

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

Water Division
Atlanta Federal Center
61 Forsyth Street SW
Atlanta, Georgia 30303-8960

**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
PERMIT NUMBER
NC0089907**

Under the authority of the Clean Water Act (CWA) of 1977 (33 USC § 1251 et seq.) and in accordance with the effluent limitations, monitoring requirements, and other conditions set forth herein

Permittee: **Eastern Band of Cherokee Indians
P.O. Box 455
Cherokee, North Carolina 28719**

is authorized to discharge: **Municipal Wastewater**

from the facility located: **Jacob Cornsilk Complex
314 Cornsilk Branch Road
Robbinsville, North Carolina 28771**

from the outfall: **001 (Latitude 35°18'13.0" North; Longitude 83°52'24.1" West)**

into the receiving water body: **Snowbird Creek**

This permit shall become effective on: **May 14, 2020**

This permit shall expire on: **May 13, 2025**

Issuance Date: **May 14, 2020**

The permittee shall reapply for NPDES coverage to discharge before **November 16, 2024**, 180 days before the expiration of this permit, if the permittee intends to continue to discharge at the facility beyond the term of this permit.

Kathlene Butler
Director
Water Division

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SCHEDULE OF SUBMISSIONS

The following is a summary of some of the items which the permittee must complete and/or submit to the U.S. Environmental Protection Agency during the term of this permit:

Item	Due Date
1. Discharge Monitoring Reports (DMRs)	Unless an exception is granted, the DMRs (EPA Form No.3320-1) are due quarterly and must be entered into NetDMR (see Part II.B.1).
2. Submittal of NPDES Application	A complete application (Forms 1, 2A, and 2S) for the next permit cycle must be submitted to the EPA no later than 180 days before the permit expires (see 40 C.F.R. § 122.21).

Submittal Addresses:

Surface Water Protection Branch Chief
U.S. Environmental Protection Agency, Region 4
Water Division | Permitting and Grants Branch
61 Forsyth Street SW | Atlanta GA 30303-8960
R4NPDESPermits@epa.govR4NPDESPermits@epa.gov

PART I – LIMITATIONS AND MONITORING REQUIREMENTS

A. Effluent Limitations and Other Monitoring Requirements

1. During the period beginning on the effective date and lasting through the term of this permit, the permittee is authorized to discharge from Outfall 001 from a treatment facility with a **design capacity of 0.03 MGD** to the receiving water body. Such discharges shall be limited and monitored by the permittee as specified in Table 1.

Table 1: Limitations and Monitoring Requirements for Outfall 001

Parameter and ICIS Parameter Code		Quantity or Loading			Quality or Concentration				No ex.	Frequency of Analysis	Sampl e Type
		Value	Value	Units	Value	Value	Value	Units			
Temperature, water deg. Centigrade	Sample Measurement		****		****	****	****	****			
00011 1 0 Effluent Gross	Permit Requirement	Req. Mon. MO AVG		Deg C	****	****	****	****		2/month	grab
Oxygen, dissolved [DO]	Sample Measurement	****	****	****							
00300 1 0 Effluent Gross	Permit Requirement	****	****	****	3 DAILY MN	****	****	Mg/l		2/month	grab
pH	Sample Measurement	****	****	****		****					
00400 1 0 Effluent Gross	Permit Requirement	****	****	****	6 DAILY MN	****	9 DAILY MX	SU		2/month	instant aneous
Solids, total suspended	Sample Measurement	****	****	****	****						
00530 1 0 Effluent Gross	Permit Requirement	****	****	****	****	30 MO AVG	45 WKLY AVG	Mg/L		2/month	Grab ^c
Solids, total suspended	Sample Measurement	****	****	****	****						
00530 G 0 Raw Sewage Influent	Permit Requirement	****	****	****	****	Req Mon. MO AVG	****	Mg/L		2/month	Grab ^c
Nitrogen, total [as N]	Sample Measurement	****	****	****	****						
00600 1 0 Effluent Gross	Permit Requirement	****	****	****	****	Req. Mon. MO AVG	Req. Mon. DAILY MX	mg/L		Monthly	Grab ^c
Nitrogen, ammonia total [as N]	Sample Measurement	****	****	****	****						
00610 1 0 Effluent Gross	Permit Requirement	****	****	****	****	10.0 MO AVG	15.0 DAILY MX	Mg/L		2/month	Grab ^c

Phosphorus, total [as P] 00665 1 0 Effluent Gross	Sample Measurement	****	****	****	****						
	Permit Requirement	****	****	****	****	Req. Mon. MO AVG	Req. Mon. DAILY MX	mg/L		Monthly	Grab ^c
Flow, in conduit or thru treatment Plant 50050 1 0 Effluent Gross	Sample Measurement				****	****	****	****			
	Permit Requirement	Req Mo. MO AVG	Req Mo. WKLY AVG	MGD	****	****	****	****		2/month	Instant aneous
E. coli 51040 1 0 Effluent Gross	Sample Measurement	****	****	****	****						
	Permit Requirement	****	****	****	****	126 ^b MO AVG	410 ^b DAILY MX	#/100 mL		2/month	Grab
BOD, carbonaceous [5 day, 20 C] 80082 1 0 Effluent Gross	Sample Measurement	****	****	****	****						
	Permit Requirement	****	****	****	****	25 MO AVG	40 WKLY AVG	Mg/L		2/month	Grab ^c
BOD, carbonaceous [5 day, 20 C] 80082 G 0 Raw Sewage Influent	Sample Measurement	****	****	****	****						
	Permit Requirement	****	****	****	****	Req. Mon. MO AVG		Mg/L		2/month	Grab ^c
BOD, carb-5 day, 20 deg C, percent Removal 80091 K 0	Sample Measurement	****	****	****		****	****				
	Permit Requirement	****	****	****	85 MO AV MN	****	****	%		Monthly	Calcul ated
Solids, suspended percent removal 81011 K 0	Sample Measurement	****	****	****		****	****				
	Permit Requirement	****	****	****	85 MO AV MN	****	****	%		Monthly	Calcul ated

^a Each month, the average effluent CBOD₅ and TSS concentrations shall not exceed 15 percent of the average of their respective influent

concentration values (85% removal).

^b The geometric mean of the E. coli values collected during any monthly period shall not exceed 126 colonies per 100 ml of effluent sample and shall be reported as the monthly average value. No more than ten percent of the E. coli samples examined during any month shall exceed 410 colonies per 100 ml.

^c While sampling procedure for these pollutants is usually 24-hour composite, due to the small size of this facility, grab sampling is allowed.

2. Samples taken in compliance with the influent monitoring requirements specified in this permit shall be taken at the nearest accessible point prior to treatment. Samples taken in compliance with the effluent monitoring requirements specified in this permit shall be taken at the nearest accessible point to the outfall, after final treatment, but prior to the actual discharge or mixing with the receiving waters (unless otherwise specified).
3. Any bypass of the treatment facility, which is not included in the effluent monitored above, is to be monitored for flow and all other parameters. For parameters other than flow, at least one grab sample per day shall be monitored. Daily flow shall be monitored or, if monitoring is not feasible, estimated to obtain reportable data. All monitoring results shall be reported on the DMR and submitted electronically using NetDMR.
4. There shall be no discharge of floating debris, oil, scum, and other floating materials in amounts sufficient to be unsightly or deleterious.
5. If the results for a given sample analysis are such that any parameter (other than E. coli) is not detected at or above the minimum level for the test method used, a value of zero will be used for that sample in calculating an arithmetic mean value for the parameter. If the resulting calculated arithmetic mean value for that reporting period is zero, the permittee shall report "NODI=B" on the DMR. For E. coli, a value of 1.0 shall be used in calculating the geometric mean. If the resulting E. coli mean value is 1.0, the permittee shall report "NODI=B" on the DMR. For each quantitative sample value that is not detectable, the test method used and the minimum level for that method for that parameter shall be attached to and submitted with the DMR. The permittee shall then be considered in compliance with the appropriate effluent limitation and/or reporting requirement.
6. Overflow identification: The permittee shall identify all wastewater discharges at locations not authorized as permitted outfalls that occur prior to the headworks of the wastewater treatment plant covered by this permit. The permittee shall submit, with the scheduled DMR, the following information for each discharge event at each source that occurs during the reporting period covered by the DMR:
 - a. the cause of the discharge;
 - b. duration and volume (estimate if unknown);
 - c. description of the source, e.g., manhole cover, pump station;
 - d. type of collection system that overflowed, i.e., combined or separate;
 - e. location by street address, or any other appropriate method;
 - f. date of event;
 - g. the ultimate destination of the flow, e.g., surface water body, land use location, via municipal separate storm sewer system to a surface water body, (show location on a USGS map or copy thereof); and
 - h. corrective actions or plans to eliminate future discharges.

The permittee shall refer to Part III.D.8 of this permit which contains information about reporting unpermitted discharge events. Submittal or reporting of any of this information does not provide relief from any subsequent enforcement actions for unpermitted discharges to waters of the United States.

B. Sludge Management Practices

1. The permittee shall comply with all existing federal laws and regulations that apply to sewage sludge use and disposal practices including 40 CFR Part 503 and 40 CFR Part 258 which are hereby incorporated as part of the permit by reference, and the Clean Water Act (CWA) Section 405(d) technical standards. If an applicable management or practice or numerical limitation for pollutants in sewage sludge more stringent than existing federal regulations is promulgated under Section 405(d) of the CWA, this permit may be modified or revoked or reissued to conform to the promulgated regulations.
2. The permittee is responsible for assuring that all biosolids produced at its facility are used or disposed of in accordance with these rules, whether the permittee uses or disposes of the biosolids itself or transfers them to another party for further treatment, use, or disposal. The permittee is responsible for informing subsequent preparers, applicators, and disposers of the requirements that they must meet under these rules.
3. The permittee shall submit within 30 days of the effective date of this permit the sludge production volume (specify if daily or annual; if actual volume is not known, estimate the quantity of sludge being handled and so indicate) and the sludge disposal practice.
4. The permittee shall provide sludge inventory data to the EPA as part of the EPA's inventory updates as requested. The data should include, but not be limited to, sludge quantity and characteristics.
5. Reopener. If an applicable "acceptable management practice" or numerical limitation for pollutants in sewage sludge promulgated under Clean Water Act (CWA) § 405(d)(2), as amended by the Water Quality Act of 1987, is more stringent than the sludge pollutant limit or acceptable management practice in this permit or controls a pollutant not limited in this permit, this permit shall be promptly modified or revoked and reissued to conform to the requirements promulgated under CWA § 405(d)(2). The permittee shall comply with the limitations by no later than the compliance deadline specified in the applicable regulations as required by CWA § 405(d)(2)(D).
6. Notice of change in sludge disposal practice. The permittee shall give prior notice to the Director of any change planned in the permittee's sludge disposal practice.
7. Cause for modification. 40 C.F.R. § 122.62(a)(1) provides that alterations are a cause for modification but not revocation and reissuance of permits except when the permittee requests or agrees. Alterations are defined as follows: There are material and substantial changes or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.
8. Upon review of information provided by the permittee as required by the above items, or results from an on-site inspection, the permit shall be subject to modification to incorporate appropriate requirements.
9. Should the permittee's sewage sludge be disposed of in a solid-waste landfill, the permittee shall demonstrate the absence of free liquids in its sewage sludge through the utilization of Test Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication No. SW-846). These tests shall be conducted on representative samples of all sewage sludge prior to each disposal at solid-waste landfills. A successful demonstration shall be performed before the permittee's sewage sludge is allowed to be disposed of at a solid-waste landfill. The permittee shall: (1) report on the DMR only the number of tests that failed during the quarter and (2) in any quarter where one or more tests failed, submit a separate report attached to the DMR which shows the date of each failed and subsequent passing test along with their respective results. Prior notice shall be

given to the EPA of any changes in disposal practice resulting from test failures.

C. Schedule of Compliance

1. The permittee shall achieve compliance with the effluent limitations specified for discharges in accordance with the following schedule:

Operational Level Attained..... Effective Date of Permit

PART II – OTHER PERMIT REQUIREMENTS

A. Reporting, Monitoring, and Recording Requirements

1. Electronic Reporting Requirements

- a. Monitoring data required by this permit shall be submitted on the EPA Form 3320-1 DMR forms using the NetDMR internet application. NetDMR is a web-based application that allows National Pollutant Discharge Elimination System (NPDES) Permittee Users to enter and electronically submit DMR data through the Central Data Exchange (CDX) to the Integrated Compliance Information System (ICIS). The EPA's NetDMR webpage can be found at: <https://cdxnodengn.epa.gov/net-netdmr/>.
- b. The DMRs shall be signed by a facility's Responsible Official or a Delegated Responsible Official (i.e. a person delegated by the Responsible Official). The Responsible Official of a facility is defined in Part V. For NetDMR, the person(s) viewing, editing, signing and submitting the DMRs will need to register for a new account managed by the EPA Region 4. A request for signatory privilege requires submission of a Subscriber Agreement to the EPA Region 4. Additionally, Delegated Responsible Officials must be delegated by the Responsible Official, either on-line using NetDMR, or on a paper delegation form provided by the EPA. For more information and guidance on NetDMR, please view the following web page: <https://netdmr.zendesk.com/home>
- c. DMRs submitted using NetDMR shall be submitted to the EPA Region 4 by the 21st day of the month (April, July, October, January) following the quarter for which the monitoring was completed.

A paper copy of the submitted EPA 3320-1 DMR shall be maintained onsite for records retention purposes. For NetDMR users, view and print the DMR from the Submission Report Information page after each original or revised DMR is submitted.

- d. DMRs must be reported using the EPA's electronic NetDMR tool unless a waiver from electronic reporting has been granted from the EPA Region 4.

2. Monitoring procedures

Monitoring and sampling must be conducted according to test procedures approved under 40 C.F.R. Part 136, unless other test procedures have been specified in this permit or approved by the EPA as an alternate test procedure under 40 C.F.R. § 136.5.

3. Additional monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 C.F.R. Part 136 or as specified in this permit, the permittee must include the results of this monitoring in the calculation and reporting of the data submitted in the DMR. Upon request by the EPA, the permittee must submit results of any other sampling, regardless of the test method used.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the permittee must collect additional samples at the outfall

whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample. The permittee must analyze the additional samples for those parameters limited in Table 1: Effluent Limitations and Monitoring Requirements.

B. Reopener Clause

This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under CWA § 301(b)(2)(C), CWA § 301(b)(2)(D), and CWA § 307(a)(2), as amended, if the effluent standard or limitation so issued or approved:

1. Contains different conditions or is otherwise more stringent than any condition in the permit; or
2. Controls any pollutant not addressed in the permit.

The permit as modified or reissued under this paragraph shall contain any other requirements of the CWA then applicable.

PART III – STANDARD CONDITIONS FOR NPDES PERMITS

A. General Conditions

1. Duty to Comply [40 C.F.R. §§ 122.41(a) and 122.41(a)(1)]

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA or Act) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

2. Penalties for Violations of Permit Conditions [40 C.F.R. § 122.41(a)(2) and 40 C.F.R. § 122.41(a)(3)]

(Note: Civil and administrative penalty amounts described in this subsection are based on adjustments to the original statutory amounts based on inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101- 410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Public Law 104-134, enacted April 26, 1996; 110 Stat. 1321) and as set forth at 40 C.F.R. § 19.4.)

The CWA provides that any person who violates Section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under Section 402, or any requirement imposed in a pretreatment program approved under Sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$25,000 per day for each violation. The CWA provides that any person who negligently violates Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, or any requirement imposed in a pretreatment program approved under Section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 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 of not more than two years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 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 of not more than six years, or both. Any person who knowingly violates Section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in Section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can

be fined up to \$2,000,000 for second or subsequent convictions.

Any person may be assessed an administrative penalty by the Administrator for violating Section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of this Act.

Administrative penalties for Class I violations are not to exceed \$20,628 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$51,570. Penalties for Class II violations are not to exceed \$20,628 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$257,848. The specific penalty amounts described above for violations reflect those in effect at the time of permit issuance and are subject to change.

3. Civil and Criminal Liability [40 C.F.R. § 122.41(m) and (n)]

Except as provided in permit conditions on “Bypassing” Section B, Paragraph 3, and “Upset” Section B, Paragraph 4, nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

4. Duty to Mitigate [40 C.F.R. § 122.41(d)]

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

5. Permit Actions [40 C.F.R. § 122.41(f)]

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.

6. Toxic Pollutants [40 C.F.R. § 122.44(b)(1)]

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 CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

7. 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 CWA.

8. State Laws

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 established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the CWA.

9. Effect of a Permit [40 C.F.R. § 122.5(a)(1) and (2)]

Except for any toxic effluent standards and prohibitions imposed under Section 307 of the CWA and “standards for sewage sludge use or disposal” under Section 405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Sections 301, 302, 306, 307, 318, 403, and 405 (a)-(b) of the CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in 40 C.F.R. §§ 122.62 and 122.64.

Compliance with a permit condition which implements a particular “standard for sewage sludge use or disposal” shall be an affirmative defense in any enforcement action brought for a violation of that “standard for sewage sludge use or disposal” pursuant to Sections 405(e) and 309 of the CWA.

10. Property Rights [40 C.F.R. § 122.5(b), 40 C.F.R. § 122.41(g), and 40 C.F.R. § 122.5(c)]

This permit does not convey any property rights of any sort, or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

11. Onshore or Offshore Construction

This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any waters of the United States.

12. Severability

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

13. Duty to Provide Information [40 C.F.R. § 122.41(h)]

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

B. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance [40 C.F.R. § 122.41(e)]

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 include adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup 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.

2. Need to Halt or Reduce Activity Not a Defense [40 C.F.R. § 122.41(c)]

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Bypass of Treatment Facilities [40 C.F.R. § 122.41(m)(1)-(4)]

a. Definitions

- (1) **“Bypass”** means the intentional diversion of waste streams from any portion of a treatment facility.
- (2) **“Severe property damage”** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations.

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs c. and d. of this subsection.

c. Notice

- (1) **Anticipated bypass.** If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the Director, if possible, at least 10 days before the date of the bypass.
- (2) **Unanticipated bypass.** The permittee shall submit notice of an unanticipated bypass as required in Section D, Subsection 8 (24-hour notice).

d. Prohibition of bypass

- (1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
 - (a) Bypass was unavoidable to prevent loss of life and person injury, or severe property damage; and
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (c) The permittee submitted notices as required under Paragraph c. of this subsection.

- (2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in Paragraph d.(1) of this subsection.

4. Upsets [40 C.F.R. § 122.41(n)(1)-(4)]

a. Definition

“Upset” means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. Effect of an upset

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Paragraph c. of this subsection 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.

c. 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:

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (2) The permitted facility was at the time being properly operated;
- (3) The permittee submitted notice of the upset as required in Section D, Subsection 8 (24-hour notice); and
- (4) The permittee complied with any remedial measures required under Section A, Subsection 4.

d. Burden of proof

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

5. Removed Substances

This permit does not authorize discharge of solids, sludge, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters of the United States unless specifically limited in Part I.

C. Monitoring and Records

1. Representative Sampling [40 C.F.R. § 122.41(j)(1)]

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. All samples shall be taken at the monitoring points specified in this permit (Part I.A.2). Monitoring points shall not be changed without notification to and the approval of the Director.

2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to ensure that the accuracy of all measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than ± 10 percent from the true discharge rates throughout the range of expected discharge volumes.

3. Monitoring Procedures [40 C.F.R. § 122.41(j)(4)]

Monitoring results must be conducted according to test procedures approved under 40 C.F.R. Part 136 or, in the case of sewage sludge use or disposal, approved under 40 C.F.R. Part 136 unless otherwise specified in 40 C.F.R. Part 503, unless other test procedures have been specified in the permit.

4. Penalties for Tampering [40 C.F.R. § 122.41(j)(5)]

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

5. Retention of Records [40 C.F.R. § 122.41(j)(2)]

Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 C.F.R. Part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

6. Record Contents [40 C.F.R. § 122.41(j)(3)(i)-(vi)]

Records of monitoring information shall include:

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

- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

7. Inspection and Entry [40 C.F.R. § 122.41(i)(1)-(4)]

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

- a. 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;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.

D. Reporting Requirements

1. Change in Discharge [40 C.F.R. § 122.41(l)(1)(i)-(iii)]

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 C.F.R. § 122.29(b); or
- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D, Subsection 11.
- c. 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.

2. Anticipated Noncompliance [40 C.F.R. § 122.41(l)(2)]

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

Any maintenance of facilities, which might necessitate unavoidable interruption of operation and degradation of effluent quality, shall be scheduled during noncritical water quality periods and carried out in a manner approved by the Director.

3. Transfer of Ownership of Control [40 C.F.R. § 122.41(l)(3), § 122.61, and § 122.61(b)]

a. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the CWA.

b. In some cases, modification or revocation and reissuance is mandatory.

c. Automatic Transfers. As an alternative to transfers of permits by modification, any NPDES permit may be automatically transferred to a new permittee if:

(1) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in Subparagraph c(2) of this subsection;

(2) The notice includes a written agreement between the existing and new permittee(s) containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

(3) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under 40 C.F.R. § 122.63. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Subparagraph c(2) of this subsection.

4. Monitoring Reports [40 C.F.R. § 122.41(l)(4) and 40 C.F.R. § 122.41(l)(4)(i)]

Monitoring results shall be reported at the intervals specified in Part I of the permit. Monitoring results must be reported on a DMR, or forms provided or specified by the director for reporting results of monitoring of sewage sludge use or disposal practices.

5. Additional Monitoring by the Permittee [40 C.F.R. § 122.41(l)(4)(ii)]

If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 C.F.R. Part 136 or, in the case of sewage sludge use or disposal, approved under 40 C.F.R. Part 136 unless otherwise specified in 40 C.F.R. Part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sewage sludge reporting form specified by this permit.

6. Averaging of Measurements [40 C.F.R. § 122.41(l)(4)(iii)]

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in this permit.

7. Compliance Schedules [40 C.F.R. § 122.41(l)(5)]

The permittee shall achieve compliance with the effluent limitations and monitoring requirements specified for discharges by the effective date of this permit. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

8. Twenty-four Hour Reporting [40 C.F.R. §§ 122.44(g), 122.41(l)(6), and 122.44(g)]

The permittee shall report to the Director any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five calendar days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The following shall be included as information which must be reported within 24-hours under this paragraph. The Director may waive the written report on a case by case basis for reports under this subsection if the oral report has been received within 24-hours.

- a. Any unanticipated bypass which exceeds any effluent limitation in the permit.
- b. Any upset which exceeds any effluent limitation in the permit.
- c. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours.

9. Other Noncompliance [40 C.F.R. § 122.41(l)(7)]

The permittee shall report all instances of noncompliance not reported under Section D at the time DMRs are submitted. The reports shall contain the information listed in Section D, Subsection 8.

10. Other Information [40 C.F.R. § 122.41(l)(8)]

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

11. Changes in Discharge of Toxic Substances [40 C.F.R. § 122.42(a)(1)(i-iii) and 40 C.F.R. § 122.42(a)(2)(i-iii)]

The following conditions apply to all NPDES permits within the categories specified below:

- a. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:
 - (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”:
 - (a) One hundred micrograms per liter (100 µg/l);
 - (b) 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; or
 - (c) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 C.F.R. § 122.21(g)(7).
 - (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”:
 - (a) Five hundred micrograms per liter (500 µg/l);
 - (b) One milligram per liter (1 mg/l) for antimony; or
 - (c) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 C.F.R. § 122.21(g)(7).
- b. Publicly owned treatment works (POTWs). All POTWs must provide adequate notice to the Director of the following:
 - (1) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to Section 301 or 306 of CWA if it were directly discharging those pollutants; and
 - (2) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
 - (3) For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW, and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW [40 C.F.R. § 122.42(b)].

12. Duty to Reapply [40 C.F.R. § 122.41(b), § 122.21(d), § 122.6(a), and § 122.6(b)]

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

The application should be submitted at least 180 days before the expiration date of this permit. The Director may grant permission to submit an application later than the 180 days in advance, but no later than the permit expiration date.

The conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit if the permittee has submitted a timely application under this subsection which is a complete application for a new permit; and the Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

Permits continued under this section remain fully effective and enforceable.

13. Signatory Requirements [40 C.F.R. § 122.41(k)(1) and 40 C.F.R. § 122.22]

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

a. Applications. All permit applications shall be signed as follows:

(1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

- (a) 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
- (b) 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.

NOTE: The EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in this subparagraph. The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under this subparagraph rather than to specific individuals.

- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
- (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:
 - (a) the chief executive officer of the agency, or
 - (b) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of the EPA).
- b. All reports required by permits, and other information requested by the Director shall be signed by a person described in Paragraph a. of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - (1) The authorization is made in writing by a person described in Paragraph a. of this section;
 - (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company.
 - (3) The written authorization is submitted to the Director.
- c. Changes to Authorization. If an authorization under Paragraph b. of this section 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 Paragraph b. of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.
- d. Certification. Any person signing a document under Paragraph a. or b. of 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.”

14. Availability of Reports and the Administrative Record [40 C.F.R. §§ 124.18 & 122]

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

15. Penalties for Falsification of Reports [40 C.F.R. § 122.41(k)(2)]

The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six (6) months per violation, or by both.

E. Definitions

1. The EPA [40 C.F.R. § 122.2]

The Regional Administrator of the EPA Region 4 or his/her designee is the “**The EPA**,” unless at some time in the future the state or Indian Tribe receives authority to administer the NPDES program and assumes jurisdiction over the permit at which time, the Director of the state or Tribal program receiving the authorization becomes the issuing authority.

The use of the term “Director” in this permit shall mean the EPA Region 4 Water Division Director, as the Regional Administrator’s designee.

2. Act [40 C.F.R. § 124.2]

“**Act**” means the CWA (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, 33 U.S.C. 1251 et seq.

3. Discharge Monitoring Report (DMR) [40 C.F.R. § 122.2]

“**Discharge Monitoring Report**” means the EPA national form (Form 3320-1), or electronic reporting form required by the federal regulations including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees.

4. Measurements [40 C.F.R. § 122.2]

The “**Daily discharge**” means the “discharge of a pollutant” measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement (i.e., concentration), the “daily discharge” is calculated as the average measurement of the pollutant over the day.

The “**average annual discharge limitation**” means the highest allowable average of “daily discharges” over a period of twelve consecutive calendar months, calculated as the “arithmetic mean” of the monthly averages for the current calendar month and the eleven prior calendar months. The annual average is calculated each month. This limitation is identified as “Annual Average” in Part I of the permit.

The “**average monthly discharge limitation**” other than for bacterial indicators, means the highest allowable 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. For bacterial indicators, the “average monthly discharge limitation” is calculated using a “geometric mean.” This limitation is identified as “Monthly Average” or “Daily Average” in Part I of the permit.

The “**average weekly discharge limitation**” means the highest allowable 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. This limitation is identified as “Weekly Average” in Part I of the permit.

The “**maximum daily discharge limitation**” means the highest allowable “daily discharge.” This limitation is identified as “Daily Maximum” in Part I of the permit.

The “**Method Detection Limit (MDL)**” means the minimum concentration of a substance (analyte) that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

The “**Minimum Level (ML)**” means the concentration at which the entire analytical system must give a recognizable signal and an acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method-specified sample weights, volumes and processing steps have been followed.

5. Types of Samples

- a. Composite Sample: A “**composite sample**” is a combination of not less than eight influent or effluent portions (aliquots), of at least 100 ml, collected over the full time period specified in Part I of the permit. The composite sample must be flow proportioned by either a time interval between each aliquot, or by volume as it relates to effluent flow at the time of sampling, or by total flow since collection of the previous aliquot. Aliquots may be collected manually or automatically.
- b. Grab Sample: A “**grab sample**” is a single influent or effluent portion which is not a composite sample. The sample(s) shall be collected at the period(s) most representative of the total discharge.

6. Calculation of Means

- a. Arithmetic Mean: The “**arithmetic mean**” of any set of values is the sum of the individual values divided by the number of individual values.
- b. Geometric Mean: The “**geometric mean**” of any set of values is the N^{th} root of the product of the individual values where N is equal to the number of individual values. The geometric mean is equivalent to the antilog of the arithmetic mean of the logarithms of the individual values. For purposes of calculating the geometric mean, values of zero (0) shall be considered to be one (1).

7. Permittee [40 C.F.R. § 122.21(b)]

The “**Permittee**” means the operator who has substantial control over the day-to-day operations of the facility; when a facility or activity is owned by one person but is operated by another person, it is the operator’s duty to obtain a permit.

8. Hazardous Substance [40 C.F.R. § 122.2]

A “**hazardous substance**” means any substance designated under 40 C.F.R. Part 116 pursuant to Section 311 of the CWA.

9. Toxic Pollutants [40 C.F.R. § 122.2]

A “**toxic pollutant**” is any pollutant listed as toxic under Section 307(a)(1) of the CWA or, in the case of “Sewage sludge use or disposal practices,” any pollutant identified in regulations implementing Section 405(d) of the CWA.