United States Environmental Protection Agency (EPA)
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 *et seq*., as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

Lummi Indian Business Council
Sandy Point Waste Water Treatment Plant
4369 Germaine Road
Ferndale, WA 98248

is authorized to discharge from the **Sandy Point Waste Water Treatment Plant**, located on the Lummi Indian Reservation near Bellingham, Washington, at the following location:

Outfall	Receiving Water	Latitude	Longitude
001	**Strait of Georgia**	48˚ 48' 56" N	122˚ 42' 57" W

in accordance with discharge point, effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective **June 1, 2004.**
This permit and the authorization to discharge shall expire at midnight, **May 31, 2009.**

The permittee shall reapply for a permit reissuance on or before **November 30, 2008**, 180 days before the expiration of this permit if the permittee intends to continue operations and discharges at the facility beyond the term of this permit.

Signed this 12th day of April, 2004,

/s/ Robert R. Robichaud for
Randall F. Smith
Director
Office of Water, Region 10
U.S. Environmental Protection Agency

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I. LIMITATIONS AND MONITORING REQUIREMENTS

During the effective period of this permit, the permittee is authorized to discharge pollutants from the outfall specified herein to Strait of Georgia within the limits and subject to the conditions set forth herein. This permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams, and operations that have been clearly identified in the permit application process.

A. Effluent Limitations and Monitoring

1. The permittee must limit and monitor discharges from outfall 001 as specified in Table 1 below. All limitations represent maximum effluent limits, unless otherwise indicated. The permittee must comply with the effluent limitations in Table 1 at all times, unless otherwise indicated, regardless of the frequency of monitoring or reporting required by other provisions of this permit.

Table 1:
Effluent Limitations and Monitoring Requirements from Outfall 001

Parameter	Effluent Limitations			Monitoring Requirements		
	Maximum Daily	Average Weekly	Average Monthly	Sample Location	Sample Frequency	Sample Type
Outfall Flow, MGD	–	–	–	Effluent	continuous	recording
Biochemical oxygen demand (BOD_5)	–	45 mg/l	30 mg/l & ≥ 85% removal	Influent & Effluent	1/week	24 hour composite
	–	94 lbs/day[1]	63 lbs/day[1]			
Total Suspended Solids (TSS)	–	45 mg/l	30 mg/l & ≥ 85% removal	Influent & Effluent	1/week	24 hour composite
	–	94 lbs/day[1]	63 lbs/day[1]			
Fecal coliform bacteria	–	400/100 ml	200/100ml	Effluent	1/week	grab
Total Residual Chlorine[2]	0.65 mg/l	--	0.39 mg/l	Effluent	daily	grab
pH	within the range of 6.0 and 9.0			Effluent	daily	grab
Temperature, deg. C	--	--	--	Effluent	daily	grab
Alkalinity, as $CaCO_3$	--	--	--	Effluent	quarterly	grab
Total Ammonia (NH_3), mg/l	–	–	–	Effluent	quarterly	24 hour composite

1. Mass loading (lbs/day) = Concentration (mg/l) x flow (MGD) x 8.34 lbs-l/gallon-mg.
2. If the permittee ceases to use chlorination as its disinfection method, it may apply to EPA to discontinue chlorine monitoring. The permittee has until 12/31/04 to come into compliance with the limits for Total Residual Chlorine.

2. The permittee must not discharge any floating solids, visible foam in other than trace amounts, or oily wastes that produce a sheen on the surface of the receiving water.

3. The permittee must not introduce any toxic substances above natural background levels in waters of the state which have the potential, either singularly or cumulatively, to adversely affect characteristic water uses, cause acute or chronic toxicity to the most sensitive biota dependent upon those waters, or adversely affect public health, as determined by the Washington Department of Ecology (Ecology).

4. Percent removal of BOD_5 and TSS must be reported on the Discharge Monitoring Reports (DMRs). For each parameter, the monthly average percent removal must be calculated from the arithmetic mean of the influent values and the arithmetic mean of the effluent values for that month. Influent and effluent samples must be taken over the same time period.

5. The permittee must collect effluent samples from the effluent stream after the last treatment unit prior to discharge into the receiving waters.

6. Method Detection Limits. For all effluent monitoring, the permittee must use methods that can achieve a method detection limit (MDL) less than the effluent limitation. For parameters that do not have effluent limitations, the permittee must use methods that can achieve MDLs less than or equal to those specified in Table 2 (Part I.B.4.).

7. For purposes of reporting on the DMR, if a value is greater than the MDL, the permittee must report the actual value. If a value is less than the MDL, the permittee must report "less than {numeric MDL}" on the DMR. For purposes of calculating monthly averages, zero may be used for values less than the MDL.

B. Whole Effluent Toxicity (WET)

1. Testing Requirements. The permittee must conduct all chronic toxicity tests below on final effluent samples from outfall 001 as specified below.

   a. The Permittee shall test final effluent twice between January 1, 2006, and December 31, 2006, once between January 1 and June 30, using Pacific herring for the fish test, if available and validated, and once between July 1 and December 31.

   b. The Permittee shall conduct chronic toxicity testing on a series of at least five (5) dilutions of effluent and a control in order to be able to determine appropriate point estimates and a No Observable Effect Concentration (NOEC). This series of dilutions must include the acute critical effluent concentration (ACEC) (2%). The Permittee shall compare the ACEC to the control using hypothesis testing at the 0.05 level of significance, as described in

Appendix G of EPA/600/R-95/136[1].

c. Chronic toxicity tests shall be conducted with the following species and the most recent version of the following protocols:

Saltwater Chronic Toxicity Test Species		Method
Pacific Herring (if available) otherwise: **Topsmelt**	*Clupea pallasia* *Atherinops affinis*	Dinnel/Middaugh Larval Growth (2004) EPA/600/R-95/136[1]
Sea urchin/ Sand dollar	*Strongylocentrotus purpuratus/ Dendraster excentricus*	EPA/600/R-95/136[1]

d. The sea urchin and sand dollar (echinoderm) test shall be run in accordance with EPA/600/R-95/136[1] and the echinoderm fertilization test conditions in the Washington Department of Ecology Publication #WQ-R-95-80[2], or the most recent version thereof. The lab shall use whichever one of these species gives a valid result in each particular test.

2. Sampling Requirements

a. Testing shall be conducted on 24 hour composite samples. Samples taken for toxicity testing shall be cooled to 4 degrees Celsius while being collected and shall be sent to the lab immediately upon completion. The lab shall begin the toxicity testing as soon as possible but no later than 36 hours after sampling was ended.

b. All samples and test solutions for toxicity testing shall have water quality measurements as specified in Ecology publication #WQ-R-95-80[2].

c. All toxicity tests shall meet quality assurance criteria and test conditions in the most recent versions of EPA/600/R-95/136[1] and Ecology #WQ-R-95-80[2]. If tests are determined to be invalid or anomalous by EPA, testing shall be repeated with freshly collected effluent.

d. Control water and dilution water shall be laboratory water meeting the requirements specified in EPA/600/R-95/136[1]

e. The whole effluent toxicity tests shall be conducted on unmodified samples of final effluent prior to chlorination.

[1] *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms. August 1995.*

[2] *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria. December 2001.*

3. Protocols – Sample analysis shall be conducted in accordance with 40 CFR §136.

4. Quality Assurance/Quality Control Procedures – The permittee shall follow the quality assurance procedures of 40 CFR §136.

5. Reporting Requirements

   a. The permittee must submit the results of the toxicity tests with the discharge monitoring reports (DMR). Toxicity tests taken from April 1 through October 31 must be reported on the December DMR. Toxicity tests taken from November 1 through March 31 must be reported on the May DMR.

   b. The report of toxicity test results must include all relevant information outlined in Section 10, Report Preparation, of EPA/821-R-02-014 (see reference above). In addition to toxicity test results, the permittee must report: dates of sample collection and initiation of each test; flow rate at the time of sample collection; bench sheets; and the results of the monitoring required in Part I.A.

C. Expanded Effluent Testing. If the whole effluent toxicity testing required in §I.B. (above) yields statistically significant toxicity at the ACEC, testing for an expanded list of pollutants must be conducted within 60 days of the receipt of WET results that exhibit toxicity.

1. The Permittee shall conduct chemical analyses of effluent samples collected from the wastewater treatment system in accordance with protocols, monitoring requirement, and QA/QC procedures specified in this section.

2. The sample shall be a representative composite sample, collected through continuous sampling or by six grab samples equally spaced over a 24 hour period.

3. Analytical results must be submitted to EPA at the address specified in § II.B (below) within 15 days of receipt by the permittee. Courtesy copies will be provided to Ecology on the same schedule.

4. The sample shall be analyzed for the following constituents:

Metals

Antimony	Nickel
Arsenic	Selenium
Beryllium	Silver
Cadmium	Thallium
Chromium	Zinc
Copper	Cyanide

Lead	Total Phenolic Compounds
Mercury	Hardness (as $CaCO_3$)

Volatile Organic Compounds

acrolein	1,1-dichloroethylene
acrylonitrile	1,2-dichloropropane
benzene	1,3-dichloro-propylene
bromoform	ethylbenzene
carbon tetrachloride	methyl bromide
chlorobenzene	methyl chloride
chlorodibromo-methane	methylene chloride
chloroethane	1,1,2,2-tetrachloro-ethane
2-chloro-ethylvinyl ether	tetrachloro-ethylene
chloroform	toluene
dichlorobromo-methane	1,1,1-trichloroethane
1,1-dichloroethane	1,1,2-trichloroethane
1,2-dichloroethane	trichloroethylene
trans-1,2-dichloro-ethylene	vinyl chloride

Acid-extractable compounds

P-chloro-M-cresol	2-nitrophenol
2-chlorophenol	4-nitrophenol
2,4-dichlorophenol	pentachlorophenol
2,4-dimethylphenol	phenol
4,6-dinitro-o-cresol	2,4,6-trichlorophenol
2,4-dinitrophenol	

Base-neutral compounds

acenaphtene	1,4-dichlorobenzene
acenaphthylene	3,3-dichlorobenzidine
anthracene	diethyl phthalate
benzo(A)anthracene	2,4-dinitrotoluene
benzo(A)pyrene	2,6-dinitrotoluene
3,4-benzo-fluoranthene	1,2-diphenylhydrazine
benzo(GHI)perylene	fluoranthene
benzo(K)fluoranthene	fluorene
bis(2-chloroethoxy) methane	hexachlorocyclo-pentadiene
bis (2-chloroethyl)-ether	hexachlorobutadiene
bis (2-chloroiso-propyl) ether	hexachlorocyclo-pentadiene
bis-(2-ethylhexyl) phthalate	hexachloroethane
4-bromophenyl phenyl ether	indeno-1,2,3-CD)pyrene
butyl benzyl phthalate	isphorone
2-chloronaphthalene	naphthalene
4-chlorphenyl phenyl ether	nitrobenzene
chrysene	N-nitrosodi-N-propylamine
di-N-butyl phthalate	N-nitrosidi-methylamine
di-N-octyl phthalate	N-nitrosodi-phenylamine
dibenzo(A,H) anthracene	phenanthrene
1,2-dichlorobenzene	pyrene
1,3-dichlorobenzene	1,2,4-trichlorobenzene

D. Surface Water Monitoring. The permittee must conduct surface water monitoring. Surface water monitoring must start within 120 days after the effective date of the permit and continue quarterly for the duration of the permit and any extensions. The program must meet the following requirements:

1. A monitoring station must be established in the **Strait of Georgia** at least 244 feet and no more than 500 feet from the outfall. To the extent practicable, samples should be taken at the same location each quarter.

2. To the extent practicable, surface water sample collection must occur on the same day as effluent sample collection.

3. Surface water samples must be grab samples.

4. Samples must be analyzed for the parameters listed in Table 2.

Table 2:
Surface Water Monitoring Parameters, Frequency, and Method Detection Levels

Parameter	Units	Sampling Frequency	Method Detection Level
Total Ammonia as N	mg/L	1/quarter	10 µg/l
Alkalinity	mg/l as $CaCO_3$	1/quarter	10 mg/l
pH	standard units	1/quarter	--
Salinity	%	1/quarter	–
Temperature	° C	1/quarter	--
Fecal coliform	colonies/100 ml	1/quarter	--

5. Quality assurance/quality control plans for all the monitoring must be documented in the Quality Assurance Plan required under Part I.C, "Quality Assurance Plan".

6. Surface water monitoring results must be submitted to EPA annually by January 31 for monitoring in the previous calendar year. Courtesy copies will also be sent to the Washington Department of Ecology on the same schedule. At a minimum, the report must include the following:

   a. Permit # and facility name.
   b. Dates of sample collection and analyses.
   c. Results of sample analysis.
   d. Relevant quality assurance/quality control (QA/QC) information.

E. Quality Assurance Plan (QAP). The permittee must develop a quality assurance plan (QAP) for all monitoring required by this permit within 60 days of the effective date of this permit. Within 120 days of the effective date of this permit, the QAP must be implemented, and EPA must be notified that the QAP has been developed and implemented. Any existing QAPs may be modified to fulfill the requirements under this section.

1. The QAP must be designed to assist in planning for the collection and analysis of effluent and receiving water samples in support of the permit and in explaining data anomalies when they occur.

2. Throughout all sample collection and analysis activities, the permittee must use the EPA-approved QA/QC and chain-of-custody procedures described in *Requirements for Quality Assurance Project Plans* (EPA/QA/R-5) and *Guidance for Quality Assurance Project Plans* (EPA/QA/G-5). The QAP must be prepared in the format which is specified in these documents.

3. At a minimum, the QAP must include the following:

a. Permit # and facility name.

b. Details on the number of samples, type of sample containers, preservation of samples, holding times, analytical methods, analytical detection and quantitation limits for each target compound, type and number of quality assurance field samples, precision and accuracy requirements, sample preparation requirements, sample shipping methods, and laboratory data delivery requirements.

c. Map(s) indicating the location of each sampling point.

d. Qualification and training of personnel.

e. Name(s), address(es) and telephone number(s) of the laboratories used by or proposed to be used by the permittee.

4. The permittee must amend the QAP whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAP.

5. Copies of the QAP must be kept on site and made available to EPA upon request.

F. Chlorine Compliance Schedule.

1. The permittee must achieve compliance with the chlorine limitations of Part I.A.1. (Table 1), by December 31, 2004.

2. Until compliance with the effluent limits is achieved, at a minimum, the permittee must complete the tasks and reports listed below.

a. By **August 15, 2004**, submit a plan detailing the steps needed to achieve compliance with the chlorine limitations by December 31, 2004.

b. By **November 30, 2004**, install equipment needed to enable compliance with the chlorine limitations.

c. By **December 31, 2004**, achieve compliance with the chlorine limitations.

G. Facility Planning Requirement. Each month, the permittee must compute an annual average value for the flow, BOD_5 loading, and TSS loading entering the facility based on the previous twelve months' data or all data available, whichever is less. If the facility has completed a plant upgrade that affects the facility planning values listed in Table 3, only the data collected after the upgrade should be used in determining the annual average value.

When the annual average values exceed 85% of the facility planning values listed in Table 3, the permittee must develop a facility plan and schedule within one year from the date of the first exceedence. The plan must include the permittee's strategy for continuing to maintain compliance with effluent limits and will be

made available to the Director, Office of Water, EPA Region 10 (Director) or authorized representative upon request.

Table 3 - Facility Planning Design Criteria

Parameter	Value	Units
Average Flow	0.25	mgd
Influent BOD_5 Loading	400	lbs/day
Influent TSS Loading	400	lbs/day

H. Outfall Inspection Requirement. Within the five year term of this permit, the permittee must conduct an inspection of the facility outfall in the Strait of Georgia as follows:

1. Inspect the submerged portion of the outfall line and diffuser.

2. Document the exact location of the outfall and diffuser using global positioning system (GPS).

3. Document the condition of the outfall photographically or videographically, if possible.

4. Submit a report of the inspection within 90 days of the inspection to EPA at the address in §II.B, below.

5. Transmit a courtesy copy of the inspection report to Ecology at the address in §II.B, below.

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

A. Representative Sampling (Routine and Non-Routine Discharges). Samples and measurements must be representative of the volume and nature of the monitored discharge.

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 appropriate 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 Part I.A. of this permit that are likely to be affected by the discharge.

The permittee must collect such additional samples as soon as the spill, discharge, or bypassed effluent reaches the outfall. The samples must be analyzed in accordance with paragraph II.C ("Monitoring Procedures"). The permittee must report all additional monitoring in accordance with paragraph II.D ("Additional Monitoring by Permittee").

B. Reporting of Monitoring Results. The permittee must summarize monitoring results each month on the Discharge Monitoring Report (DMR) form (EPA No.

3320-1) or equivalent or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. The permittee must submit reports monthly, postmarked by the 10th day of the following month. The permittee must sign and certify all DMRs, and all other reports, in accordance with the requirements of Part IV.E. of this permit ("Signatory Requirements"). The permittee must submit the legible originals of these documents to the Director, Office of Water, EPA Region 10, at the following address:

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue, OW-133
Attn: PCS Data Entry Team
Seattle, Washington 98101

On the same schedule, the permittee will provide courtesy copies of the reports to:

Washington Department of Ecology
1204 Railroad Avenue, Suite 200
Bellingham WA 98225

C. Monitoring Procedures. Monitoring must be conducted according to test procedures approved under 40 CFR §136 or, in the case of sludge use or disposal, approved under 40 CFR §503, unless other test procedures have been specified in this permit.

D. Additional Monitoring by Permittee. If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR §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 DMRs or sludge reporting forms specified by the Director.

Upon request by the Director, the permittee must submit results of any other sampling, regardless of the test method used.

E. Records Contents. Records of monitoring information must include:

1. the date, exact place, and time of sampling or measurements;
2. the name(s) of the individual(s) who performed the sampling or measurements;
3. the date(s) analyses were performed;
4. the names of the individual(s) who performed the analyses;
5. the analytical techniques or methods used; and
6. the results of such analyses.

F. Retention of Records. 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 CFR §503, the permittee must 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, copies of DMRs, a copy of the NPDES permit, and records of all data used to complete the application for this permit for a period of

at least five years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

G. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee must report the following occurrences of noncompliance by telephone to EPA at **(206) 553-1846**, as soon as possible, but at least within 24 hours of the time the permittee becomes aware of the circumstances:

   a. any noncompliance that may endanger health or the environment;

   b. any unanticipated bypass that exceeds any effluent limitation in the permit (See Part III.F., "Bypass of Treatment Facilities");

   c. any upset that exceeds any effluent limitation in the permit (See Part III.G., "Upset Conditions"); or

   d. any violation of a maximum daily or an instantaneous maximum discharge limitation for any of the pollutants in Table 1 of Part I.A; or

   e. any overflow prior to the treatment works, whether or not such overflow endangers health or the environment or exceeds any effluent limitation in the permit.

2. The permittee must also provide a written submission within five days of the time that the permittee becomes aware of any event required to be reported under Part II.G.1. The written submission must contain:

   a. a description of the noncompliance and its cause;

   b. the period of noncompliance, including exact dates and times;

   c. the estimated time noncompliance is expected to continue if it has not been corrected; and

   d. steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance; and

   e. if the non compliance involves an overflow prior to the treatment works, an estimate of the quantity (in gallons) of untreated overflow.

3. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the NPDES Compliance Hotline in Seattle, Washington, by telephone at **(206) 553-1846.**

4. Reports must be submitted to the EPA address in Part II.B ("Reporting of Monitoring Results").

H. Reporting of Unauthorized Discharges. The permittee must report immediately all unauthorized discharges that affect shellfish growing areas, such as collection

system overflows, plant bypasses, or failure of the disinfection system, to the Washington State Department of Health, Shellfish Protection Program. The 24-hour number for the Department of Health is **(360) 236-3330**.

I. Other Noncompliance Reporting. The permittee must report all instances of noncompliance that are not required to be reported within 24 hours at the time that monitoring reports for Part II.B ("Reporting of Monitoring Results") are submitted. The reports must contain the information listed in Part II.G.2 ("Twenty-four Hour Notice of Noncompliance Reporting").

J. Notice of New Introduction of Pollutants. The permittee must provide notice to the Director of:

1. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to Sections 301 or 306 of the Act if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into the POTW by a source introducing pollutants into the POTW at the time of issuance of this permit.

3. For the purposes of this section, adequate notice must include information on:

   a. The quality and quantity of effluent to be introduced into the POTW, and

   b. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application.

B. Penalties for Violations of Permit Conditions

1. Civil and Administrative Penalties. Pursuant to 40 CFR §19 and the Act, 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 the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $27,500 per day for each violation).

2. Administrative Penalties. Any person may be assessed an administrative penalty by the Administrator of EPA (Administrator) for violating section 301, 302, 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. Pursuant to 40 CFR §19 and the Act, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $27,500). Pursuant to 40 CFR §19 and the Act, penalties for Class II violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $137,500).

3. Criminal Penalties:

   a. Negligent Violations. The Act 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 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or to imprisonment of not more than 2 years, or both.

   b. Knowing Violations. 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 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both.

   c. Knowing Endangerment. 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 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.

d. False Statements. The Act 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 2 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 4 years, or both. The Act further 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 6 months per violation, or by both.

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

D. Duty to Mitigate. The permittee must take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance. The permittee must 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 the permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Bypass of Treatment Facilities

1. Bypass not exceeding limitations: The permittee may allow any bypass to occur that 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 2 and 3 of this Part.

2. Notice.

   a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it must submit prior notice to the Director, if possible, at least 10 days before the date of the bypass.

   b. Unanticipated bypass. The permittee must submit notice of an unanticipated bypass as required under Part II.G ("Twenty-four Hour Notice of Noncompliance Reporting").

3. Prohibition of bypass.

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

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

ii) 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 that occurred during normal periods of equipment downtime or preventive maintenance; and

iii) The permittee submitted notices as required under paragraph 2 of this Part.

b. 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 3.a. of this Part.

G. Upset Conditions

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 permittee meets the requirements of paragraph 2 of this Part. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is a final administrative action subject to judicial review.

2. Conditions necessary for a demonstration of upset. To establish the affirmative defense of upset, the permittee must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

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

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

c. The permittee submitted notice of the upset as required under Part II.G, “Twenty-four Hour Notice of Noncompliance Reporting;” and

d. The permittee complied with any remedial measures required under Part III.D, “Duty to Mitigate.”

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

H. **Toxic Pollutants**. The permittee must comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the Act 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.

I. **Planned Changes**. The permittee must give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit nor to notification requirements under Part II.I ("Notice of New Introduction of Pollutants").

J. **Anticipated Noncompliance**. The permittee must give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

IV. GENERAL PROVISIONS

A. **Permit Actions**. This permit may be modified, revoked and reissued, or terminated for cause, as specified in 40 CFR §§122.62, 122.64, or 124.5. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

B. **Duty to Reapply**. If the permittee intends 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. In accordance with 40 CFR §122.21(d), and unless permission for the application to be submitted at a later date has been granted by the Director, the permittee must submit a new application at least 180 days before the expiration date of this permit.

C. **Duty to Provide Information**. The permittee must furnish to the Director within the time specified in the request, any information that 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 must also furnish to the Director, upon request, copies of records required to be kept by this permit.

D. **Other Information**. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to the Director, it must promptly submit the omitted facts or corrected information.

E. Signatory Requirements. All applications, reports, or information submitted to the Director must be signed and certified as follows.

1. All permit applications must be signed as follows:

   a. For a corporation: by a responsible corporate officer.

   b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

   c. For a municipality, Indian tribe, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director must 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:

   a. The authorization is made in writing by a person described above;

   b. 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; and

   c. The written authorization is submitted to the Director.

3. Changes to authorization. If an authorization under Part IV.E.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or for environmental matters for the company, a new authorization satisfying the requirements of Part IV.E.2. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this Part must 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."

F. **Availability of Reports**. In accordance with 40 CFR §2, information submitted to EPA pursuant to this permit may be claimed as confidential by the permittee. In accordance with the Act, permit applications, permits, and effluent data are not considered confidential. Any confidentiality claim must be asserted at the time of submission by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice to the permittee. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR §2, Subpart B (Public Information) and 41 Fed. Reg. 36902 through 36924 (September 1, 1976), as amended.

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

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

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

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

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.

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

I. **Transfers**. 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 Act. (See 40 CFR §122.61; in some cases, modification or revocation and reissuance is mandatory).

J. **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 Act.

K. **Reopener**. This permit may be reopened to include any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the Act. The Director may modify or revoke and reissue the permit if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in this permit or controls a pollutant or practice not limited in this permit.

V. DEFINITIONS

A. "ACEC" means acute critical effluent concentration.

B. "Act" means the Clean Water Act.

C. "Administrator" means the Administrator of the EPA, or an authorized representative.

D. "Average monthly effluent limitation" 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.

E. "BOD_5" means a measurement of the amount of oxygen utilized by the decomposition of organic material, over a specified time period (usually 5 days) in a wastewater sample; it is used as a measurement of the readily decomposable organic content of a wastewater.

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

G. "^{o}C" means degrees Celsius.

H. "CFR" means Code of Federal Regulations.

I. "cfs" means cubic feet per second.

J. "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, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

K. "Director" means the Director of the Office of Water, EPA Region 10, or an authorized representative.

L. "DMR" means discharge monitoring report.

M. "EPA" means the United States Environmental Protection Agency.

N. "Ecology" means the Washington State Department of Ecology.

O. "Fed. Reg." means Federal Register, a daily compilation of new and proposed federal regulations.

P. "Grab" sample is an individual sample collected over a period of time not exceeding 15 minutes.

Q. "Indirect discharger" means a source that introduces pollutants into a POTW from any non-domestic source regulated under §307(b), (c) or (d) of the Act.

R. “lbs/day” means pounds per day.

S. "Maximum daily effluent limitation" means the highest allowable "daily discharge."

T. “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.

U. “MGD” means million gallons per day.

V. “mg/l” means milligrams per liter.

W. “NPDES” means National Pollutant Discharge Elimination System.

X. “NOEC” means no observable effect concentration.

Y. “pH” means a measure of the hydrogen ion concentration of water or wastewater, expressed as the negative log of the hydrogen ion concentration in mg/l. A pH of 7 is neutral; a pH less than 7 is acidic; a pH greater than 7 is basic.

Z. “POTW” means publicly owned treatment works, including those owned by an Indian tribe or authorized tribal organization.

AA. “Pollutants” means, among other things, solid waste, sewage, garbage, chemical wastes, biological materials, heat, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

BB. “QA/QC” means quality assurance/quality control.

CC. “QAP” means quality assurance plan.

DD. "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.

EE. “TSS” means total suspended solids.

FF. “24-hour composite” sample means a combination of at least 8 discrete samples collected at equal time intervals from the same location, over a 24 hour period. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of *Standard Methods for the Examination of Water and Wastewater*.

GG. “U.S.C.” means United States Code.

HH. “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.

II. "WET" means whole effluent toxicity.