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**I. EFFLUENT LIMITATIONS**

A. During the effective period of this permit, the Permittee is authorized to discharge an average monthly flow of 7.6 mgd in accordance to the restrictions set forth herein. This permit does not authorize the discharge of any waste streams, including spills and other unintentional or non-routine discharges of pollutants, that the Permittee did not apply to discharge and that are not part of the normal operation of the facility as disclosed in the permit application, or any pollutants that are not ordinarily present in such waste streams, unless the Permittee receives prior authorization from EPA.

B. The Permittee must limit and monitor discharges as specified in Section C below. All figures represent maximum effluent limits unless otherwise indicated. The Permittee must comply with the following effluent limits at all times unless otherwise indicated regardless of the frequency of monitoring or reporting required by other provisions of this permit.

**C. Effluent Limitations**

1. Fort Lewis Water Pollution Control Plant (Discharge 001) During the period beginning on the effective date of this permit and lasting through the expiration date, discharges from the Fort Lewis Water Pollution Control Plant shall be limited and monitored by the permittee as specified below.
  - a. The pH shall not be less than 6.0 nor greater than 8.5 standard units
  - b. There shall be no discharge of floating solids, visible foam in other than trace amounts, or oily wastes which produce a sheen on the surface of the receiving water.
  - c. The following limitations shall apply:

Effluent Characteristic	Units of Measure	Average Monthly	Average Weekly	Daily Maximum
5-day Biochemical Oxygen Demand* (BOD <sub>5</sub> )	mg/L	30	45	---
BOD <sub>5</sub>	lbs/day	1902	2852	---
Total Suspended Solids* (TSS)	mg/L	30	45	---
TSS	lbs/day	1902	2852	---
Fecal Coliform Bacteria**	col/100 ml	200	400	---

Total Residual Chlorine	mg/l	---	---	0.5
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- \* Monthly average BOD<sub>5</sub> and TSS effluent concentrations shall not exceed 30 mg/l or 20% of the influent concentrations, whichever is more stringent.
- \*\* Report as the geometric mean of all samples collected during the weekly and monthly reporting periods. The average monthly fecal coliform count must not exceed a geometric mean of 200 col./100 ml. The average weekly fecal coliform count must not exceed a geometric mean of 400 col./100 ml.

## II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

### A. Monitoring Requirements

1. The Permittee shall monitor the final effluent as specified below, subject to the other monitoring and reporting requirements set forth in this permit.

Effluent Characteristics	Units of Measure	Sample Frequency	Sample Type
Total Flow	MGD	Continuous	Recording
Biochemical Oxygen Demand (5 day)*	mg/l	Daily Composite	24-Hour
Total Suspended Solids	mg/l	Daily Composite	24-Hour
Fecal Coliform Bacteria	Number/100 ml	Daily	Grab
Total Residual Chlorine	mg/l	Daily	Grab
pH	Standard Units	Daily	Grab
Total Copper	mg/l	Semi-Annual	Grab
Total Nickel	mg/l	Semi-Annual	Grab
Total Chromium	mg/l	Semi-Annual	Grab
Total Lead	mg/l	Semi-Annual	Grab
Total Mercury	mg/l	Semi-Annual	Grab
Total Molybdenum	mg/l	Semi-Annual	Grab
Total Selenium	mg/l	Semi-Annual	Grab
Total Zinc	mg/l	Semi-Annual	Grab

Total Nitrogen **	mg/l	Semi-Annual	Grab
Total Petroleum Hydrocarbon ***	mg/l	Semi-Annual	Grab
<p>* Representative daily influent and effluent monitoring for BOD<sub>5</sub> and TSS is required to demonstrate % removal efficiencies. Monthly average percent removal for BOD<sub>5</sub> and SS shall be reported on monthly discharge monitoring reports.</p> <p>** Nitrogen analyses shall determine and report total Kjeldahl nitrogen, ammonia as N, nitrate and nitrite nitrogen.</p> <p>*** Two samples for total petroleum hydrocarbon (TPH) analyses are to be collected during the wet season (October - March) and analyzed using the Hydrocarbon Identification Method for Soil and Water. This analysis is required to determine if TPH is present in the effluent at levels of concern and only required during the first year of the permit. Results of this monitoring is to be submitted to EPA with the annual Inflow and Infiltration report (condition S.I.D.3.c.)</p>			

**B. Dilution Zone**

1. The boundaries of the dilution zone are defined as follows:
  - The limits in depth are one foot below the surface to one foot above the bottom.
  - The length, on either side of the diffuser, is 300 feet.
  - The width shall be 230 feet.
  - The zone of acute criteria exceedence shall be one tenth (1/10) the distance to the boundaries of the overall dilution zone.

2. Outfall evaluation

Within two years of permit issuance the permittee shall conduct an underwater evaluation of the submerged portion of the outfall pipe and diffusers to verify the structural integrity and functioning of this equipment. The permittee will provide a written report of the results of this evaluation to EPA with the next application for permit renewal. Immediate notification will be provided to EPA if the evaluation determines the outfall or diffuser structure is broken, leaking or not functioning properly.

**C. Toxicity Testing Requirements**

1. Acute Toxicity Testing Requirements

The Permittee shall test final effluent once in the last summer and once in the last winter prior to submission of the application for permit renewal. The two species listed below shall be used on each sample and the results submitted to the Department as a part of the permit renewal application process. The Permittee shall conduct acute toxicity testing on a series of five concentrations of effluent and a control in order to be able to determine appropriate point estimates and an NOEC. The percent survival in 100% effluent shall also be reported.

Acute toxicity tests shall be conducted with the following species and protocols:

- a. Fathead minnow, *Pimephales promelas* (96 hour static-renewal test, method: EPA/600/4-90/027F)
- b. Daphnid, *Ceriodaphnia dubia*, *Daphnia pulex*, or *Daphnia magna* (48 hour static test, method: EPA/600/4-90/027F).

2. Acute Toxicity Testing Procedures and Reporting Requirements

- a. All reports for effluent characterization or compliance monitoring shall be submitted in accordance with the most recent version of Department of Ecology Publication # WQ-R-95-80, *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria* in regards to format and content. Reports shall contain bench sheets and reference toxicant results for test methods. If the lab provides the toxicity test data on floppy disk for electronic entry into the Department's database, then the Permittee shall send the disk to the Department along with the test report, bench sheets, and reference toxicant results.
- b. Testing shall be conducted on 24-hour composite effluent 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.
- c. All samples and test solutions for toxicity testing shall have water quality measurements as specified in Department of Ecology Publication # WQ-R-95-80, *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria* or most recent version thereof.
- d. All toxicity tests shall meet quality assurance criteria and test conditions in the most recent versions of the EPA manual listed in subsection A. and the Department of Ecology Publication # WQ-R-95-80, *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria*. If test results are determined to be invalid or anomalous by the Department, testing shall be repeated with freshly collected effluent.

- e. Control water and dilution water shall be laboratory water meeting the requirements of the EPA manual listed in subsection A or pristine natural water of sufficient quality for good control performance.
- f. Effluent samples for whole effluent toxicity testing shall be collected just prior to the chlorination step in the treatment process.
- g. The Permittee may choose to conduct a full dilution series test during compliance monitoring in order to determine dose response. In this case, the series must have a minimum of five effluent concentrations and a control. The series of concentrations must include the ACEC.
- h. All whole effluent toxicity tests, effluent screening tests, and rapid screening tests that involve hypothesis testing and do not comply with the acute statistical power standard of 29% as defined in WAC 173-205-020 must be repeated on a fresh sample with an increased number of replicates to increase the power.

3. Chronic Toxicity Testing Requirements

The Permittee shall test final effluent once in the last summer and once in the last winter prior to submission of the application for permit renewal. All of the chronic toxicity tests listed below shall be conducted on each sample. The results of this chronic toxicity testing shall be submitted to the Department as a part of the permit renewal application process.

The Permittee shall conduct chronic toxicity testing on a series of at least five concentrations of effluent and a control in order to be able to determine appropriate point estimates and an NOEC. This series of dilutions shall include the acute critical effluent concentration (ACEC). The ACEC equals 0.57 % effluent. The Permittee shall compare the ACEC to the control using hypothesis testing at the 0.05 level of significance as described in Appendix H, EPA/600/4-89/001.

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
Topsmelt or Silverside minnow	<i>Atherinops affinis</i> or <i>Menidia beryllina</i>	EPA/600/R-95/136 or EPA/600/4-91/003
Mysid shrimp	<i>Holmesimysis costata</i> or <i>Mysidopsis bahia</i>	EPA/600/R-95/136 or EPA/600/4-91/003



The Permittee shall use the West Coast fish (topsmelt, *Atherinops affinis*) and mysid (*Holmesimysis costata*) for toxicity testing unless the lab cannot obtain a sufficient quantity of a West Coast species in good condition in which case the East Coast fish (silverside minnow, *Menidia beryllina*) or mysid (*Mysidopsis bahia*) may be substituted.

4. Chronic Toxicity Testing Procedures and Reporting Requirements

- a. All reports for effluent characterization or compliance monitoring shall be submitted in accordance with the most recent version of Department of Ecology Publication # WQ-R-95-80, *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria* in regards to format and content. Reports shall contain bench sheets and reference toxicant results for test methods. If the lab provides the toxicity test data on floppy disk for electronic entry into the Department's database, then the Permittee shall send the disk to the Department along with the test report, bench sheets, and reference toxicant results.
- b. Testing shall be conducted on 24-hour composite effluent 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.
- c. All samples and test solutions for toxicity testing shall have water quality measurements as specified in Department of Ecology Publication # WQ-R-95-80, *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria* or most recent version thereof.
- d. All toxicity tests shall meet quality assurance criteria and test conditions in the most recent versions of the EPA manual listed in subsection A. and the Department of Ecology Publication # WQ-R-95-80, *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria*. If test results are determined to be invalid or anomalous by the Department, testing shall be repeated with freshly collected effluent.
- e. Control water and dilution water shall be laboratory water meeting the requirements of the EPA manual listed in subsection A or pristine natural water of sufficient quality for good control performance.
- f. Effluent samples for whole effluent toxicity testing shall be collected just prior to the chlorination step in the treatment process.
- g. The Permittee may choose to conduct a full dilution series test in order to determine dose response. In this case, the series must have a minimum of

five effluent concentrations and a control. The series of concentrations must include the ACEC and the CCEC. The ACEC and CCEC may either substitute for the effluent concentration that is closest to it in the dilution series or be an extra effluent concentration.

- h. All whole effluent toxicity tests that involve hypothesis testing and do not comply with the chronic statistical power standard of 39% as defined in WAC 173-205-020 must be repeated on a fresh sample with an increased number of replicates to increase the power.

**D. Infiltration and Inflow**

1. Infiltration and Inflow Evaluation

- a. The Permittee shall conduct an infiltration and inflow evaluation. Plant monitoring records may be used to assess measurable infiltration and inflow.
- b. A report shall be prepared which summarizes any measurable infiltration and inflow. If infiltration and inflow have increased by more than 15 percent from baseline flows (established from average influent flow observed during equivalent rainfall events during the previous five years), the report shall contain a plan and a schedule for: (1) locating the sources of infiltration and inflow; and (2) correcting the problem.
- c. The report shall be submitted by June 15 annually for the I/I related control activities conducted since the previous annual report.

**E. Representative Sampling (Routine and Non-routine Discharges)**

The Permittee shall collect all effluent samples from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

The Permittee shall collect additional samples at the appropriate sampling points and analyze them for the parameters limited in Part I. Table 1 of this permit, 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 shall also conduct monitoring sufficient to characterize the nature and quantity of the pollutants discharged.

The Permittee shall collect such additional samples as soon as possible after the spill or discharge. The samples shall be analyzed in accordance with paragraph G., below. In the event of an anticipated bypass, as defined in Part V. of this permit, the Permittee shall

collect and analyze additional samples as soon as the bypassed effluent reaches the outfall. The Permittee shall report all additional monitoring in accordance with paragraph H., below.

- F. Reporting of Monitoring Results.** The Permittee shall summarize monitoring results each month on the Discharge Monitoring Report (DMR) form (EPA No. 3320-1). The Permittee shall submit reports monthly, postmarked by the 10th day of the following month. The Permittee shall sign and certify all DMRs, and all other reports, in accordance with the requirements of Part IV. of this permit ("Signatory Requirements"). The Permittee shall submit the legible originals of these documents to the Director, Office of Water at:

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

- G. Monitoring Procedures.** Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

- H. Additional Monitoring by Permittee** If the Permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the Permittee shall include the results of this monitoring in the calculation and reporting of the data submitted in the DMR. The Permittee shall indicate on the DMR whenever it has performed additional monitoring, and shall explain why it performed such monitoring.

Upon request by the Regional Administrator, the Permittee shall submit results of any other sampling, regardless of the test method used.

- I. Records Contents** All effluent monitoring records shall bear the hand-written signature of the person who prepared them. In addition, all records of monitoring information shall include:

1. the date, exact place, and time of sampling or measurements;
2. the names 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.

**J. Retention of Records** The Permittee shall retain the a copy of this NPDES permit, and records of all monitoring information, including, but not limited to, 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 five years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. This period may be extended by request of the Regional Administrator.

**K. Twenty-four Hour Notice of Noncompliance Reporting**

1. The Permittee shall report the following occurrences of noncompliance by telephone within 24 hours from the time the Permittee becomes aware of the circumstances:
  - a. any noncompliance that may endanger health or the environment;
  - b. any unanticipated bypass that results in or contributes to an exceedence of any effluent limitation in the permit (See Part III.G., "Bypass of Treatment Facilities");
  - c. any upset that results in or contributes to an exceedence of any effluent limitation in the permit (See Part III.H., "Upset Conditions"); or
  - d. any violation of a maximum daily discharge limitation for any of the pollutants listed in the permit.
  - 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 shall also provide a written submission within five days of the time that the Permittee becomes aware of any event required to be reported under subpart 1, above. The written submission shall 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 reoccurrence of the noncompliance.
  - 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 Regional Administrator may, at his or her sole discretion, waive the written report on a case-by-case basis if the oral report has been received within 24 hours within 24 hours by the NPDES Compliance Hotline in Seattle, Washington, by telephone, (206) 553-1846.
  4. Reports shall be submitted to the addresses in Part II.F. ("Reporting of Monitoring Results").
  5. Unauthorized discharges such as collection system overflows, plant bypasses, or failure of the disinfection system, shall be reported immediately to the Department of Health, Shellfish Protection Program. The 24-hour number for the Department of Health is (360) 753-5992

**L. Other Noncompliance Reporting** The Permittee shall report all instances of noncompliance, not required to be reported within 24 hours, at the time that monitoring reports for Part II.H. are submitted. The reports shall contain the information listed in Part II.K. of this permit.

**M. Changes in Discharge of Pollutants** The Permittee shall notify the Regional Administrator as soon as it knows of, or has reason to believe:

1. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any pollutant that is not limited in the permit, if that discharge may reasonably be expected to exceed any of the following "notification levels":
  - a. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR §122.21(g)(7); or
  - b. The level established by the Regional Administrator in accordance with 40 CFR §122.44(f).

### **III. COMPLIANCE RESPONSIBILITIES**

**A. Duty to Comply**

The Permittee shall 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. The Permittee shall give reasonable advance notice to the Regional Administrator of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

**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 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. 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 by 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 shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal 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 shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that 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. Removed Substances** Solids, biosolids, filter backwash, or other pollutants removed in the course of treatment or control of wastewater shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.
- G. 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 shall submit prior notice, if possible at least 10 days before the date of the bypass.
    - b. Unanticipated bypass. The Permittee shall submit notice of an unanticipated bypass as required under Part II.K. ("Twenty-four Hour Notice of Noncompliance Reporting").
  3. Prohibition of bypass.



- a. Bypass is prohibited, and the Regional Administrator may take enforcement action against the Permittee for a bypass, unless:
  - 1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - 2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment shall 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
  - 3) The Permittee submitted notices as required under paragraph 2 of this Part.
- b. The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in paragraph 3.a. of this Part.

## **H. Upset Conditions**

1. 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 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 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.K, 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.

**I. Toxic Pollutants** The Permittee shall 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.

**J. Planned Changes** The Permittee shall give notice to the Regional Administrator 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.K.

**K. Anticipated Noncompliance** The Permittee shall also give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

**L. Compliance Schedules** Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any Compliance Schedule of the permit shall be submitted no later than 10 days following each schedule date.

#### **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 122.5. 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.

**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. The application shall be submitted at least 180 days before the expiration date of this permit.

- C. Duty to Provide Information** The Permittee shall furnish to the Regional Administrator, within the time specified in the request, any information that the Regional Administrator 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 Regional Administrator, 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 Regional Administrator, it shall promptly submit the omitted facts or corrected information.
- E. Signatory Requirements** All applications, reports or information submitted to the Regional Administrator shall be signed and certified.
1. All permit applications shall be signed as follows:
    - a. For a municipality, state, federal, Indian tribe 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 Regional Administrator shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
    - a. The authorization is made in writing by a person described above and submitted to the Regional Administrator, and
    - 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 facility.
  3. Changes to authorization. If an authorization under paragraph 2., above, 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 2 must be submitted to the Regional Administrator 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 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."

- 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 shall allow EPA or their authorized representatives (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. Oil and Hazardous Substance Liability** Nothing in this permit shall be construed to

preclude any legal action, or relieve the Permittee from any responsibilities, liabilities, or penalties to that the Permittee is or may be subject, under Section 311 of the Act.

- I. Property Rights** The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.
- J. Severability** The provisions of this permit are severable. 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.
- K. Transfers** The Permittee may request that this permit be automatically transferred to a new Permittee if:
1. The current Permittee notifies the Regional Administrator at least 30 days in advance of the proposed transfer date;
  2. The notice includes a written agreement between the existing and new Permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
  3. The Regional Administrator does not notify the existing Permittee and the proposed new Permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2 above.
- L. 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.
- M. Reopener Clause**
1. This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Act, as amended, if the effluent standard, limitation, or requirement so issued or approved:
    - a. Contains different conditions or is otherwise more stringent than any condition in the permit; or

- b. Controls any pollutant or disposal method not addressed in the permit. The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.
2. This permit may be reopened to add or adjust any effluent limitations if future water quality studies, waste load allocation determinations, or changes in water quality standards show the need for different requirements, subject to the provisions of sections 303(d)(4) and 402(o) of the Act.

## V. DEFINITIONS

1. “Average monthly discharge 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.
2. “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.
3. “Bypass” means the intentional diversion of waste streams from any portion of a treatment facility.
4. “CWA” means the Clean Water Act (formerly referred to as either the Federal Water Pollution Control Act or the Federal Water Pollution Control Act Amendments of 1972), Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, and Pub. L. 100-4.
5. “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.
6. “Daily Maximum” (“Daily Max.”) is the maximum value allowable in any single sample or instantaneous measurement.
7. “Daily maximum discharge limitation” means the highest allowable “daily discharge.”
8. “Director” means Director of the Office of Water, United States Environmental

Protection Agency, Region 10.

9. “EPA” means the United States Environmental Protection Agency.
10. A “grab” sample, for monitoring requirements, is a single “dip and take” sample or measurement taken at a specific time or over as short a period of time at a representative point anywhere in wastewater treatment or biosolids land application processes, as is feasible.
11. “Monthly Average” is the arithmetic mean of all measurements taken during the month except that a geometric mean will be used for fecal coliform analyses.
12. “Not Permitted” means not approved under this permit. It usually refers to either a practice for which the permittee did not apply to utilize, or has not prepared procedures complying with the federal standards or requirements of others.
13. “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.
14. “Treatment Works” are either Federally owned, publicly owned, or privately owned devices or systems used to treat (including recycling and reclamation) either cosmetic sewage or a combination of cosmetic sewage and industrial waste of a liquid nature.
15. A “24-hour composite” sample shall mean a flow-proportioned mixture of not less than eight discrete aliquots. Each aliquot shall be a grab sample of not less than 100 ml and shall be collected and stored in accordance with procedures prescribed in the most recent edition of *Standard Methods for the Examination of Water and Wastewater*.
16. “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.