



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS TX 75202-2733

SEP 8 2010

*Permit*

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7009 2820 0001 8263 5056)

Mr. Mark Hiles  
Lee Ranch Mine  
P.O. Box 757  
Grants, NM 87020



Re: NPDES Permit No. NM0029581  
Public Notice of Final Permit Decision

Dear Mr. Hiles:

This package constitutes EPA's final permit decision for the above referenced facility. Enclosed are the responses to comments received during the public comment period and the final permit. According to EPA regulations at 40 CFR124.19, within 30 days after a final permit decision has been issued, any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision.

Should you have any questions regarding the final permit, please feel free to contact Isaac Chen of the NPDES Permits Branch at the above address or VOICE:214-665-7364, FAX:214-665-2191, or EMAIL:chen.isaac@epa.gov. Should you have any questions regarding compliance with the conditions of this permit, please contact the Water Enforcement Branch at the above address or VOICE:214-665-6468.

Sincerely yours,

Miguel I. Flores  
Director  
Water Quality Protection Division

Enclosures

✓ cc (w/enclosures):

New Mexico Environment Department

**NPDES PERMIT NO. NM0029581  
RESPONSE TO COMMENTS**

**RECEIVED ON THE SUBJECT DRAFT NATIONAL POLLUTANT DISCHARGE  
ELIMINATION SYSTEM(NPDES) PERMIT IN ACCORDANCE WITH REGULATIONS  
LISTED AT 40CFR124.17**

**APPLICANT:** Lee Ranch Coal Company  
P.O. Box 757  
Grants, NM 87020

**ISSUING OFFICE:** U.S. Environmental Protection Agency  
Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

**PREPARED BY:** Isaac Chen  
Environmental Engineer  
Permits & Technical Section (6WQ-PP)  
NPDES Permits Branch  
Water Quality Protection Division  
VOICE: 214-665-7364  
FAX: 214-665-2191  
EMAIL: chen.isaac@epa.gov

**PERMIT ACTION:** Final permit decision and response to comments received on the draft reissued NPDES permit publicly noticed on June 26, 2010.

**DATE PREPARED:** August 30, 2010

Unless otherwise stated, citations to 40CFR refer to promulgated regulations listed at Title 40, Code of Federal Regulations, revised as of July 1, 2010.

## SUBSTANTIAL CHANGES FROM DRAFT PERMIT

There are substantial changes from the draft reissued permit publicly noticed on June 26, 2010. All minor changes and their rationale for changes can be found in the following response to certification or response to comments.

1. Revised the list of outfall information;
2. Deleted sampling requirement from undisturbed areas; and
3. Modified Sediment Control Plan requirements.

### State Certification

Mr. Glenn Saums (NMED) letter to Mr. Miguel Flores (EPA 6), dated July 26, 2010, certifies that the discharge will comply with the applicable provisions of the Clean Water Act and with appropriate requirements of State law.

### Response to Comments

Mr. Glenn Saums (NMED) letter to Mr. Miguel Flores (EPA 6) dated July 26, 2010.  
Mr. John Cochran (Peabody on behalf of Lee Ranch Coal Company (LRCC)) letter to Ms. Diane Smith (EPA 6) dated July 26, 2010, and emails dated July 30, 2010, and August 27, 2010, respectively, to Mr. Isaac Chen (EPA).

Comment 1: NMED requests that the final permit requires the permittee send a copy of annual Sediment Control Report to NMED.

Response: The final permit requires the permittee to submit a copy of annual Sediment Control Report to NMED.

Comment 2: Part II.G. of the permit establishes "Reported as Final Outfall: 01A" for WET testing. NMED believes that the permit requires WET testing for all discharges, not some subset of "Mine Drainage" and not all WET monitoring results to be reported as Outfall 01A.

Response: The "Mine Drainage Discharges" described in (b) of Part I.A. include discharges from process plant associated areas, mine drainage areas, groundwater intercept wells, and disturbed areas. Therefore, WET testing is required for discharges from these four categorical areas. However, EPA allows one representative WET sample for discharges from the same categorical areas. EPA does not intend to establish WET testing requirements for discharges from reclamation areas under the Sediment Control Plan. Also, because LRCC intends not to include groundwater intercept wells in the permit renewal, discharges from groundwater intercept wells are not authorized by this permit. Permit languages were modified to reflect the requirements.

Comment 3: LRCC provides a complete list of outfalls and requests to add those outfalls including outfalls associated with reclamation areas omitted from the application into the final permit.

Response: The final permit includes correct outfall information and identifies outfalls with their associated activity areas, such as process plant associated area, mine drainage, disturbed area, and reclamation area. This change does not result in changes of effluent limitations proposed in the draft permit, rather it identifies outfalls under site-specific limitations.

Comment 4: LRCC requests to retain the numeric effluent limitations based on the Post-Mining Area category for discharges from reclamation areas at this moment. LRCC wants to first evaluate its best management practices (BMPs) on reclamation areas before it develops an appropriate Sediment Control Plan under the new rule for Western Alkaline Coal Mining category and submit it to EPA.

Response: EPA published the final rule for the Western Alkaline Coal Mining on Federal Register/Vol. 67, No. 15/ January 23, 2002, in which non-numeric effluent guideline limitations are established. The Western Alkaline Coal Mining rule requires the permittee to submit a site-specific Sediment Control Plan (SCP) to the permitting authority that is designed to prevent an increase in the average annual sediment yield from pre-mined, undisturbed conditions. EPA stated in the final rule making, "EPA believes that determining compliance for settleable solids based on a single numeric standard for runoff from BMPs is infeasible at western coal mines due to the environmental conditions present. Precipitation events are often localized, high-intensity, short-duration thunderstorms and watersheds often cover vast and isolated areas. Rain may fall in one area of a watershed while other areas remain dry, making it extremely difficult to evaluate overall performance of the BMPs...."

The permittee has used sediment ponds to contain runoffs from reclamation areas and result in no-discharge or rare-discharge for the past years. Sediment ponds would address localized precipitation issue as discussed above and could be appropriate technology to reduce settleable solids in discharges. Sediment ponds could be site-specific BMPs to meet the proposed permit conditions as long as the permittee could demonstrate future discharge, if occurs, meets pre-mined, undisturbed conditions. The final permit clarifies that only 100% of the drainage area to an outfall that meets the western alkaline coal mining operations from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas is covered by the SCP. The permittee shall submit EPA a SCP which is approved by the State mining authority under the SMCRA authority.

Because none of mining areas has met the defined areas under the Western Alkaline Coal Mining subcategory, the final permit changes the SCP submittal requirement from three months from the permit effective date to three months prior to any discharge occurs. The permittee shall have an approved SCP in place prior to any discharges from areas defined under the Western Alkaline Coal Mining subcategory. The permittee shall submit SCP update with associated outfall information. The permittee shall comply with the EPA approved SCP even if EPA does not reopen the permit for permit modification. The State mining agency approved SCP will be automatically approved by EPA if EPA does not take action after 90 days from the submittal of the SCP.

Comment 5: LRCC maintains that the designated uses for Ephemeral Waters at State Water Quality Standards (NMAC 20.6.4.97) approved by the State of New Mexico are appropriate for the receiving water Mulatto Drainage, regardless whether the EPA has approved them or not.

LRCC requests effluent limitations for E. coli and pH to be developed based on the designated uses for ephemeral waters.

Response: The code of federal regulations, Title 40, part 131, section 131.2 (§131.2) states "A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. States adopt water quality standards to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (the Act). "Serve the purposes of the Act" (as defined in sections 101(a)(2) and 303(c) of the Act) means that water quality standards should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration their use and value of public water supplies, propagation of fish, shellfish, and wildlife, recreation in and on the water, and agricultural, industrial, and other purposes including navigation." Also, §131.10(j) states "A State must conduct a use attainability analysis as described in §131.3(g) whenever: (1) The State designates or has designated uses that do not include the uses specified in section 101(a)(2) of the Act, or (2) The State wishes to remove a designated use that is specified in section 101(a)(2) of the Act or to adopt subcategories of uses specified in section 101(a)(2) of the Act which require less stringent criteria."

Because the State agency has not conducted a use attainability analysis (UAA) for its ephemeral waters as required by the federal regulations, the State approved designated uses for ephemeral waters do not serve the purpose of the Act. As the result, EPA, as a federal agency, could not based on such designated uses establish permit conditions for authorization of discharges under the authority of the Act. Therefore, effluent limitation for E. coli and pH are based on standards for aquatic life and primary contact.

Comment 6: LRCC comments that samples taken from sediment ponds will not be representative for reasonable potential (RP) analysis because sediment ponds only provide the primary treatment of drainages. LRCC also suggests constituents to be analyzed should be based on the applicable Water Quality Standards (WQS) for ephemeral waters.

Response: EPA agrees that samples from sediment ponds will not be representative for RP analysis, so samples shall be collected from the first discharge from each area if appropriate. But, as discussed above, the designated uses for ephemeral waters do not serve the purpose of the Act and until State conducts a site-specific UAA, the permittee shall have at least one analysis for constituents listed in the application Form 2C as required in section D, Part I of the permit. Samples from reclamation areas are required because the discharges from reclamation areas must also comply with State WQS.

Comment 7: LRCC contends WET testing of non-continuous discharges to ephemeral stream should not be required because obligate aquatic organisms are not supported and aquatic life designated uses are not met in these streams.

Response: EPA disagrees. The State has established narrative criteria, which in part, state that: "Surface waters of the State shall be free of toxic pollutants ... in amounts, concentrations or combinations which affect the propagation of fish or that are toxic to humans, livestock or other animals, fish or other aquatic organisms;..." (NM Standards 20.6.4.13 .F) The NMIP dated November 2009 was based on the letter from Marcy Leavitt, NMED, to Claudia Hosch, EPA,

December 16, 2005, and in the letter NMED provided a guidance title "Narrative Toxics Implementation Guidance – Whole Effluent Toxicity." EPA must include the WET testing requirement to comply with NM Standards. NMED is the certifying agency under the section 401 of the Clean Water Act. NMED certifies that the draft permit conditions comply with appropriate requirements of State law.

Comment 8: Sampling requirement for discharges from undisturbed areas shall be eliminated under section D. Effluent Characteristics of Part I of the permit.

Response: Sampling requirement for discharges from undisturbed areas is removed because the permittee did not provide outfall information from undisturbed area. So, discharge from undisturbed area is not authorized by this permit.

Comment 9: LRCC comments that under the Sediment Control Plan, the permit (1) eliminate the 3-month requirement for the submittal of the Plan, (2) clearly identify the permitting agency, and (3) incorporate approved Sediment Control Plan by reference in the permit.

Response: In accordance with the Federal Register/Vol. 67, No. 15/January 23, 2002, existing direct dischargers must comply with limitations as soon as their NPDES permits include such limitations. EPA to allow the permittee to submit a Sediment Control Plan within 3 months from the effective date of the permit does not grant a compliance schedule for compliance, rather, it gives the permittee time to submit the Plan. EPA is the permitting agency to approve the SCP, but EPA requires the permittee submit an approved Plan by State mining agency for approval requirement. The permittee shall keep a copy of the SCP with the final NPDES permit as part of the permit.

Comment 10: LRCC believes the Appendix A of Part II has no applicability for this permit.

Response: Appendix A of Part II of the permit defines the minimum quantification levels (MQLs) to be used for reporting pollutant data. The permittee must use analytical methods which can detect the listed MQLs or below the listed MQLs for their effluent characteristics report.



Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

NPDES Permit No. **NM0029581**

## AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended,  
(33 U.S.C. 1251 et. seq; the "Act"),

Lee Ranch Coal Company  
P.O. Box 757  
Grants, NM 87020

is authorized to discharge from a facility located at Sections 23, 24, 25, 26, 27, 28, 33, 34, 35,  
and 36 of T15N, R8W; Section 19 of T15N, R7W; and Sections 21, 29, 31, and 32 of T16N,  
R8W, all near San Mateo, McKinley County, New Mexico, to receiving waters named Mulatto  
Canyon Arroyo in Segment No. 20.6.4.105 of the Rio Grande Basin, sewage and mine drainage

in accordance with this cover page and effluent limitations, monitoring requirements, and other  
conditions set forth in Parts I [Requirements for NPDES Permits], II [Other Conditions], and  
III [Standard Conditions for NPDES Permits] hereof.

This permit supersedes and replaces NPDES Permit No. NM0029581 issued on March 23, 2005.

This permit shall become effective on November 1, 2010

This permit and the authorization to discharge shall expire at midnight, October 31, 2015

Issued on September 8, 2010

Prepared by

Miguel I. Flores  
Division Director  
Water Quality Protection Division (6WQ)

Isaac Chen  
Environmental Engineer  
Permits Section (6WQ-PP)

PART I – REQUIREMENTS FOR NPDES PERMITS

SECTION A. LIMITATIONS AND MONITORING REQUIREMENTS

(a) DISCHARGES FROM SEWAGE LAGOON (Outfalls 034 and 034A)

During the period beginning on the effective date of this permit and lasting through the expiration date of the permit (unless otherwise noted), the permittee is authorized to discharge treated sanitary wastewater from Outfall 034 which discharges wastewater from pond EVAP-2 to Mulatto Canyon Arroyo. Such discharges shall be limited and monitored by the permittee as specified below:

| EFFLUENT CHARACTERISTICS |             | DISCHARGE LIMITATIONS |         | MONITORING REQUIREMENTS |             |
|--------------------------|-------------|-----------------------|---------|-------------------------|-------------|
|                          |             | Standard Units        |         |                         |             |
| POLLUTANT                | STORET CODE | MINIMUM               | MAXIMUM | MEASUREMENT FREQUENCY   | SAMPLE TYPE |
| pH                       | 00400       | 6.6                   | 9.0     | 1/Day                   | Grab        |

| EFFLUENT CHARACTERISTICS   |             | DISCHARGE LIMITATIONS |            |                    |           | MONITORING REQUIREMENTS |             |
|----------------------------|-------------|-----------------------|------------|--------------------|-----------|-------------------------|-------------|
|                            |             | lbs/day, unless noted |            | mg/l, unless noted |           |                         |             |
| POLLUTANT                  | STORET CODE | 30-Day Avg            | Daily Max  | 30-Day Avg         | Daily Max | MEASUREMENT FREQUENCY   | SAMPLE TYPE |
| Flow                       | 50050       | Report MGD            | Report MGD | N/A                | N/A       | 1/Day                   | Estimate    |
| Total Suspended Solids     | 00530       | N/A                   | N/A        | 30                 | 45        | 1/Week                  | Grab        |
| Biological Oxygen Demand   | 00310       | N/A                   | N/A        | 30                 | 45        | 1/Week                  | Grab        |
| E. coli (unit: cfu/100 ml) | 51040       | N/A                   | N/A        | 126                | 410       | 1/Week                  | Grab        |
| Total Residual Chlorine    | 50060       | N/A                   | N/A        | N/A                | 0.011     | 1/Week                  | Grab        |

SAMPLING LOCATION(S)

Samples taken in compliance with the monitoring requirements specified above shall be taken when discharges occur at the following location(s): Outfalls 034 and 034A.

b) MINE DRAINAGE DISCHARGES FROM PROCESS PLANT, MINE DRAINAGE AND DISTURBED AREAS

During the period beginning on the effective date of this permit and lasting through the expiration date of the permit (unless otherwise noted), the permittee is authorized to discharge wastewater from:

- Process plant associated areas (Outfalls 001, 002, 003, 004, 009, 044, and 094)
- Mine drainage areas (Outfalls 045, 054, 061, 062, 091, 092, and 093)
- Disturbed areas (Outfalls 015, 016, 020, 021, 024, 027, 028, 032, 033, 036, 037, 038, 039, 041, 042, 049, 050, 051, 063, 064, 065, 066, 067, 073, 076, 077, 078, 079, 080, 085, 086, 087, 088, 089, 090, 095, 096, 097, 098, and 099)

to receiving waters named Mulatto Canyon Arroyo.

Such discharges shall be limited and monitored by the permittee as specified below:

| EFFLUENT CHARACTERISTICS |             | DISCHARGE LIMITATIONS |         | MONITORING REQUIREMENTS |             |
|--------------------------|-------------|-----------------------|---------|-------------------------|-------------|
|                          |             | Standard Units        |         |                         |             |
| POLLUTANT                | STORET CODE | MINIMUM               | MAXIMUM | MEASUREMENT FREQUENCY   | SAMPLE TYPE |
| pH                       | 00400       | 6.6                   | 9.0     | 1/Day                   | Grab        |

| EFFLUENT CHARACTERISTICS         |             | DISCHARGE LIMITATIONS |            |                    |           | MONITORING REQUIREMENTS |             |
|----------------------------------|-------------|-----------------------|------------|--------------------|-----------|-------------------------|-------------|
|                                  |             | lbs/day, unless noted |            | mg/l, unless noted |           |                         |             |
| POLLUTANT                        | STORET CODE | 30-Day Avg            | Daily Max  | 30-Day Avg         | Daily Max | MEASUREMENT FREQUENCY   | SAMPLE TYPE |
| Flow                             | 50050       | Report MGD            | Report MGD | N/A                | N/A       | 1/Day                   | Estimate    |
| Total Suspended Solids (*1) (*2) | 00530       | N/A                   | N/A        | 35                 | 70        | 1/Week                  | Grab        |
| Iron (*1) (*2)                   | 01045       | N/A                   | N/A        | 3.5                | 7.0       | 1/Week                  | Grab        |

| EFFLUENT CHARACTERISTICS                                 | DISCHARGE MONITORING |               | MONITORING REQUIREMENTS |             |
|--|----------------------|---------------|-------------------------|-------------|
|  | 30-DAY AVG MINIMUM   | 48-HR MINIMUM | MEASUREMENT FREQUENCY   | SAMPLE TYPE |
| WHOLE EFFLUENT TOXICITY TESTING (48-Hour Static Renewal) |                      |               |                         |             |
| Daphnia pulex (*3)                                       | Report               | Report        | 1/Year                  | Grab        |

Footnote:

(\*1) Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event (or snow melt of equivalent volume) may comply with settleable solids of 0.5 ml/L. See Part II.A. for restriction.

(\*2) Any discharge or increase in the volume of a discharge caused by precipitation greater than the 10-year, 24-hour precipitation event (or snow melt of equivalent volume) is not required for monitoring of TSS and total iron. See Part II.A. for restriction.

(\*3) Separate WET testing is required for respective discharges from process plant associated areas, mine drainage areas, and disturbed areas. A representative WET testing result may be reported for discharges from the same categorical area.

SAMPLING LOCATION(S)

Samples taken in compliance with the monitoring requirements specified above shall be taken when discharges occur at the following location(s): See Part I.B.

FLOATING SOLIDS OR VISIBLE FOAM

There shall be no discharge of oils, scum, grease and other floating materials that would cause the formation of a visible sheen or visible deposits on the bottom or shoreline, or would damage or impair the normal growth, function or reproduction of human, animal, plant or aquatic life.

NO DISCHARGE REPORTING

If there is no discharge event at this outfall during the sampling month, place an "X" in the NO DISCHARGE box located in the upper right corner of the preprinted Discharge Monitoring Report.

c) DISCHARGES FROM RECLAMATION AREAS

During the period beginning on the effective date of this permit and lasting through the expiration date of the permit (unless otherwise noted), the permittee is authorized to discharge wastewater from Outfalls within the reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas as defined in the Western Alkaline Coal Mining subcategory at 40 CFR 434.80.

The permittee shall develop a site-specific Sediment Control Plan as described in Part II.E. SEDIMENT CONTROL PLAN of this permit.

The permittee shall comply with the Non-numeric Best Management Practices (BMPs) described in the Sediment Control Plan.

If any outfall discharge comingled drainages from reclamation areas (as defined in Part II.E. of this permit or at 40 CFR 434.80) and non-reclamation areas, the discharge must comply with effluent limitations established in b) MINE DRAINAGE DISCHARGES FROM PROCESS PLANT, MINE DRAINAGE AND DISTURBED AREAS above and report accordingly.

## B. Sampling Locations.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the point of discharge prior to mixing with other flows.

| Outfall No. | Latitude  | Longitude  | Outfall No. | Latitude  | Longitude  |
|-------------|-----------|------------|-------------|-----------|------------|
| 001         | 35°29'10" | 107°39'58" | 062         | 35°31'17" | 107°34'52" |
| 002         | 35°29'27" | 107°40'58" | 063         | 35°31'45" | 107°37'17" |
| 003         | 35°29'15" | 107°40'06" | 064         | 35°31'50" | 107°37'15" |
| 004         | 35°29'15" | 107°40'08" | 066         | 35°31'43" | 107°34'34" |
| 009         | 35°29'12" | 107°40'06" | 067         | 35°31'15" | 107°34'35" |
| 015         | 35°30'11" | 107°37'19" | 073         | 35°31'55" | 107°34'45" |
| 016         | 35°29'35" | 107°40'42" | 076         | 35°30'42" | 107°39'32" |
| 020         | 35°29'24" | 107°39'22" | 077         | 35°29'45" | 107°39'58" |
| 021         | 35°29'33" | 107°30'16" | 078         | 35°29'32" | 107°39'52" |
| 024         | 35°30'10" | 107°39'33" | 079         | 35°32'06" | 107°33'10" |
| 027         | 35°25'22" | 107°35'00" | 080         | 35°32'08" | 107°33'05" |
| 028         | 35°25'29" | 107°35'02" | 085         | 35°30'35" | 107°35'55" |
| 032         | 35°30'37" | 107°37'20" | 086         | 35°30'40" | 107°36'00" |
| 033         | 35°30'37" | 107°37'10" | 087         | 35°30'43" | 107°36'00" |
| 034         | 35°29'11" | 107°40'06" | 088         | 35°30'45" | 107°36'05" |
| 034A        | 35°29'11" | 107°40'06" | 089         | 35°31'40" | 107°36'02" |
| 036         | 35°31'05" | 107°37'16" | 090         | 35°31'37" | 107°35'55" |
| 037         | 35°31'05" | 107°37'12" | 091         | 35°32'23" | 107°37'02" |
| 038         | 35°31'05" | 107°37'08" | 092         | 35°31'10" | 107°39'15" |
| 039         | 35°31'05" | 107°37'05" | 093         | 35°30'48" | 107°39'48" |
| 041         | 35°30'05" | 107°38'42" | 094         | 35°29'30" | 107°40'00" |
| 042         | 35°24'53" | 107°34'55" | 095         | 35°29'52" | 107°37'17" |
| 044         | 35°29'15" | 107°40'15" | 096         | 35°31'43" | 107°38'11" |
| 045         | 35°30'55" | 107°39'15" | 097         | 35°31'45" | 107°38'34" |
| 049         | 35°31'42" | 107°35'43" | 098         | 35°32'10" | 107°38'40" |
| 050         | 35°31'43" | 107°35'37" | 099         | 35°30'43" | 107°35'48" |
| 051         | 35°31'05" | 107°34'20" |             |           |            |
| 054         | 35°30'57" | 107°34'52" |             |           |            |
| 061         | 35°31'07" | 107°34'38" |             |           |            |

Locations may be revised by the permittee if it becomes necessary to eliminate or establish new holding ponds. For any revision, the permittee shall submit appropriate maps showing the holding pond locations.

Any revised pond or outfall locations shall be consistent with, and fall within, the mining area boundary as defined in the applicant's State Mining Plan.

Any revised pond or outfall location shall be limited to discharging to the same receiving body of water.

Discharges from any revised pond or outfall location shall be subject to monitoring requirements and effluent limitations listed in Part A. **EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS** of this permit.

C. **REPORTING OF MONITORING RESULTS**

Monitoring information shall be on Discharge Monitoring Report Form(s) EPA 3320-1 or electronic NetDMR as specified in Part III.D.4 of this permit and shall be submitted quarterly. Each quarterly submittal shall include separate forms for each month of the reporting period.

1. Reporting periods shall end on the last day of the months March, June, September, and December.
2. The permittee is required to submit regular quarterly reports as described above postmarked no later than the 28<sup>th</sup> day of the month following each reporting period.

D. **EFFLUENT CHARACTERISTICS**

The permittee is required to take, at least, one representative effluent sample from (1) process plant areas, (2) mine drainage areas, (3) disturbed areas, and (4) reclamation areas, respectively, for analyses of constituents listed in Application Form 2-C, section V. Part A-C. The sample shall also be analyzed for total hardness as CaCO<sub>3</sub>. Representative samples from a particular area shall be taken as soon as practical when the first discharge occurs. The analytical results shall be sent to the following address:

Water Quality Protection Division  
NPDES Permits & TMDL Branch  
U.S. Environmental Protection Agency, Region 6  
Dallas, TX 75202-2733

A copy of such results shall also be sent to NMED. NMED mailing address is listed in Part III.D.4. of this permit.

PART II  
OTHER CONDITIONS

A ALTERNATE EFFLUENT LIMITATIONS FOR PRECIPITATION EVENTS

(a) The operator shall have the burden of proof that the discharge or increase in discharge was caused by the applicable precipitation event described above.

(b) The term "10-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in ten years as defined by the National Weather Service and Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, or equivalent regional or rainfall probability information developed therefrom.

(c) The following procedure shall be used to determine settleable solids:

Fill an Imhoff cone to the one-liter mark with a thoroughly mixed sample. Allow to settle undisturbed for 45 minutes. Gently stir along the inside surface of the cone with a stirring rod. Allow to settle undisturbed for 15 minutes longer. Record the volume of settled material in the cone as milliliters per liter. Where a separation of settleable and floating materials occurs, do not include the floating material in the reading.

The method detection limit for measuring settleable solids shall be 0.4 ml/L

B EFFLUENT LIMITATIONS FOR DISCHARGES FROM COAL PREPARATION AREAS

1. Except as provided in Paragraph (2) of Part II.B., there shall be no discharge of process wastewater pollutants from the coal preparation plant water circuit to surface waters.

2. An occasional discharge or purge of pollutants may occur when necessary to reduce the concentration of solids or process chemicals in the water circuit to a level which would not interfere with the preparation process or process equipment, provided that:

! Advance written notice is submitted to the permitting authority and the permitting authority does not disapprove of the discharge. Such notice shall include: (i) Description of the need for the discharge or purge; (ii) the period of discharge or purge, including anticipated dates and times; (iii) an estimate of discharge volume; and (iv) the intended receiving area.

! The occasional purge or discharge, if discharged to waters of the United States, shall be subject to the following limitations:

| <u>Parameters</u> | <u>Daily<br/>Maximum</u>       | <u>Monthly<br/>Average</u> | <u>Monitoring<br/>Frequency</u> | <u>Sample<br/>Type</u> |
|-------------------|--------------------------------|----------------------------|---------------------------------|------------------------|
| TSS               | 70 mg/L                        | 35 mg/L                    | 1/Week                          | Grab                   |
| Iron (Total)      | 7.0 mg/L                       | 3.5 mg/L                   | 1/Week                          | Grab                   |
| pH                | within the range of 6.0 to 9.0 |                            | 1/Day                           | Grab                   |

The pollutant shall be sampled when discharging.

The operator shall have the burden of proof that the purge was necessary to reduce the concentration of solids or process chemicals in the water circuit to a level which would not interfere with the preparation process or process equipment.

C. MINIMUM QUALIFICATION LEVELS (MQLs)

If any individual analytical test result is less than the MQL for that parameter listed in Appendix A to this Part, then a value of zero may be used for discharge monitoring report (DMR) calculations and reporting requirements for the parameter.

The permittee may develop an effluent specific method detection limit (MDL) in accordance with Appendix B to 40 CFR 136. For any pollutant for which the permittee determines an effluent specific MDL, the permittee shall send to the EPA Region 6 NPDES Permits Branch (6WQ-P) a report containing QA/QC documentation, analytical results, and calculations necessary to demonstrate that the effluent specific MDL was correctly calculated. An effluent specific minimum quantification level (MQL) shall be determined in accordance with the following calculation:

$$MQL = 3.3 \times MDL$$

Upon written approval by the EPA Region 6 NPDES Permits Branch (6WQ-P), the effluent specific MQL may be utilized by the permittee for all future Discharge Monitoring Report (DMR) reporting requirements.

D. REOPENER CLAUSE

In accordance with 40 CFR Part 122.44(d), the permit may be reopened and modified during the life of the permit if relevant portions of New Mexico's Water Quality Standards for Interstate and Intrastate Streams are revised, or new State water quality standards are established and/or remanded by the New Mexico Water Quality Control Commission.

In accordance with 40 CFR Part 122.62(s)(2), the permit may be reopened and modified if new information is received that was not available at the time of permit issuance that would have justified the application of different permit conditions at the time of permit issuance.

## E. SEDIMENT CONTROL PLAN

1. This subpart applies to any outfall that 100% of its associated drainage is at western alkaline coal mining operations from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas where the discharge, before any treatment, meets all the following requirements:

- (a) pH is equal to or greater than 6.0;
- (b) Dissolved iron concentration is less than 10 mg/L; and
- (c) Net alkalinity is greater than zero.

(i) The term *brushing and grubbing area* means the area where woody plant materials that would interfere with soil salvage operations have been removed or incorporated into the soil that is being salvaged.

(ii) The term *regraded area* means the surface area of a coal mine that has been returned to required contour.

(iii) The term *sediment* means undissolved organic and inorganic material transported or deposited by water.

(iv) The term *sediment yield* means the sum of the soil losses from a surface minus deposition in macro-topographic depressions, at the toe of the hillslope, along field boundaries, or in terraces and channels sculpted into the hillslope.

(v) The term *topsoil stockpiling area* means the area outside the mined-out area where topsoil is temporarily stored for use in reclamation, including containment berms.

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

2. No later than three (3) months prior to any discharge from the above areas, the operator must submit a site specific Sediment Control Plan (Plan) approved by the State mining agency under the authority of SMCRA to EPA at the address listed in Part I.D. of this permit that is designed to prevent an increase in the average annual sediment yield from pre-mined, undisturbed conditions. (The Plan is automatically approved if EPA does not take action in 90 days after the submittal of the Plan.) The Plan must identify best management practices (BMPs) and also must describe design specifications, construction specifications, maintenance schedules, criteria for inspection, as well as expected performance and longevity of the best management practices. A copy of the Plan must be kept with this final permit and BMPs be incorporated into the permit as non-numeric effluent limitations. The permittee shall also send a copy of the approved Plan to the State of New Mexico Environment Department (NMED).

3. Using watershed models, the operator must demonstrate that implementation of the Sediment Control Plan will result in average annual sediment yields that will not be greater than the sediment yield levels from premined, undisturbed conditions. The operator must use the same watershed model that was, or will be, used to acquire the SMCRA permit.

4. The operator must submit an annual Sediment Control Report every 12 months from the approval of the Sediment Control Plan. This report shall demonstrate that the facility has met requirements set forth in above sub-sections 2. and 3. A copy of annual Report shall also be sent to the NMED.
5. The operator must also submit an updated Sediment Control Plan and reclassification of existing outfalls to EPA and a copy to NMED.
6. The operator must comply with the Plan even if EPA does not reopen the permit for permit modification.

F. SMCRA BOND RELEASE

When the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work has been satisfactorily completed on a watershed or a specific part of a disturbed area, the permittee may request to terminate the corresponding NPDES discharge points to that specific drainage area, if the permittee can demonstrate that the Phase III bond for that particular drainage area has been released.

G. WHOLE EFFLUENT TOXICITY TESTING (48-HOUR ACUTE NOEC FRESHWATER)

*It is unlawful and a violation of this permit for a permittee or his designated agent, to manipulate test samples in any manner, to delay sample shipment, or to terminate or to cause to terminate a toxicity test. Once initiated, all toxicity tests must be completed unless specific authority has been granted by EPA Region 6 or the State NPDES permitting authority.*

1. SCOPE AND METHODOLOGY

- a. The permittee shall test the effluent for toxicity in accordance with the provisions in this section.

APPLICABLE TO FINAL OUTFALL(S): Mine Drainage

REPORTED AS FINAL OUTFALL: 01A

CRITICAL DILUTION (%): 100

EFFLUENT DILUTION SERIES (%): 32, 42, 56, 75, and 100

COMPOSITE SAMPLE TYPE: Defined at PART I

TEST SPECIES/METHODS: 40 CFR Part 136

*Daphnia pulex* acute static renewal 48-hour definitive toxicity test using EPA-821-R-02-012, or the latest update thereof. A minimum of five (5) replicates with eight (8) organisms per replicate must be used in the control and in each effluent dilution of this test.

b. The NOEC (No Observed Lethal Effect Concentration) is defined as the greatest effluent dilution at and below which lethality that is statistically different from the control (0% effluent) at the 95% confidence level does not occur. Acute test failure is defined as a demonstration of a statistically significant lethal effect at test completion to a test species at or below the critical dilution.

c. This permit may be reopened to require whole effluent toxicity limits, chemical specific effluent limits, additional testing, and/or other appropriate actions to address toxicity.

d. Test failure is defined as a demonstration of statistically significant lethal effects to a test species at or below the effluent critical dilution.

e. This permit does not establish requirements to automatically increase the WET testing frequency after a test failure, or to begin a toxicity reduction evaluation (TRE) in the event of multiple test failures. However, upon failure of any WET test, the permittee must report the test results to NMED, Surface Water Quality Bureau, in writing, within 5 business days of notification the test failure. NMED will review the test results and determine the appropriate action necessary, if any.

## 2. REQUIRED TOXICITY TESTING CONDITIONS

### a. Test Acceptance

The permittee shall repeat a test, including the control and all effluent dilutions, if the procedures and quality assurance requirements defined in the test methods or in this permit are not satisfied, including the following additional criteria:

i. Each toxicity test control (0% effluent) must have a survival equal to or greater than 90%.

ii. The percent coefficient of variation between replicates shall be 40% or less in the control (0% effluent).

iii. The percent coefficient of variation between replicates shall be 40% or less in the critical dilution, unless significant lethal effects are exhibited.

Test failure may not be construed or reported as invalid due to a coefficient of variation value of greater than 40%. A repeat test shall be conducted within the required reporting period of any test determined to be invalid.

b. Statistical Interpretation

The statistical analyses used to determine if there is a statistically significant difference between the control and the critical dilution shall be in accordance with the methods for determining the No Observed Effect Concentration (NOEC) as described in EPA-821-R-02-012 or the most recent update thereof.

If the conditions of Test Acceptability are met in Item 2.a above and the percent survival of the test organism is equal to or greater than 90% in the critical dilution concentration and all lower dilution concentrations, the test shall be considered to be a passing test, and the permittee shall report an NOEC of not less than the critical dilution for the reporting requirements found in Item 3 below.

c. Dilution Water

i. Dilution water used in the toxicity tests will be receiving water collected as close to the point of discharge as possible but unaffected by the discharge. The permittee shall substitute synthetic dilution water of similar pH, hardness, and alkalinity to the closest downstream perennial water for;

(A) toxicity tests conducted on effluent discharges to receiving water classified as intermittent streams; and

(B) toxicity tests conducted on effluent discharges where no receiving water is available due to zero flow conditions.

ii. If the receiving water is unsatisfactory as a result of instream toxicity (fails to fulfill the test acceptance criteria of Item 3.a), the permittee may substitute synthetic dilution water for the receiving water in all subsequent tests provided the unacceptable receiving water test met the following stipulations:

(A) a synthetic dilution water control which fulfills the test acceptance requirements of Item 3.a was run concurrently with the receiving water control;

(B) the test indicating receiving water toxicity has been carried out to completion (i.e., 48 hours);

(C) the permittee includes all test results indicating receiving water toxicity with the full report and information required by Item 4 below; and

(D) the synthetic dilution water shall have a pH, hardness, and alkalinity similar to that of the receiving water or closest downstream perennial water not adversely affected by the discharge, provided the magnitude of these parameters will not cause toxicity in the synthetic dilution water.

d. Samples and Composites (Composite sample may be replaced with grab sample)

i. The permittee shall collect two flow-weighted composite samples from the outfall(s) listed at Item 1.a above.

ii. The permittee shall collect a second composite sample for use during the 24-hour renewal of each dilution concentration for the tests. The permittee must collect the composite samples so that the maximum holding time for any effluent sample shall not exceed 36 hours. The permittee must have initiated the toxicity test within 36 hours after the collection of the last portion of the first composite sample. Samples shall be chilled to 6 degrees Centigrade during collection, shipping, and/or storage.

iii. The permittee must collect the composite samples such that the effluent samples are representative of any periodic episode of chlorination, biocide usage or other potentially toxic substance discharged on an intermittent basis.

iv. If the flow from the outfall(s) being tested ceases during the collection of effluent samples, the requirements for the minimum number of effluent samples, the minimum number of effluent portions and the sample holding time are waived during that sampling period. However, the permittee must collect an effluent composite sample volume during the period of discharge that is sufficient to complete the required toxicity tests with daily renewal of effluent. When possible, the effluent samples used for the toxicity tests shall be collected on separate days. The effluent composite sample collection duration and the static renewal protocol associated with the abbreviated sample collection must be documented in the full report required in Item 3 of this section.

3. REPORTING

a. The permittee shall prepare a full report of the results of all tests conducted pursuant to this Part in accordance with the Report Preparation Section of EPA-821-R-02-012, for every valid or invalid toxicity test initiated, whether carried to completion or not. The permittee shall retain each full report pursuant to the provisions of PART III.C.3 of this permit. The permittee shall submit full reports upon the specific request of the Agency. For any test which fails, is considered invalid or which is terminated early for any reason, the full report must be submitted for agency review.

b. A valid test for each species must be reported during each reporting period specified in PART I of this permit unless the permittee is performing a TRE which may increase the frequency of testing and reporting. Only ONE set of biomonitoring data for each species is to be recorded for each reporting period. The data submitted should reflect the LOWEST Survival results for each species during the reporting period. All invalid tests, repeat tests (for invalid tests), and retests (for tests previously failed) performed during the reporting period must be attached for EPA review.

c. The permittee shall report the following results of each valid toxicity test. Submit retest information, if required, clearly marked as such. Only results of valid tests are to be reported.

i. *Daphnia pulex*

(A) If the NOEC for survival is less than the critical dilution, enter a "1"; otherwise, enter a "0" for Parameter No. TEM3D.

(B) Report the NOEC value for survival, Parameter No. TOM3D.

(C) Report the highest (critical dilution or control) Coefficient of Variation, Parameter No. TQM3D.

d. If retests are required by NMED, enter the following codes:

i. For retest number 1, Parameter 22415, enter a "1" if the NOEC for survival is less than the critical dilution; otherwise, enter a "0."

ii. For retest number 2, Parameter 22416, enter a "1" if the NOEC for survival is less than the critical dilution; otherwise, enter a "0."

## APPENDIX A of PART II

The following Minimum Quantification Levels (MQL's) are to be used for reporting pollutant data for NPDES permit applications and/or compliance reporting.

| POLLUTANTS   | MQL<br>µg/l | POLLUTANTS                     | MQL<br>µg/l |
|--|-------------|--------------------------------|-------------|
| <b>METALS, RADIOACTIVITY, CYANIDE and CHLORINE</b> |             |                                |             |
| Aluminum   | 2.5         | Molybdenum                     | 10          |
| Antimony   | 60          | Nickel                         | 0.5         |
| Arsenic  | 0.5         | Selenium                       | 5           |
| Barium   | 100         | Silver                         | 0.5         |
| Beryllium  | 0.5         | Thallium                       | 0.5         |
| Boron  | 100         | Uranium                        | 0.1         |
| Cadmium  | 1           | Vanadium                       | 50          |
| Chromium   | 10          | Zinc                           | 20          |
| Cobalt   | 50          | Cyanide                        | 10          |
| Copper   | 0.5         | Cyanide, weak acid dissociable | 10          |
| Lead   | 0.5         | Total Residual Chlorine        | 33          |
| Mercury *1   | 0.0005      |                                |             |
|  | 0.005       |                                |             |
| <b>DIOXIN</b>                                      |             |                                |             |
| 2,3,7,8-TCDD                                       | 0.00001     |                                |             |
| <b>VOLATILE COMPOUNDS</b>                          |             |                                |             |
| Acrolein   | 50          | 1,3-Dichloropropylene          | 10          |
| Acrylonitrile                                      | 20          | Ethylbenzene                   | 10          |
| Benzene  | 10          | Methyl Bromide                 | 50          |
| Bromoform  | 10          | Methylene Chloride             | 20          |
| Carbon Tetrachloride                               | 2           | 1,1,2,2-Tetrachloroethane      | 10          |
| Chlorobenzene                                      | 10          | Tetrachloroethylene            | 10          |
| Clorodibromomethane                                | 10          | Toluene                        | 10          |
| Chloroform   | 50          | 1,2-trans-Dichloroethylene     | 10          |
| Dichlorobromomethane                               | 10          | 1,1,2-Trichloroethane          | 10          |
| 1,2-Dichloroethane                                 | 10          | Trichloroethylene              | 10          |
| 1,1-Dichloroethylene                               | 10          | Vinyl Chloride                 | 10          |
| 1,2-Dichloropropane                                | 10          |                                |             |
| <b>ACID COMPOUNDS</b>                              |             |                                |             |
| 2-Chlorophenol                                     | 10          | 2,4-Dinitrophenol              | 50          |
| 2,4-Dichlorophenol                                 | 10          | Pentachlorophenol              | 5           |
| 2,4-Dimethylphenol                                 | 10          | Phenol                         | 10          |
| 4,6-Dinitro-o-Cresol                               | 50          | 2,4,6-Trichlorophenol          | 10          |

| POLLUTANTS                  | MQL<br>µg/l | POLLUTANTS                | MQL<br>µg/l |
|-----------------------------|-------------|---------------------------|-------------|
| <b>BASE/NEUTRAL</b>         |             |                           |             |
| Acenaphthene                | 10          | Dimethyl Phthalate        | 10          |
| Anthracene                  | 10          | Di-n-Butyl Phthalate      | 10          |
| Benzidine                   | 50          | 2,4-Dinitrotoluene        | 10          |
| Benzo(a)anthracene          | 5           | 1,2-Diphenylhydrazine     | 20          |
| Benzo(a)pyrene              | 5           | Fluoranthene              | 10          |
| 3,4-Benzofluoranthene       | 10          | Fluorene                  | 10          |
| Benzo(k)fluoranthene        | 5           | Hexachlorobenzene         | 5           |
| Bis(2-chloroethyl)Ether     | 10          | Hexachlorobutadiene       | 10          |
| Bis(2-chloroisopropyl)Ether | 10          | Hexachlorocyclopentadiene | 10          |
| Bis(2-ethylhexyl)Phthalate  | 10          | Hexachloroethane          | 20          |
| Butyl Benzyl Phthalate      | 10          | Indeno(1,2,3-cd)Pyrene    | 5           |
| 2-Chloronaphthalene         | 10          | Isophorone                | 10          |
| Chrysene                    | 5           | Nitrobenzene              | 10          |
| Dibenzo(a,h)anthracene      | 5           | n-Nitrosodimethylamine    | 50          |
| 1,2-Dichlorobenzene         | 10          | n-Nitrosodi-n-Propylamine | 20          |
| 1,3-Dichlorobenzene         | 10          | n-Nitrosodiphenylamine    | 20          |
| 1,4-Dichlorobenzene         | 10          | Pyrene                    | 10          |
| 3,3'-Dichlorobenzidine      | 5           | 1,2,4-Trichlorobenzene    | 10          |
| Diethyl Phthalate           | 10          |                           |             |
| <b>PESTICIDES AND PCBS</b>  |             |                           |             |
| Aldrin                      | 0.01        | Beta-Endosulfan           | 0.02        |
| Alpha-BHC                   | 0.05        | Endosulfan sulfate        | 0.02        |
| Beta-BHC                    | 0.05        | Endrin                    | 0.02        |
| Gamma-BHC                   | 0.05        | Endrin Aldehyde           | 0.1         |
| Chlordane                   | 0.2         | Heptachlor                | 0.01        |
| 4,4'-DDT and derivatives    | 0.02        | Heptachlor Epoxide        | 0.01        |
| Dieldrin                    | 0.02        | PCBs                      | 0.2         |
| Alpha-Endosulfan            | 0.01        | Toxaphene                 | 0.3         |

(MQL's Revised November 1, 2007)

## Footnotes:

\*1 Default MQL for Mercury is 0.005 unless Part I of your permit requires the more sensitive Method 1631 (Oxidation / Purge and Trap / Cold vapor Atomic Fluorescence Spectrometry), then the MQL shall be 0.0005.

**PART III - STANDARD CONDITIONS FOR NPDES PERMITS****A. GENERAL CONDITIONS****1. INTRODUCTION**

In accordance with the provisions of 40 CFR Part 122.41, et. seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the "Act") as well as ALL applicable regulations.

**2. 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.

**3. TOXIC POLLUTANTS**

a. Notwithstanding Part III.A.5, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition.

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

**4. DUTY TO REAPPLY**

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit. The Director may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date. Continuation of expiring permits shall be governed by regulations promulgated at 40 CFR Part 122.6 and any subsequent amendments.

**5. PERMIT FLEXIBILITY**

This permit may be modified, revoked and reissued, or terminated for cause in accordance with 40 CFR 122.62-64. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

**6. PROPERTY RIGHTS**

This permit does not convey any property rights of any sort, or any exclusive privilege.

**7. DUTY TO PROVIDE INFORMATION**

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

**8. CRIMINAL AND CIVIL LIABILITY**

Except as provided in permit conditions on "Bypassing" and "Upsets", nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the Permit may subject the Permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.

**9. OIL AND HAZARDOUS SUBSTANCE LIABILITY**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

**10. 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.

**11. SEVERABILITY**

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

**B. PROPER OPERATION AND MAINTENANCE****1. NEED TO HALT OR REDUCE NOT A DEFENSE**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent.

**2. DUTY TO MITIGATE**

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

**3. PROPER OPERATION AND MAINTENANCE**

- a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will 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 backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.
- b. The permittee shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

**4. BYPASS OF TREATMENT FACILITIES****a. BYPASS NOT EXCEEDING LIMITATIONS**

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III.B.4.b. and 4.c.

**b. NOTICE****(1) ANTICIPATED BYPASS**

If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

**(2) UNANTICIPATED BYPASS**

The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in Part III.D.7.

**c. PROHIBITION OF BYPASS**

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

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required by Part III.B.4.b.

(2) The Director may allow an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed at Part III.B.4.c(1).

**5. UPSET CONDITIONS****a. EFFECT OF AN UPSET**

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part III.B.5.b. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

**b. CONDITIONS NECESSARY FOR A DEMONSTRATION OF UPSET**

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (2) The permitted facility was at the time being properly operated;
- (3) The permittee submitted notice of the upset as required by Part III.D.7, and,
- (4) The permittee complied with any remedial measures required by Part III.B.2.

**c. BURDEN OF PROOF**

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

**6. REMOVED SUBSTANCES**

Unless otherwise authorized, solids, sewage sludges, filter backwash, or other pollutants removed in the course of treatment or wastewater control shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

**7. PERCENT REMOVAL (PUBLICLY OWNED TREATMENT WORKS)**

For publicly owned treatment works, the 30-day average (or Monthly Average) percent removal for Biochemical Oxygen Demand and Total Suspended Solids shall not be less than 85 percent unless otherwise authorized by the permitting authority in accordance with 40 CFR 133.103.

**C. MONITORING AND RECORDS****1. INSPECTION AND ENTRY**

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

- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

**2. REPRESENTATIVE SAMPLING**

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

**3. RETENTION OF RECORDS**

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

**4. RECORD CONTENTS**

Records of monitoring information shall include:

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

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

#### 5. MONITORING PROCEDURES

- a. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator.
- b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.
- c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

#### 6. FLOW MEASUREMENTS

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

### D. REPORTING REQUIREMENTS

#### 1. PLANNED CHANGES

##### a. INDUSTRIAL PERMITS

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

- (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR Part 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 which are subject neither to effluent limitations in the permit, nor to notification requirements listed at Part III.D.10.a.

##### b. MUNICIPAL PERMITS

Any change in the facility discharge (including the introduction of any new source or significant discharge or significant changes in the quantity or quality of existing discharges of pollutants) must be reported to the permitting authority. In no case are any new connections, increased flows, or significant changes in influent quality permitted that will cause violation of the effluent limitations specified herein.

#### 2. ANTICIPATED NONCOMPLIANCE

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

#### 3. 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.

#### 4. DISCHARGE MONITORING REPORTS AND OTHER REPORTS

Monitoring results must be reported to EPA on either the electronic or paper Discharge Monitoring Report (DMR) approved formats. Monitoring results can be submitted electronically in lieu of the paper DMR Form. To submit electronically, access the NetDMR website at [www.epa.gov/netdmr](http://www.epa.gov/netdmr) and contact the R6NetDMR.epa.gov in-box for further instructions. Until you

are approved for Net DMR, you must report on the Discharge Monitoring Report (DMR) Form EPA. No. 3320-1 in accordance with the "General Instructions" provided on the form. No additional copies are needed if reporting electronically, however when submitting paper form EPA No. 3320-1, the permittee shall submit the original DMR signed and certified as required by Part III.D.11 and all other reports required by Part III.D. to the EPA at the address below. Duplicate copies of paper DMR's and all other reports shall be submitted to the appropriate State agency (ies) at the following address (es):

EPA:

Compliance Assurance and Enforcement Division  
Water Enforcement Branch (6EN-W)  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

New Mexico:

Program Manager  
Surface Water Quality Bureau  
New Mexico Environment Department  
P.O. Box 5469  
1190 Saint Francis Drive  
Santa Fe, NM 87502-5469

5. ADDITIONAL MONITORING BY THE PERMITTEE

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

6. AVERAGING OF MEASUREMENTS

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

7. TWENTY-FOUR HOUR REPORTING

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

- (1) A description of the noncompliance and its cause;
- (2) The period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and,
- (3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

b. The following shall be included as information which must be reported within 24 hours:

- (1) Any unanticipated bypass which exceeds any effluent limitation in the permit;
- (2) Any upset which exceeds any effluent limitation in the permit; and,
- (3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in Part II (industrial permits only) of the permit to be reported within 24 hours.

c. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

8. OTHER NONCOMPLIANCE

The permittee shall report all instances of noncompliance not reported under Parts III.D.4 and D.7 and Part I.B (for industrial permits only) at the time monitoring reports are submitted. The reports shall contain the information listed at Part III.D.7.

9. OTHER INFORMATION

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

10. CHANGES IN DISCHARGES OF TOXIC SUBSTANCES

All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the Director as soon as it knows or has reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
- (1) One hundred micrograms per liter (100 µg/L);
  - (2) Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2, 4-dinitro-phenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
  - (3) Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
  - (4) The level established by the Director.
- b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
- (1) Five hundred micrograms per liter (500 µg/L);
  - (2) One milligram per liter (1 mg/L) for antimony;
  - (3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
  - (4) The level established by the Director.

#### 11. SIGNATORY REQUIREMENTS

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

- a. ALL PERMIT APPLICATIONS shall be signed as follows:

- (1) FOR A CORPORATION - by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or,

(b) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

- (2) FOR A PARTNERSHIP OR SOLE PROPRIETORSHIP - by a general partner or the proprietor, respectively.

- (3) FOR A MUNICIPALITY, STATE, FEDERAL, OR OTHER PUBLIC AGENCY - by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

(a) The chief executive officer of the agency, or

(b) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

- b. ALL REPORTS required by the permit and other information requested by the Director 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:
- (1) The authorization is made in writing by a person described above;
  - (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental

matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,

(3) The written authorization is submitted to the Director.

c. CERTIFICATION

Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

12. AVAILABILITY OF REPORTS

Except for applications, effluent data permits, and other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

E. PENALTIES FOR VIOLATIONS OF PERMIT CONDITIONS

1. CRIMINAL

a. NEGLIGENT VIOLATIONS

The Act provides that any person who negligently violates permit conditions implementing Section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

b. KNOWING VIOLATIONS

The Act provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

c. KNOWING ENDANGERMENT

The Act provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than \$250,000, or by imprisonment for not more than 15 years, or both.

d. FALSE STATEMENTS

The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act)

2. CIVIL PENALTIES

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed \$27,500 per day for each violation.

3. ADMINISTRATIVE PENALTIES

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

a. CLASS I PENALTY

Not to exceed \$11,000 per violation nor shall the maximum amount exceed \$27,500.

b. CLASS II PENALTY

Not to exceed \$11,000 per day for each day during which the violation continues nor shall the maximum amount exceed \$137,500.

F. DEFINITIONS

All definitions contained in Section 502 of the Act shall apply to this permit and are incorporated herein by reference. Unless otherwise specified in this permit, additional definitions of words or phrases used in this permit are as follows:

1. ACT means the Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.
2. ADMINISTRATOR means the Administrator of the U.S. Environmental Protection Agency.
3. APPLICABLE EFFLUENT STANDARDS AND LIMITATIONS means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards or performance, toxic effluent standards and prohibitions, and pretreatment standards.
4. APPLICABLE WATER QUALITY STANDARDS means all water quality standards to which a discharge is subject under the Act.
5. BYPASS means the intentional diversion of waste streams from any portion of a treatment facility.
6. 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 terms of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the sampling 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 sampling day. "Daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge" determination of concentration shall be arithmetic average (weighted by flow value) of all samples collected during that sampling day.
7. DAILY MAXIMUM discharge limitation means the highest allowable "daily discharge" during the calendar month.
8. DIRECTOR means the U.S. Environmental Protection Agency Regional Administrator or an authorized representative.
9. ENVIRONMENTAL PROTECTION AGENCY means the U.S. Environmental Protection Agency.
10. GRAB SAMPLE means an individual sample collected in less than 15 minutes.
11. INDUSTRIAL USER means a non-domestic discharger, as identified in 40 CFR 403, introducing pollutants to a publicly owned treatment works.
12. MONTHLY AVERAGE (also known as DAILY AVERAGE) discharge limitations means the highest allowable average of "daily discharge(s)" over a calendar month, calculated as the sum of all "daily discharge(s)" measured during a calendar month divided by the number of "daily discharge(s)" measured during that month. When the permit establishes daily average concentration effluent limitations or conditions, the daily average concentration means the arithmetic average (weighted by flow) of all "daily discharge(s)" of concentration determined during the calendar month where C = daily concentration, F = daily flow, and n = number of daily samples; daily average discharge =

$$C_1F_1 + C_2F_2 + \dots + C_nF_n$$

$$F_1 + F_2 + \dots + F_n$$

13. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402, and 405 of the Act.
14. 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.
15. SEWAGE SLUDGE means the solids, residues, and precipitates separated from or created in sewage by the unit processes of a publicly owned treatment works. Sewage as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff that are discharged to or otherwise enter a publicly owned treatment works.
16. TREATMENT WORKS means any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage and industrial wastes of a liquid nature to implement Section 201 of the Act, or necessary to recycle or reuse water at

the most economical cost over the estimated life of the works, including intercepting sewers, sewage collection systems, pumping, power and other equipment, and their appurtenances, extension, improvement, remodeling, additions, and alterations thereof.

17. 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.
18. FOR FECAL COLIFORM BACTERIA, a sample consists of one effluent grab portion collected during a 24-hour period at peak loads.
19. The term "MGD" shall mean million gallons per day.
20. The term "mg/L" shall mean milligrams per liter or parts per million (ppm).
21. The term "µg/L" shall mean micrograms per liter or parts per billion (ppb).
22. MUNICIPAL TERMS
  - a. 7-DAY AVERAGE or WEEKLY AVERAGE, other than for fecal coliform bacteria, is the arithmetic mean of the daily values for all effluent samples collected during 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. The 7-day average for fecal coliform bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.
  - b. 30-DAY AVERAGE or MONTHLY AVERAGE, other than for fecal coliform bacteria, is the arithmetic mean of the daily values for all effluent samples collected during 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. The 30-day average for fecal coliform bacteria is the geometric mean of the values for all effluent samples collected during a calendar month.
  - c. 24-HOUR COMPOSITE SAMPLE consists of a minimum of 12 effluent portions collected at equal time intervals over the 24-hour period and combined proportional to flow or a sample collected at frequent intervals proportional to flow over the 24-hour period.
  - d. 12-HOUR COMPOSITE SAMPLE consists of 12 effluent portions collected no closer together than one hour and composited according to flow. The daily sampling intervals shall include the highest flow periods.
  - e. 6-HOUR COMPOSITE SAMPLE consists of six effluent portions collected no closer together than one hour (with the first portion collected no earlier than 10:00 a.m.) and composited according to flow.
  - f. 3-HOUR COMPOSITE SAMPLE consists of three effluent portions collected no closer together than one hour (with the first portion collected no earlier than 10:00 a.m.) and composited according to flow.