



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

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27 SEP 2017

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7014 0150 0000 2452 0344)

Mr. Michael Sloane
Chief of Fisheries
State of New Mexico Department of Game & Fish
Red River State Trout Hatchery
P.O. Box 25112
Santa Fe, NM 87504

Re: NPDES Permit No. NM0030147
Public Notice of Draft Permit

Dear Mr. Sloane:

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 CFR 124.19, within 30 days after a final permit decision has been issued, any person who filed comments on the 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 Jim Afghani of the Permitting Section at the above address or by telephone: (214) 665-6615, by fax: (214) 665-2191, or by E-mail: afghani.jim@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 by telephone: (214) 665-6468.

Sincerely yours,

William K. Honker, P.E.

Director

Water Division

Enclosures

cc w/enclosures:

Sarah Holcomb, NMED

**NPDES PERMIT NO. NM0030147
RESPONSE TO COMMENTS**

RECEIVED ON THE SUBJECT DRAFT NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM (NPDES) PERMIT IN ACCORDANCE WITH REGULATIONS
LISTED AT 40 CFR 124.17

APPLICANT: State of New Mexico Department of Game & Fish
Red River State Fish Hatchery
P.O. Box 25112
Santa Fe, NM 87504

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

PREPARED BY: Jim Afghani
Environmental Engineer
NPDES Permits and TMDL Branch (6WQ-P)
Water Division
VOICE: 214-665-6615
FAX: 214-665-2191
EMAIL: afghani.jim@epa.gov

PERMIT ACTION: Final permit decision and response to comments received on the proposed
NPDES permit publicly noticed on July 29, 2017.

DATE PREPARED: September 19, 2017

Unless otherwise stated, citations to 40 CFR refer to promulgated regulations listed at Title 40, Code
of Federal Regulations, revised as of September 15, 2017.

SUBSTANTIAL CHANGES FROM DRAFT PERMIT

1. TRC sampling and TRC maximum daily limit of 11 ug/l is added and required during the period when the FDA approved drug Chloramine-T is used as a treatment for the Bacterial Gill Disease.

STATE CERTIFICATION

In a letter from Shelly Lemon, Bureau Chief, SWQB, to William K. Honker, P.E., Director, Water Division (EPA) dated September 15, 2017, the NMED certified that the discharge will comply with the applicable provisions of Section 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of the following conditions in the permit.

The NMED stated that in order to meet the requirements of State law, including water quality standards and appropriate basin plans as may be amended by the water quality management plan, each of the conditions cited in the draft permit and the State certification shall not be made less stringent.

The State also stated that it reserves the right to amend or revoke this certification if such action is necessary to ensure compliance with the State's water quality standards and water quality management plan.

CONDITIONS OF CERTIFICATION**Condition No. 1:**

USEPA may remove the condition in Part II.C (Chlorine) of the Draft Permit that states "There shall be no discharge of chlorine for any outfall" to the extent as follows:

- a. USEPA must add monitoring and reporting requirements for TRC to Part I.A of the Final Permit; and
- b. USEPA must retain the Permit Modification and Reopener conditions in Part II.A of the Final Permit.

Monitoring and reporting with the permit modification and reopener conditions is required to ensure the protection of designated uses in State WQS 20.6.4.122 NMAC and that applicable numeric criteria in State WQS in 20.6.4.900.J (1) NMAC for Total Residual Chlorine are not violated.

Response No. 1:

Part II prohibition on the discharge of chlorine has been removed as suggested. TRC monitoring added in Part I.A with a footnote 8. Permit Modification and Reopener conditions can be found in Part II.A.

Condition #2:

If USEPA includes an effluent limitation for TRC in Part, I.A of the Final Permit then the concentration must be protective of designated uses in State WQS 20.6.4.122 NMAC and applicable numeric criteria in State WQS 20.6.4.900.J (1) NMAC. The calculation of the effluent limitation must use applicable State WQS in 20.6.4.11.B NMAC for critical flow (Wildlife Habitat and chronic Aquatic Life) and 20.6.4.11.E (2) NMAC at the point of discharge (Acute Aquatic Life). Excerpts for NMWQS citations were provided above. Additional information is provided in Comment 2 below.

Response No. 2:

Based on discussion with NMED and lack of ambient data for TRC, chronic aquatic life criteria for TRC of 11 ug/L has been selected for the maximum chlorine limit.

COMMENTS THAT ARE NOT CONDITIONS OF CERTIFICATION**NMED Comment No. 1:**

USEPA Fact Sheet prepared June 13, 2017 included an analysis showing that Aldrin had a reasonable potential (RP) to exceed state WQS. However, USEPA Fact Sheet Page 12 of 17 states "EPA was unable to determine if RP for Aldrin exists and has proposed collection of additional information during the permit term." NMED concurs that USEPA's use of Aldrin data in the RP may not be representative and that an effluent limitation for Aldrin is not required in the permit. NMED agrees that further monitoring for Aldrin appears warranted.

Response No. 1:

Comment noted for the record.

NMED Comment No. 2:

NMED requests USEPA to update the Authorization Page and throughout the Final Permit with the correct facility name. "Red River State Fish Hatchery" is the correct name according to NMDG&F.

Response No. 2:

Facility name corrected.

NMED Comment No. 3:

NMED requests USEPA to clarify the authorized discharge description in Part I.A.1 and Part I.A.2 of the Final Permit. The Draft Permit states "authorized to discharge treated wastewater" and "authorized to discharge wastewater" in Part I.A.1 and Part I.A.2 of Draft Permit, respectively. NMED recommends that the discharge be described as "hatchery wastewater" which is consistent with other NPDES permits for hatcheries in the State of New Mexico.

Response No. 3:

Revised discharge description in Part I.A.1 and Part I.A.2 of the Final Permit as suggested.

NMED Comment No. 4:

NMDG&F requested that the permit be revised "to allow for occasional discharges of chlorine due to the proposed use of the FDA approved drug Chloramine-T to treat Bacterial Gill Disease (BGD) at the hatchery." Since the use of the drug is proposed, a representative sample of the discharge was not provided. EPA may not be able to determine that RP exists, but may include limitations based on the Permit Writer's best professional judgement. USEPA uses equations for calculating water quality based effluent limits for discharges to perennial streams as described in the NMIP. Based on the critical dilution in USEPA's Fact Sheet, the Acute Aquatic Life Criteria (19 µg/L) should be the limiting effluent limitation concentration.

Response No. 4:

TRC sampling is added and required during the period when the FDA approved drug Chloramine-T is used as a treatment for the Bacterial Gill Disease. A daily maximum TRC limit of 11 ug/l has been added. Refer also to the responses to NMED Conditions 1 and 2.

NMED Comments No. 5:

NMED requests that USEPA remove the condition to average pH values in Part I.A.1 Footnote #3 of the Draft Permit. If not removed, then USPA should provide instruction to the Permittee on the calculation in the Final Permit since pH is a logarithmic measure and simple arithmetic average would not be applicable.

For this request, NMED recommends that the pH sample type in Part I.A.1 be changed to "Composite Grab or Grab *2,3" and the following language be deleted from Footnote 3: "*and then pH value averaged for reporting at Outfall 001*" in the Final Permit.

Response No. 5:

Removed the condition to average pH in Part I.A.1 in footnote 3. Sample type is "Composite Grab" and requires compositing of grab samples from each of the three outfalls prior to analysis.

NMED Comments No. 6:

NMED requests that USEPA clarify monitoring requirements for Aldrin in Part I.A.1 and Footnote 7 of the Final Permit.

Based on Part I.B Aldrin Study Conditions, the Permittee is to submit a detailed plan to test for Aldrin at each source of intake water within six months after the effective date of the permit for EPA and NMED review and approval. Effluent monitoring for Aldrin once/quarter is required in Part I.A.1 starting the 2nd year of the permit. However, depending on the Permittee's detailed plan and results of testing of the source water and effluent, it may not be necessary to monitor the influent to the plant at a frequency of once/quarter thru the permit term.

For this request, NMED recommends Footnote 7 be changed to "If conducting influent testing for Aldrin per Part II.B of this permit, effluent testing shall be conducted at the same time. Effluent testing more frequently than once/quarter is to be reported per Part III.D.5 of this Permit."

Response No. 6:

Footnote 7 revised to include the following language: "When conducting influent testing for Aldrin per Part I.B of this permit, effluent testing shall be conducted at the same time. Effluent testing more frequently than once/quarter is to be reported per Part III.D.5 of this permit."

NMED Comments No. 7:

NMED requests USEPA to clarify Part I.A.1 Footnote 7 regarding Whole Effluent Toxicity (WET) testing in the Final Permit that the sample collection shall occur between April 1 and June 30 during times of raceway, trough or tank cleaning if possible." WET monitoring during periods of potentially higher pollutant concentrations from cleaning operations is consistent with other NPDES permits for hatcheries in the State of New Mexico.

Response No. 7:

The selection of April 1-June 30 is based on operational maximum for the facility and as such is used as the time period for WET testing in the final permit.

NMED Comments No. 8:

NMED requests USEPA to provide the Permittee with additional information in Part II.B.1.d of the Final Permit should a failure of a Whole Effluent Toxicity (WET) test occurs at the end of the paragraph as follows "USEPA will inform the Permittee if additional information, testing, TRE, and/or reporting is required."

Response No. 8:

The suggested language has been added to Part II.B.1.e regarding additional information.

NMED Comments No. 9:

NMED requests that USEPA update Part III Standard Conditions of the Final Permit with the latest amendment approved by Region 6. NMED received e-mail correspondence with updated language for Part III Amended September 2017.

Response No. 9:

Updated Part III Standard Conditions has been included with the final permit.

NMDGF Comments No. 10:

Under the 'Applicant' section of the cover page the facility name is incorrectly identified as "Red River State Trout Hatchery." This is a historic name for the facility. The correct name for the facility, as identified in the permit application forms, is 'Red River State Fish Hatchery.' The facility name was updated in the early 2000s along with all other Department hatcheries, although the names have been used interchangeably in various documents since that time.

Response No. 10:

Facility name is corrected.

NMDGF Comments No. 11:

The last sentence of the first paragraph on Page 4 states: "The facility described in the application produces an annual estimated fish harvest of 224,721 pounds of rainbow trout from 42 raceways and 4 ponds." While the numbers included in this sentence are pulled directly from Items B and D in the Application form 2b, the sentence is misleading. The four ponds at the facility are the show pond, kids fishing pond and the two settling ponds, all described correctly previously in the paragraph. No fish are harvested for stocking from any ponds at the facility.

Response No. 11:

Comment noted for the record.

NMDGF Comments No. 12:

The Department asks the U.S. Environmental Protection Agency to amend the notification requirement contained in the Drugs Medications and/or Chemicals (DMC) section of the Fact Sheet which states, "Anytime DGF uses any DMC, such that it will enter waters of the US, then DGF shall notify both EPA and NMED of its impending use." to match the notification requirement for DMC use contained on Page 6 of PART II Section C of the Proposed Permit which states "Anytime drugs, medications and chemicals (DMC), at either concentrations and/or uses not approved by the Food and Drug Administration (FDA), are used either in amounts or a manner that it would allow it to enter the receiving stream, the Department of Game and Fish (DGF) shall notify both EPA and NMED of its impending use."

Response No. 12:

Revised the language as requested.

NMDGF Comments No. 13:

The facility name is incorrectly identified on the cover page as "Red River State Trout Hatchery." This is a historic name for the facility. The correct name for the facility, as identified in the permit application forms, is 'Red River State Fish Hatchery.' The facility name was updated in the early

2000s along with all other Department hatcheries, although the names have been used interchangeably in various documents since that time.

Response No. 13:

Facility name is corrected.

NMDGF Comments No. 14:

The Department has no comments on the Aldrin Study requirements, but has performed subsequent testing for Aldrin at the two source water inputs. Lab reports for these tests indicate that Aldrin was not detected during the tests performed in June 2017. We believe that the disparate results from the discharge from November 2016 and the source water samples are inconclusive and further study is warranted. The lab report for the source water samples is available upon request.

Response No. 14:

Comment noted.

NMDGF Comments No. 15:

The proposed permit states that "There shall be no discharge of chlorine from any outfall." The Department requests that this section be revised to allow for occasional discharges of chlorine due to the proposed use of the FDA approved drug Chloramine-T to treat Bacterial Gill Disease (BGD) at the hatchery.

Chloramine-T was approved by the FDA in 2014 for use in aquaculture (see attached product label) and is one of the most effective options for treating BGD in fresh water salmonids. The Department is proposing to incorporate the use of Chloramine-T to treat this disease at all Department managed hatcheries (see attached Proposed Drug Use Plan). According to the product label and the Environmental Assessment prepared by the FDA (attached), Chloramine-T has the potential to produce residual free chlorine. While the Environmental Assessment determined that the Chloramine-T will not produce free chlorine at concentrations of concern when used at approved concentrations, chlorine may still be detectable in hatchery discharge.

The Department proposes that conditional chlorine monitoring be added to the permit to allow for the use of Chloramine-T at the hatchery to include daily monitoring of Total Residual Chlorine during treatments with Chloramine-T.

Response No. 15:

TRC sampling is added and required during the period when the FDA approved drug Chloramine-T is used as a treatment for the Bacterial Gill Disease. A daily maximum TRC limit has been added. Refer also to NMED Conditions of Certification No. 1 and 2.



REGION 6
1445 ROSS AVENUE
DALLAS, TEXAS 75202-2733

NPDES Permit No. NM0030147

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"),

State of New Mexico Department of Game & Fish
Red River State Fish Hatchery
P.O. Box 25112
Santa Fe, NM 87504

is authorized to discharge from a facility located at the end of State Highway 515, about 10-miles northwest of the intersection with State Highway 522 and approximately 5-miles downriver (southwest) from the town of Questa, in Taos County, NM, to receiving waters named Red River, thence the Rio Grande, in Segment No. 20.6.4.122 of the Rio Grande Basin, the discharges are located on that water at the following coordinates:

Outfall 001 - Latitude 36° 41' 01.56" North, Longitude 105° 39' 07.03" West

Outfall 002 - Latitude 36° 40' 59.81" North, Longitude 105° 39' 10.55" West

Outfall 003 - Latitude 36° 40' 58.59" North, Longitude 105° 39' 13.94" West

in accordance with this cover page and the effluent limitations, monitoring requirements, and other conditions set forth in Part I, Part II, and Part III hereof.

This permit shall become effective on *NOVEMBER 1, 2017*

This permit and the authorization to discharge shall expire at midnight, *OCTOBER 31, 2022*

Issued on *SEPTEMBER 27, 2017* Prepared by

William K. Honker, P.E.
Director
Water Division (6WQ)

Jim Afghani
Environmental Engineer
Permitting Section (6WQ-PP)

PART I – REQUIREMENTS FOR NPDES PERMITS

A. LIMITATIONS AND MONITORING REQUIREMENTS

1. FINAL EFFLUENT LIMITS BASED ON THE HIGHEST MONTHLY AVERAGE FLOW OF 10.717 MGD – OUTFALL 001

During the period beginning the effective date of the permit and lasting through the expiration date of the permit (unless otherwise noted), the permittee is authorized to discharge hatchery wastewater to the Red River, in Segment Number 20.6.4.122, from Outfalls 001, 002 and 003 (See Part II). Such discharges shall be limited and monitored by the permittee and reported as Outfall 001, as specified below:

POLLUTANT	MINIMUM	MAXIMUM	MEASUREMENT FREQUENCY	SAMPLE TYPE
pH	6.6 standard unit	8.8 standard unit	Two/Month ^{*1}	Composite Grab ^{*2, 3}

POLLUTANT	DAILY AVERAGE	DAILY MAXIMUM	MEASUREMENT FREQUENCY	SAMPLE TYPE
Flow	Report MGD	Report MGD	One/Day	Weir Collection System Total Flow ^{*4}

POLLUTANT	DAILY AVG	DAILY MAX	DAILY AVG	DAILY MAX	MEASUREMENT FREQUENCY	SAMPLE TYPE
Total Suspended Solids	894 lbs./day	1342 lbs./day	10 mg/L	15 mg/L	Two/Month ^{*1}	Composite Grab ^{*2}
Settle-able Solids	N/A	N/A	0.1 ml/L	0.5 ml/L	Two/Month ^{*1}	Composite Grab ^{*2}
Aldrin	N/A	N/A	N/A	Report	One/Quarter ^{*1,7}	Composite Grab ^{*2}
Total Residual Chlorine	N/A	N/A	N/A	11 ug/L	Daily ^{*8}	Composite Grab ^{*2}

WHOLE EFFLUENT TOXICITY TESTING (7-Day Static Renewal) (See Part II, Section C)	30-DAY AVG	7-DAY MINIMUM	MEASUREMENT FREQUENCY	SAMPLE TYPE
Ceriodaphnia dubia	Report	Report	Once/Term ^{*5, 6}	Composite Grab ^{*2}
Pimephales promelas	Report	Report	Once/Term ^{*5, 6}	Composite Grab ^{*2}

Footnotes:

- *1 The first sample event of any reporting period shall be at least 10-days from the first sample event of the previous reporting period.
- *2 Composite Grab: During periods when Outfall 003 is discharging, obtain a grab aliquot and record the flow from each outfall. When all three outfalls have been sampled and flows recorded, make a composite sample by mixing each individual outfall's aliquot in proportion to the flow from each outfall to the sum of the total flow. In the event during a reporting period that discharge from Outfall 003 does not occur, submit a composite sample from Outfalls 001 and 002, and note on the discharge monitoring form that no discharge from Outfall 003 occurred during the sample period, noting which reporting period the discharge from Outfall 003 did not occur.
- *3. Monitoring for pH has a 15-minute holding time per 40 CFR 136.3. If the facility has difficulties with meeting the holding time, then individual grab samples for each outfall may be collected and analyzed within 15 minutes.
- *4 Flow shall be recorded from each outfall by measuring flow over the weir. The flow from each outfall shall be totaled, and reported on the discharge monitoring report.
- *5. Once per permit term. 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 EPA and NMED, Surface Water Quality Bureau, in writing, within 5 business days of notification the test failure. EPA and NMED will review the test results and determine the appropriate action necessary, if any. (See Part II, Section C)
- *6. Sampling for the whole effluent toxicity test shall occur between April 1 and June 30.
- *7. When conducting influent testing for Aldrin per Part I.B of this permit, effluent testing shall be conducted at the same time. Effluent testing more frequently than once/quarter is to be reported per Part III.D.5 of this Permit.
- *8. The effluent limitation for TRC is the instantaneous maximum and cannot be averaged for reporting purposes. TRC sampling is required during the period when the FDA approved drug Chloramine-T is used as a treatment for the Bacterial Gill Disease.

A. LIMITATIONS AND MONITORING REQUIREMENTS

2. FINAL Effluent Limits – Outfall 01B – Special Testing - Non FDA Approved Drugs, Medications and/or Chemicals

During the period beginning the effective date of the permit and lasting through the expiration date of the permit (unless otherwise noted), the permittee is authorized to discharge hatchery wastewater containing either non-approved Food and Drug Administration (FDA) drugs, medications or chemicals (DMC), or DMC used in a manner not consistent with FDA approval to the Red River, in Segment Number 20.6.4.122, from Outfalls 001, 002 and 003 (See Part II). Such discharges shall be limited and monitored by the permittee and reported as Outfall 01B, as specified below:

POLLUTANT	DAILY AVG	DAILY MAX	DAILY AVG	DAILY MAX	MEASUREMENT FREQUENCY	SAMPLE TYPE
Flow	Report MGD	Report MGD	***	***	Daily	Weir collection system *1

WHOLE EFFLUENT TOXICITY TESTING (7-Day Static Renewal) (See Part II, Section C)	30-DAY AVG	7-DAY MINIMUM	MEASUREMENT FREQUENCY	SAMPLE TYPE
Ceriodaphnia dubia	Report	Report	Once/Use*2,3	Grab*4
Pimephales promelas	Report	Report	Once/Use*2,3	Grab*4

Footnotes:

- *1 The flow shall be from only the outfall associated with the DMC use. Flow is NOT to be composited with the other outfalls.
- *2 Once per use is defined as one WET test for each continuous use of the DMC. For long-term use of these DMC, only one WET test shall be required on the maximum dose of the treatment, unless that maximum dose is later increased by 20 percent. At that point, and any later increases above 20 percent, then additional WET tests will be required.
- *3 Once per use. 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 EPA and NMED, Surface Water Quality Bureau, in writing, within 5 business days of notification the test failure. EPA and NMED will review the test results and determine the appropriate action necessary, if any. See Part II, Section C.
- *4 Grab sample shall be taken approximately 30-minutes after the expected time of arrival of the treated water has passed through the outfall. The expected time of arrival can be determined by direct observation by the use of floatable markers such as wooden blocks.

B. Aldrin Study

The permittee shall submit a detailed plan to test for Aldrin at each source of intake water for the hatchery within six months after the effective date of the permit to both EPA and NMED for approval. The plan must also include any use of Aldrin at the facility, if any. Once approved, the permittee must collect and analyze samples for Aldrin at least once a quarter or more frequent during 2nd, 3rd, 4th and 5th year of the permit. The results of this study shall be attached to the DMR reports to EPA.

C. CHLORINE

TRC sampling is required during the period when the FDA approved drug Chloramine-T is used as a treatment for the Bacterial Gill Disease.

D. FLOATING SOLIDS, VISIBLE FOAM AND/OR OILS

There shall be no discharge of floating solids or visible foam in other than trace amounts. There shall also be no discharge of visible films of oil, globules of oil, grease or solids in or on the water, or coatings on stream banks. In addition, Surface waters of the state shall be free of oils, scum, grease and other floating materials resulting from other than natural causes 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.

E. MONITORING AND REPORTING (MINOR DISCHARGERS)

1. The permittee shall effectively monitor the operation and efficiency of all treatment and control facilities and the quantity and quality of the treated discharge.
2. Monitoring discharge information shall be submitted electronically. To submit electronically, access the Net-DMR website at www.epa.gov/netdmr and contact the R6NetDMR.epa.gov in-box for further instructions.
 - a. Reporting periods shall end on the last day of the months March, June, September and December.
 - b. The permittee is required to submit regular monthly reports as described above no later than the 15th day of the month.
3. If any daily average and daily maximum value exceeds the effluent limitations specified in Part IA, the permittee shall report the excursion in accordance with the requirements of Part III.D.
4. Any daily average and daily maximum value reported in the required Discharge Monitoring Report which is in excess of the effluent limitation specified in Part I.A shall constitute evidence of violation of such effluent limitation and of this permit.
5. NO DISCHARGE REPORTING: If there is no discharge from any outfall during the sampling month, place an "X" in the NO DISCHARGE box located in the upper right corner of the Discharge Monitoring Report.

PART II - OTHER CONDITIONS

A. PERMIT MODIFICATION AND REOPENER

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 State of New Mexico water quality standards are established and/or remanded.

In accordance with 40 CFR Part 122.62(a)(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. Permit modifications shall reflect the results of any of these actions and shall follow regulations listed at 40 CFR Part 124.5.

B. WHOLE EFFLUENT TOXICITY TESTING (7-DAY CHRONIC 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):	001, 002, 003
REPORTED ON DMR AS FINAL OUTFALL:	001
CRITICAL DILUTION:	54%
EFFLUENT CONCENTRATIONS:	23%, 30%, 41%, 54% and 72%
COMPOSITE SAMPLE TYPE:	Defined at PART I
TEST SPECIES/METHODS:	40 CFR Part 136

Ceriodaphnia dubia chronic static renewal survival and reproduction test, Method 1002.0, EPA-821-R-02-013, or the most recent update thereof. This test should be terminated when 60% of the surviving females in the control produce three broods or at the end of eight days, whichever comes first.

Pimephales promelas (Fathead minnow) chronic static renewal 7-day larval survival and growth test, Method 1000.0, EPA-821-R-02-013, or the most recent 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 herein 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. Chronic lethal 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. Chronic sub-lethal test failure is defined as a demonstration of a statistically significant sub-lethal effect (i.e., growth or reproduction) 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 sub-lethal or 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 EPA and NMED, Surface Water Quality Bureau, in writing, within 5 business days of notification the test failure. EPA and NMED will review the test results and determine the appropriate action necessary, if any. USEPA will inform the Permittee if additional information, testing, TRE and/or reporting is required.

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. The toxicity test control (0% effluent) must have survival equal to or greater than 80%.
- ii. The mean number of *Ceriodaphnia dubia* neonates produced per surviving female in the control (0% effluent) must be 15 or more.
- iii. 60% of the surviving control females must produce three broods. The mean dry weight of surviving Fathead minnow larvae at the end of the 7 days in the control (0% effluent) must be 0.25 mg per larva or greater.
- iv. The percent coefficient of variation between replicates shall be 40% or less in the control (0% effluent) for: the young of surviving females in the *Ceriodaphnia dubia* reproduction test; the growth and survival endpoints of the Fathead minnow test.
- v. The percent coefficient of variation between replicates shall be 40% or less in the critical dilution, unless significant lethal or nonlethal effects are exhibited for: the young of surviving females in the *Ceriodaphnia dubia* reproduction test; the growth and survival endpoints of the Fathead minnow test.
- vii. A PMSD range of 13 - 47 for *Ceriodaphnia dubia* reproduction;
- viii. A PMSD range of 12 - 30 for Fathead minnow growth. 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

- i. For the *Ceriodaphnia dubia* survival test, the statistical analyses used to determine if there is a significant difference between the control and the critical dilution shall be Fisher's Exact Test as described in EPA/821/R-02-013 or the most recent update thereof.
- ii. For the *Ceriodaphnia dubia* reproduction test and the Fathead minnow larval survival and growth test, the statistical analyses used to determine if there is a 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-02-013 or the most recent update thereof.
- iii. 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 80% 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 a survival NOEC of not less than the critical dilution for the DMR 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., 7 days);
 - 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 (Grab Samples Authorized For This Permit)

- i. The permittee shall collect a minimum of three flow-weighted composite samples from the outfall(s) listed at Item 1a above.
- ii. The permittee shall collect second and third composite samples for use during 24-hour renewals of each dilution concentration for each test. 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.
- iii. The permittee must collect the composite samples so that the maximum holding time for any effluent sample shall not exceed 72 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 4 degrees Centigrade during collection, shipping, and/or storage.
- 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 if the discharge occurs over multiple 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 4 of this section.

3. REPORTING

- a. The permittee shall prepare a full report of the results of all tests conducted pursuant to this section in accordance with the Report Preparation Section of EPA/821/R-02-013, or the most current publication, 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 on the DMR 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 on the DMR for each reporting period. The data submitted should reflect the LOWEST survival lethal and sub-lethal effects 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 to the DMR for EPA review.
- c. The permittee shall submit the results of each valid toxicity test on the subsequent monthly DMR for that reporting period in accordance with PART III.D.4 of this permit, as follows below. Submit retest information, if required, clearly marked as such with the following month's DMR. Only results of valid tests are to be reported on the DMR.

i. *Pimephales promelas* (Fathead Minnow)

- A. If the No Observed Effect Concentration (NOEC) for survival is less than the critical dilution, enter a 1; otherwise, enter a 0 for Parameter No. TLP6C
- B. Report the NOEC value for survival, Parameter No. TOP6C
- C. Report the LOEC value for survival, Parameter No. TXP6C
- D. Report the NOEC value for growth, Parameter No. TPP6C
- E. Report the LOEC value for growth, Parameter No. TYP6C
- F. If the No Observed Effect Concentration (NOEC) for growth is less than the critical dilution, enter a 1; otherwise, enter a 0 for Parameter No. TGP6C
- G. Report the highest (critical dilution or control) Coefficient of Variation, Parameter No. TQP6C

ii. *Ceriodaphnia dubia*

- A. If the NOEC for survival is less than the critical dilution, enter a 1; otherwise, enter a 0 for Parameter No. TLP3B
- B. Report the NOEC value for survival, Parameter No. TOP3B
- C. Report the LOEC value for survival, Parameter No. TXP3B
- D. Report the NOEC value for reproduction, Parameter No. TPP3B
- E. Report the LOEC value for reproduction, Parameter No. TYP3B
- F. If the No Observed Effect Concentration (NOEC) for reproduction is less than the critical dilution, enter a 1; otherwise, enter a 0 for Parameter No. TGP3B
- G. Report the higher (critical dilution or control) Coefficient of Variation, Parameter No. TQP3B

d. If retests are required by EPA, enter the following codes on the DMR for retests only:

- 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

C. DRUGS, MEDICATIONS and CHEMICALS

Anytime drugs, medications and chemicals (DMC), at either concentrations and/or uses not approved by the Food and Drug Administration (FDA), are used either in amounts or a manner that it would allow it to enter waters of the US, the Department of Game and Fish (DGF) shall notify both EPA

and NMED of its impending use. Notification to NMED shall be by phone within one business day of its decision to use the DMC, and to EPA within three days. Written notification shall also be to both EPA and NMED, in writing no less than five-business days later. Both notifications shall provide the name of the DMC, its amount, concentration of use and reason for its use, along with the expected date and time of its use, and expected duration of use.

Anytime the DGF uses DMC, at either amounts and/or uses not approved by the FDA, such that it would allow it to enter the receiving stream, the DGF shall conduct Whole Effluent Toxicity (WET) tests. See Part II, Section B. The testing shall be reported on the discharge monitoring report (DMR) and reported as Outfall 01B. On the DMR, report in the comment section the date, time duration and the name of the DMC used. Also note the date of the letter sent to EPA and NMED.

WET testing shall be conducted on the maximum dose of each instance of intermittent use of drugs, medications and/or chemicals not approved by the FDA, or drugs, medications and/or chemicals for purposes other than those for which FDA approval was granted. For long-term use of these drugs, medications and/or chemicals, only one WET test shall be required on the maximum dose of the treatment, unless that maximum dose is later increased by 20 percent. At that point, and any later increases above 20 percent, then additional WET tests will be required. The sample shall NOT be flow weighted with other outfall flow. The sample shall occur at the outfall location consistent with the unit being treated, during the time that the expected highest dose is being administered and shall be taken at a time taking into consideration the lag-time for the slug of maximum dosage of DMC to flow from the point of application to the sample point. The grab sample for the WET test shall be taken 30-minutes after the expected arrival time of the first slug of DMC at the outfall. The expected arrival time can be determined by direct observation by use of a floatable marker such as wooden blocks.

D. BEST MANAGEMENT PRACTICES

1. IMPLEMENTATION

The permittee shall develop and implement a Best Management Practices (BMP) Plan that achieves the objectives and the specific requirements listed below. A copy of the plan shall be submitted to EPA and NMED within three (3) months of the effective date of the permit. EPA shall have the right to disapprove the BMP plan within sixty (60) days of receipt of the plan. Upon receipt of a BMP denial, the permittee shall resubmit a revised Plan within 30-days. Upon either acceptance of the Plan, or no-action by EPA after the 60-day review time, the plan shall be deemed approved. The Plan shall be implemented as soon as possible but no later than six months from the date of approval.

2. PURPOSE

Through implementation of the BMP Plan the permittee shall prevent or minimize the generation of and the potential for the release of pollutants from the facility to the waters of the United States through normal operations and ancillary activities.

3. OBJECTIVES

The permittee shall develop and amend the BMP Plan consistent with the following objectives for the control of pollutants.

- a. The number and quantity of pollutants and the toxicity of effluent generated, discharged or potentially discharged at the facility shall be minimized by the permittee to the extent feasible by managing each influent waste stream in the most appropriate manner.
- b. Under the BMP Plan, and any SOPS included in the Plan, the permittee shall ensure proper operation and maintenance of the treatment facility.

4. REQUIREMENTS

The BMP Plan shall be consistent with the objectives mentioned above and the general guidance contained in the publication entitled "Best Management [practices Guidance Document]" (U.S. EPA 1981) or "Guidance manual for Developing Best Management Practices (BMP's)" (U.S. EPA October 1993), or any subsequent revisions to the guidance document where applicable.

The Plan shall be documented in narrative form, and shall include any necessary plot plan, drawings or maps, and shall be developed in accordance with good engineering practices. The BMP Plan shall be organized and written with the following structures:

- a. Name and location of the facility.
- b. Statement of BMP policy.
- c. The location of all monitoring (sampling) stations.
- d. Summary of all data required to the monitoring and sampled for as a permit condition.
- e. Specific management practices and standard operating procedures to achieve objective, including, but not limited to the following:
 - i. Modification of equipment, facilities, technology, procedures.
 - ii. Improvement in management or general operational phases of the facility.
 - iii. Inspections and records.
 - iv. Reporting of BMP's incidents.

5. MINIMUM PRACTICES REQUIRED AND IMPLEMENTED IN THE BMP

a. Solids Control

- i. Employ efficient feed management and feeding strategies that limit feed input to the minimum amount reasonably necessary to achieve production goals and sustain targeted rates of aquatic animal growth in order to minimize potential discharges of uneaten feed and waste products to waters of the U.S.
- ii. In order to minimize the discharge of accumulated solids from settling ponds and basins and production systems, identify and implement procedures for routine cleaning of rearing units and off-line settling basins, and procedures to minimize any discharge of accumulated solids during the inventorying, grading and harvesting aquatic animals in the production system.
- iii. Remove and dispose of aquatic animal mortalities properly on a regular basis to prevent discharge to waters of the U.S., except in cases where the permitting authority authorizes such discharge in order to benefit the aquatic environment.

b. Materials Storage

- i. Ensure proper storage of drugs, pesticides, and feed in a manner designed to prevent spills that may result in the discharge of drugs, pesticides or feed to waters of the U.S.
- ii. Implement procedures for properly containing, cleaning, and disposing of any spilled material.

c. Structural Maintenance

- i. Inspect the production system and the hatchery wastewater treatment system on a routine basis in order to identify and promptly repair any damage.
- ii. Conduct regular maintenance of the production system and the hatchery wastewater treatment system in order to ensure that they are properly functioning.

d. Recordkeeping

- i. In order to calculate representative feed conversion ratios, maintain records for aquatic animal rearing units documenting the feed amounts and estimates of the numbers and weight of aquatic animals.
- ii. Keep records documenting the frequency of cleaning, inspections, maintenance and repairs.

e. Training - The permittee must:

- i. In order to ensure the proper clean-up and disposal of spilled material, train all relevant facility personnel in spill prevention and how to respond in the event of a spill.
- ii. Train staff on the proper operation and cleaning of production and hatchery wastewater treatment systems including training in feeding procedures and proper use of equipment.

6. DOCUMENTATION

The permittee shall maintain a copy of the BMP Plan at the facility and shall make the plan available to EPA upon request.

7. MODIFICATION

The permittee shall amend a copy of the BMP Plan whenever there is a change in the facility or in the operation of the facility that increases the generation of pollutants or their release or potential release to the receiving waters. The permittee shall also amend the plan, as appropriate, when plant operations covered by the BMP Plan change. Any such changes to the BMP shall be consistent with the objective and specific requirements listed above. All changes in the BMP Plan shall be reported to EPA in writing.

8. MODIFICATION FOR INEFFECTIVENESS

At any time, if the BMP Plan proves to be ineffective in achieving the general objective of preventing and minimizing the generation of pollutants and their release and potential release to the receiving waters and/or meeting the specific requirements above, the permit and/or the BMP Plan shall be subject to modifications to incorporate revised BMP requirements.

E. MINIMUM QUANTIFICATION LEVEL (MQL)

The permittee shall use sufficiently sensitive EPA-approved analytical methods (under 40 CFR part 136 or required under 40 CFR chapter I, subchapters N or O) when quantifying the presence of pollutants in a discharge for analyses of pollutants or pollutant parameters under the permit. In case the approved methods are not sufficiently sensitive to the limits, the most sufficiently sensitive methods (lowest minimum levels) must be used as defined under 40 CFR 122.44(i)(1)(iv)(A). The following pollutants may not have EPA approved methods with a published ML at or below the effluent limit, if specified:

POLLUTANT	CAS Number	STORET Code
Total Residual Chlorine	7782-50-5	50060
Cadmium	7440-43-9	01027
Silver	7440-22-4	01077
Thallium	7440-28-0	01059
Cyanide	57-12-5	78248
Dioxin (2,3,7,8-TCDD)	1764-01-6	34675
4, 6-Dinitro-0-Cresol	534-52-1	34657
Pentachlorophenol	87-86-5	39032
Benzidine	92-87-5	39120
Chrysene	218-01-9	34320
Hexachlorobenzene	118-74-1	39700
N-Nitrosodimethylamine	62-75-9	34438
Aldrin	309-00-2	39330
Chlordane	57-74-9	39350
Dieldrin	60-57-1	39380
Heptachlor	76-44-8	39410
Heptachlor epoxide	1024-57-3	39420
Toxaphene	8001-35-2	39400

For pollutants listed on Appendix A of Part II with MQL's, analyses *may* be performed to the listed MQL. If any individual analytical test result is less than the MQL listed, a value of zero (0) may be used for that pollutant result for the Discharge Monitoring Report (DMR) reporting requirements. In addition, any additional pollutant sampling for purposes of this permit, including renewal applications or any other reporting, may be tested to the MQL, permit limit(s) or the state WQS. Results of analyses that are less than the listed MQL, permit limit(s) or the state WQS may be reported as "non-detect." 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 DMR reporting requirements until/or unless changes are required for adoption of a lower MQL.

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

Discharge Monitoring Report (DMR) results shall be electronically reported to EPA per 40 CFR 127.16. To submit electronically, access the NetDMR website at <https://netdmr.epa.gov>. Until approved for Net DMR, the permittee shall request temporary or emergency waivers from electronic reporting. To obtain the waiver, please contact: U.S. EPA - Region 6, Water

Enforcement Branch, New Mexico State Coordinator (6EN-WC), (214) 665-6468. If paper reporting is granted temporarily, 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 and copies to NMED as required. Duplicate copies of all other reports shall be submitted to NMED 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. Notification shall be made to the EPA at the following e-mail address: R6_NPDES_Reporting@epa.gov, as soon as possible, but within 24 hours from the time the permittee becomes aware of the circumstance. Oral notification shall also be to the New Mexico Environment Department at (505) 827-0187 as soon as possible, but within 24 hours from the time the permittee becomes aware of the circumstance. 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 silvacultural 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 gathered and evaluated 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 have no personal knowledge that the information submitted is other than 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. 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

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. 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

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. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

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 \$37,500 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 \$16,000 per violation nor shall the maximum amount exceed \$37,500.

b. CLASS II PENALTY

Not to exceed \$16,000 per day for each day during which the violation continues nor shall the maximum amount exceed \$177,500.

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 =

$$\frac{C_1F_1 + C_2F_2 + \dots + C_nF_n}{F_1 + F_2 + \dots + F_n}$$
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.