

**Wyoming Department of Environmental Quality  
Water Quality Division  
WYPDES (Wyoming Pollutant Discharge Elimination System) Program**

STATEMENT OF BASIS

NEW

APPLICANT NAME: Fossil Energy Inc.

MAILING ADDRESS: 445 Union Blvd, Suite 209  
Lakewood, CO 80228

FACILITY LOCATION: Wasserburger 2-12 OT, which is located in NENE Section 12, Township 37N, Range 63W, Niobrara County. The wastewater will be discharged to Cheyenne River (2ABWW) via Lance Creek (2ABWW) via Spring Creek (3B).

PERMIT NUMBER: WY0094501

**General Description:** This facility is an oil production unit in which the oil and formation waters are separated at the surface using a heater treater, gravity separation, emulsion breaking chemicals, and/or skim ponds and tanks. The permit authorizes the discharge of produced water from conventional oil and/or gas facilities to waters of the state provided that the effluent quality is in compliance with effluent limits that are established by this permit. In developing effluent limits, all federal and state regulations and standards have been considered and the most stringent requirements incorporated into the permit. The effluent limits established in this permit are based upon Chapters 1 and 2 of the Wyoming Water Quality Rules and Regulations, 40 CFR Part 435 Subpart E, and other evaluations conducted by WDEQ related to this industry. This permit does not cover activities associated with discharges of drilling fluids, acids, stimulation waters or other fluids derived from the drilling or completion of the wells. This permit was previously permitted as WY0032948.

**Effluent limits**

In developing effluent limits, all federal and state regulations and standards have been considered and the most stringent requirements incorporated into the permit. Permit limits are **technology-based** and **water-quality based**, as described below.

**TECHNOLOGY-BASED EFFLUENT LIMITS:**

The proposed permit limits oil and grease to 10 mg/L with monitoring once every two months; and the specific conductance limit is 7,500 micromhos/cm with semi-annual monitoring. The chloride limit is 2,000 mg/L, with semi-annual monitoring. The sulfate limit is 3,000 mg/L, with semi-annual monitoring. All of these limits are based on *Chapter 2, Appendix H, Wyoming Water Quality Rules and Regulations*. Waters meeting the above mentioned criteria can be put to use for stock and/or wildlife watering.

**WATER-QUALITY-BASED EFFLUENT LIMITS:**

The facility is in more than 2 miles but less 10 miles from the nearest class 2AB water. The DEQ Implementation Policy for Radium Effluent Limits in WYPDES Permits stipulates that the

effluent limit for radium 226 will be 5 pCi/L in cases where the outfall is more than 2 miles but less 10 miles from a class 2A or 2AB water. Therefore, the permit limits total recoverable radium 226 to 5 pCi/L. The pH must remain within the range of 6.5 to 9.0. Water-quality-based effluent limits are all based on *Chapter 1, Wyoming Water Quality Rules and Regulations*.

The permit establishes effluent limits for the end of pipe, which are protective of the designated uses for class 3B waters as defined in *Chapter 1 of Wyoming Water Quality Rules and Regulations*. These include aquatic life other than fish, recreation, agriculture, wildlife, industry and scenic value. Water quality based effluent limits for this permit are based on standards which are intended to protect for the above listed designated uses and reflect the application of "tier 1" antidegradation protection. Tier 1 antidegradation protection is the basic level of protection which applies to all waters of the state, as described in the Wyoming Surface Water Quality Standards "Implementation Policies for Antidegradation."

**Sulfide Monitoring:** Based on water quality from nearby discharges, WDEQ determined that there is a potential for exceedance of sulfide-hydrogen sulfide standards. For sulfide-hydrogen sulfide, the permit requires monitoring at the outfall(s) and the receiving stream below the outfall(s) once every two months. Monitoring at downstream monitoring point 1 (DMP1, listed in Table 1, in Part I (B) (12) of the permit) is necessary to determine impacts, if any, on the receiving stream for sulfide-hydrogen sulfide. Results are to be reported twice-yearly and if no effluent from this facility reaches the downstream monitoring point during an entire sampling period, then "no discharge" is to be reported from the DMP that period. The DMP is not a compliance point. It is intended only as a location to gather downstream water quality data.

Data collected at location DMP1 will be evaluated by WDEQ on an ongoing basis in order to determine if effluent from this facility conforms to the following chemical characteristics at the DMP location:

Sulfide-Hydrogen Sulfide < 2 µg/L

Analytical laboratory methods testing sulfide have practical quantitation limits above 2 µg/L, so a non-detectable test result will be considered compliant with standards. Required detection limit is 0.1 mg/L, maximum.

**Agricultural and wildlife use of water:** Federal effluent guidelines, per 40 CFR Part 435 Subpart E, require that the discharges of produced water from oil production units be used for agricultural or wildlife propagation when discharged. The Wyoming Game and Fish Department has determined that discharge of produced water from all existing WYPDES-permitted oil production units in Wyoming is being used to enhance wildlife propagation and habitat. Hence, this facility complies with 40 CFR Part 435 Subpart E, provided that the discharge meets the effluent limits of this WYPDES permit.

**Antidegradation, impairment review:** The discharge of wastewater and the effluent limits that are established in this permit have been reviewed to ensure that the levels of water quality necessary to protect the designated uses of the receiving waters are maintained and protected. An antidegradation review has been conducted and verifies that the permit conditions, including the effluent limitations established, provide a level of protection to the receiving water consistent with the antidegradation provisions of Wyoming surface water quality standards. An evaluation has been completed to ensure that the receiving water has not been listed on the 303(d) list as a waterbody that cannot support designated uses. The evaluation has revealed that the receiving water is not included on this list.

**Other Permit Requirements:** There shall be no discharge of floating solids or visible foam in other than trace amounts, nor shall the discharge cause formation of visible deposits of iron, hydrocarbons or any other constituent on the bottom or shoreline of the receiving water. In addition, erosion control measures

will be implemented to prevent significant damage to or erosion of the receiving water channel at the point of discharge.

Self monitoring of effluent quality and quantity is required on a regular basis. Reporting of results is required semi-annually. The permit is scheduled to expire on December 31, 2012, the same expiration date of other oil production unit WYPDES facilities in this locale.

Roland Peterson  
Water Quality Division  
Department of Environmental Quality  
Drafted: January 28, 2011

AUTHORIZATION TO DISCHARGE UNDER THE  
WYOMING POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Federal Water Pollution Control Act, (hereinafter referred to as "the Act"), and the Wyoming Environmental Quality Act,

Fossil Energy Inc.

is authorized to discharge from the wastewater treatment facilities serving the

Wasserburger 2-12 OT

located in

NENE Section 12, Township 37N, Range 63W, Niobrara County.


to receiving waters named

Cheyenne River (2ABWW) via Lance Creek (2ABWW) via Spring Creek (3B)

in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I, II and III hereof.

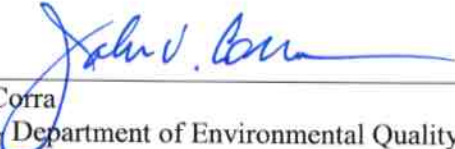
This permit shall become effective on upon date of signature by Director, Department of Environmental Quality.

This permit and the authorization to discharge shall expire December 31, 2012 at midnight.

  
John F. Wagner, Administrator  
Water Quality Division

Date

4/21/11

  
John V. Corra  
Director - Department of Environmental Quality

Date

4/27/11

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. Effective immediately and lasting through December 31, 2012, the quality of effluent discharged by the permittee shall, at a minimum, meet the limitations set forth below. The permittee is authorized to discharge from outfall serial number(s) 001.

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>
	<u>Daily Maximum</u>
Chloride, mg/L	2,000
Oil and Grease, mg/L	10
pH, standard units	6.5 – 9.0*
Radium 226, Total Recoverable, pCi/L	5
Specific Conductance, micromhos/cm	7,500
Sulfate, mg/L	3,000

\*The pH shall not be less than 6.5 standard units nor greater than 9.0 standard units in any single grab sample.

The permittee may, if so desired, discharge produced water from any authorized well to any permitted outfall, as long as all permit limits and requirements can be met.

There shall be no discharge of floating solids or visible foam in other than trace amounts, nor shall the discharge cause formation of a visible sheen or visible hydrocarbon deposits on the bottom or shoreline of the receiving water.

All waters shall be discharged in a manner to prevent erosion, scouring, or damage to stream banks, stream beds, ditches, or other waters of the state at the point of discharge. In addition, there shall be no deposition of substances in quantities which could result in significant aesthetic degradation, or degradation of habitat for aquatic life, plant life or wildlife; or which could adversely affect public water supplies or those intended for agricultural or industrial use.

2. Discharges shall be monitored by the permittee as specified below:

a. Routine monitoring End of Pipe—for outfall(s) 001

For the duration of the permit, at a minimum, samples for the constituents described below shall be collected at the indicated frequencies. Reporting will be based on semi-annual time frames, from January through June, and from July through December.

<b><u>Monitoring Requirements</u></b>		
<b><u>Parameter</u></b>	<b><u>Measurement Frequency</u></b>	<b><u>Sample Type</u></b>
Chloride, mg/L	Semi-annually	Grab
Flow, MGD	Monthly	Instantaneous
Oil and Grease, mg/L	Once Every Two Months	Grab
pH, standard units	Semi-Annually	Grab
Radium 226, Total Recoverable , pCi/L	Semi-Annually	Grab
Specific Conductance, micromhos/cm	Semi-Annually	Grab
Sulfate, mg/L	Semi-annually	Grab
Sulfide-Hydrogen Sulfide, µg/L	Once Every Two Months	Grab

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location: At the outfall of the final treatment unit which is located out of the natural drainage and prior to admixture with diluent waters.

**3. One-Time Initial Monitoring (per 5 year permit cycle)**

Discharges shall be monitored by the permittee specified as follows. Within 60 days of commencement of discharge, a sample shall be collected from each outfall and analyzed for the constituents specified below, at the required detection limits. Upon commencement of discharge, the water analysis report is due within 90 days. A summary report on the produced water must be submitted to the Wyoming Department of Environmental Quality at the address listed below (next page). This summary report must include the results and detection limits for each of the constituents. After receiving the monitoring results for the initial discharge, the effluent limits and monitoring requirements established in this permit may be modified.

PARAMETER	REQUIRED DETECTION LIMIT and Required Units	STANDARD OR LIMIT*
Aluminum, Dissolved	50 ug/l	750 ug/l
Arsenic, Total Recoverable	1 ug/l	150 ug/l
Barium, Total Recoverable ( <i>New Facilities Only</i> )	100 µg/l	2000 ug/l
Boron, Dissolved ( <i>New Facilities Only</i> )	100 ug/l	5000 ug/l
Cadmium, Dissolved	5 ug/l	0.25 ug/l (hardness
Calcium, Dissolved	50 ug/l, report as mg/l	
Chloride – Technology Based	5 mg/l	2000 mg/l
Chloride, For Class 2A and 2B Waters	5 mg/l	230 mg/l
Chromium, Dissolved (III)	1ug/l	74.1 ug/l (hardness
Copper, Dissolved	10 ug/l	9 ug/l (hardness dependent)
Fluoride, Dissolved ( <i>New Facilities Only</i> )	100 ug/l	4,000 ug/l
Hardness (CaCO <sub>3</sub> ) mg/L	10 mg/l as CaCO <sub>3</sub>	(for metals analyses)
Iron, Dissolved	50 ug/l	1000 ug/l
Iron, Dissolved, for Class 2A and 2AB waters	50 ug/l	300 ug/l
Lead, Dissolved	2 ug/l	2.5 ug/l (hardness dependent)
Magnesium, Dissolved	100 ug/l, report as mg/l	
Manganese, Dissolved	50 ug/l	1462 ug/l (hardness
Manganese, Dissolved, for Class 2A and 2AB	50 ug/l	50 ug/l
Mercury, Dissolved	1 ug/l	0.77 ug/l
Molybdenum, Dissolved ( <i>New Facilities Only</i> )	100 ug/l	300 ug/l
Nickel, Dissolved	10 ug/l	52 ug/l (hardness dependent)
Oil and Grease	1 mg/l	10 mg/l
pH	0.1 pH unit	6.5-9.0 s.u.
Radium 226, Total Recoverable	0.2 pCi/l	5 or 60 pCi/l
Selenium, Total Recoverable	5 ug/l	5 ug/l
Silver, Dissolved	3 ug/l	3.4 ug/l (hardness dependent)
Sodium Adsorption Ratio	Calculated as unadjusted ratio	
Sodium, Dissolved	100 ug/l, report as mg/l	
Specific Conductance	5 micromhos/cm	7500 micromhos/cm
Sulfates	10 mg/l	3000 mg/l
Sulfide-Hydrogen Sulfide (S <sup>2-</sup> , HS <sup>-</sup> )	0.1 mg/l	2 ug/l
Total Dissolved Solids	5 mg/l	5000 mg/l
Total Petroleum Hydrocarbons	1 mg/l	
Zinc, Dissolved	50 ug/l	118.1 ug/l (hardness

*\*The values listed in the Standard or Limit column are associated with water quality standards (Chapter 1 of Wyoming Water Quality Rules and Regulations) or technology-based effluent limits (Chapter 2 of Wyoming Water Quality Rules and Regulations). Site specific standards may vary.*

Wyoming Department of Environmental Quality  
Water Quality Division  
Herschler Building, 4 West  
122 West 25th Street  
Cheyenne, WY 82002  
Telephone: (307) 777-7781

b. **Downstream Monitoring Point –DMP1**

For the duration of the permit, at a minimum, samples for the constituents described below shall be collected at the indicated frequencies when water discharged from the outfalls reaches the downstream monitoring point and reported semi-annually.

<b><u>Parameter</u></b>	<b><u>Measurement Frequency</u></b>	<b><u>Sample Type</u></b>
Sulfide-Hydrogen Sulfide, $\mu\text{g/L}$	Once Every Two Months	Grab

The permit requires monitoring once every two months at a designated location below the outfall(s) in order to determine whether constituents of concern discharged from the outfall(s) reach an established downstream monitoring point (DMP1 listed in Table 1, in Part I(B)(12) of the permit). Once effluent flow at the downstream monitoring point has been documented within a sampling period, a sample shall be collected to represent effluent quality for downstream monitoring point constituents. Results are to be reported twice-yearly and if no effluent from this facility reaches the downstream monitoring point during an entire sampling period, then "no discharge" is to be reported for the DMP that sampling period. The DMP is not a compliance point. It is intended only as a location to gather downstream water quality data.

B. **MONITORING AND REPORTING**

1. **Representative Sampling**

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and approval by, the permit issuing authority.

2. **Reporting**

Effluent monitoring results obtained during the previous six (6) month(s) shall be summarized and reported on a Discharge Monitoring Report Form. If the permit requires whole effluent toxicity (WET) (biomonitoring) testing, WET test results must be reported on the most recent version of EPA Region 8 Guidance for Whole Effluent Reporting. Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with the Signatory Requirements (see Part II.A.11.), and submitted to the state water pollution control agency at the following address. The reports must be received by the agency no later than the 28th day of the month following the completed reporting period. The first report is due on July 28, 2011.

Wyoming Department of Environmental Quality  
Water Quality Division  
Herschler Building, 4 West  
122 West 25th Street  
Cheyenne, WY 82002  
Telephone: (307) 777-7781

If no discharge occurs during the reporting period, "no discharge" shall be reported. If discharge is intermittent during the reporting period, sampling shall be done while the facility is discharging.

3. **Definitions**

- a. A "composite" sample, for monitoring requirements, is defined as a minimum of four (4) grab samples collected at equally spaced two (2) hour intervals and proportioned according to flow.
- b. The "daily maximum" shall be determined by the analysis of a single grab or composite sample.
- c. An "instantaneous" measurement for monitoring requirements is defined as a single reading, measurement, or observation.
- d. "MGD", for monitoring requirements, is defined as million gallons per day.
- e. The "monthly average" shall be determined by calculating the arithmetic mean (geometric mean in the case of fecal coliform and E. coli) of all composite and/or grab samples collected during a calendar month.
- f. "Net" value, if noted under Effluent Characteristics is calculated on the basis of the net increase of the individual parameter over the quantity of that same parameter present in the intake water measured prior to any contamination or use in the process of this facility. Any contaminants contained in any intake water obtained from underground wells shall not be adjusted for as described above and, therefore, shall be considered as process input to the final effluent. Limitations in which "net" is not noted are calculated on the basis of gross measurements of each parameter in the discharge, irrespective of the quantity of those parameters in the intake waters.
- g. A "pollutant" is any substance or substances which, if allowed to enter surface waters of the state, causes or threatens to cause pollution as defined in the Wyoming Environmental Quality Act, Section 35-11-103.
- h. The "weekly average" shall be determined by calculating the arithmetic mean (geometric mean in the case of fecal coliform and E. coli) of all composite and/or grab samples collected during any week.

4. Test Procedures

Test procedures for the analysis of pollutants, collection of samples, sample containers, sample preservation, and holding times, shall conform to regulations published pursuant to 40 CFR, Part 136, unless other test procedures have been specified in this permit.

5. Recording of Results

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

- a. The exact place, date and time of sampling;
- b. The dates and times the analyses were performed;
- c. The person(s) who performed the analyses and collected the samples;
- d. The analytical techniques or methods used; and

- e. The results of all required analyses including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine the results.

6. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the Discharge Monitoring Report Form. Such increased frequency shall also be indicated.

7. Records Retention

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurements, report or application. This period may be extended by request of the administrator at any time. Data collected on site, copies of Discharge Monitoring Reports and a copy of this WYPDES permit must be maintained on site during the duration of activity at the permitted location.

8. Penalties for Tampering

The Act provides that any person who falsifies, tampers with or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two (2) years per violation, or both.

9. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any Compliance Schedule of this permit shall be submitted no later than 14 days following each schedule date.

10. Facility Identification

All facilities discharging produced water shall be clearly identified with an all-weather sign posted at a visually prominent location. This sign shall, as a minimum, convey the following information:

- a. The name of the company, corporation, person or persons who hold(s) the discharge permit; and
- b. The name of the facility (lease, tank battery number, etc.) as identified by the discharge permit.
- c. In addition, all outfall signs will include the outfall number.

11. Outlet Structures

The permittee shall construct and maintain all outlet structures so that there is a free fall from the discharge pipe sufficient to allow the collection of representative samples and the measurement of flow volume using the bucket and stopwatch technique.

If the volume of discharge is too large to make measurement of flow by the bucket and stopwatch technique practical, the permittee must be able to measure or calculate flow volume by another means to an accuracy of plus or minus ten percent of the actual flow.

12. Location of Discharge Points

See Table 1, Below.

**Table 1, Outfall(s)**  
WY0094501  
Wasserburger 2-12 OT

Outfall	QtrQtr	Section	Township	Range	Latitude	Longitude	Receiving Water
001	NENE	12	37N	63W	43.20281	-104.37189	Cheyenne River (2ABWW) via Lance Creek (2ABWW) via Spring Creek (3B)
DMP1*	SESE	1	37N	63W	43.20784	-104.364537	Unnamed drainage, where oilfield road crosses drainage

\*Identical to WY0056685-DMP1, WY0056707-DMP1, and WY0094226-DMP1

PART II

A. MANAGEMENT REQUIREMENTS

1. Changes

The permittee shall give notice to the administrator of the Water Quality Division as soon as possible of any physical alterations or additions to the permitted facility. Notice is required when:

- a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29 (b); or
- b. The alteration or addition could change the nature or increase the quantity of pollutants discharged.

2. Noncompliance Notification

- a. The permittee shall give advance notice of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- b. The permittee shall report any noncompliance which may endanger health or the environment as soon as possible, but no later than 24 hours from the time the permittee first became aware of the circumstances. The report shall be made to the Water Quality Division, Wyoming Department of Environmental Quality at (307) 777-7781.
- c. A written submission shall be provided within five (5) days of the time that the permittee becomes aware of a noncompliance circumstance as described in paragraph b. above.

The written submission shall contain:

- (1) A description of the noncompliance and its cause;
  - (2) The period of noncompliance, including exact dates and times;
  - (3) The estimated time noncompliance is expected to continue if it has not been corrected; and
  - (4) Steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance.
- d. The following occurrences of unanticipated noncompliance shall be reported by telephone to the Water Quality Division, WYPDES Program (307) 777-7781 by the first workday following the day the permittee became aware of the circumstances.
    - (1) Any unanticipated bypass which exceeds any effluent limitation in the permit;
    - (2) Any upset which exceeds any effluent limitation in the permit; or
    - (3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit.

- e. The administrator of the Water Quality Division may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Quality Division, WYPDES Program (307) 777-7781.
- f. The permittee shall report all instances of noncompliance that have not been specifically addressed in any part of this permit at the time the monitoring reports are due.

3. Facilities Operation

The permittee shall, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit. However, the permittee shall operate, as a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

4. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact to waters of the state resulting from noncompliance with any effluent limitations specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

5. Bypass of Treatment Facilities

- a. Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- b. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs c. and d. of this section. Return of removed substances to the discharge stream shall not be considered a bypass under the provisions of this paragraph.
- c. Notice:
  - (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice at least 60 days before the date of the bypass.
  - (2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.A.2.
- d. Prohibition of bypass.
  - (1) Bypass is prohibited and the administrator of the Water Quality Division may take enforcement action against a permittee for a bypass, unless:
    - (a) The 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 to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - (c) The permittee submitted notices as required under paragraph c. of this section.
- e. The administrator of the Water Quality Division may approve an anticipated bypass, after considering its adverse effects, if the administrator determines that it will meet the three conditions listed above in paragraph d. (1) of this section.

6. Upset Conditions

- a. 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, improper designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- b. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of paragraph c. of this section are met.
- c. 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 under Part II.A.2; and
  - (4) The permittee complied with any remedial measures required under Part II.A.4.
- d. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

7. Removed Substances

Solids, sludges, filter backwash or other pollutants removed in the course of treatment or control of wastewaters or intake waters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering waters of the state.

8. Power Failures

In order to maintain compliance with the effluent limitations and prohibitions of this permit, the permittee shall either:

- a. In accordance with a schedule of compliance contained in Part I, provide an alternative power source sufficient to operate the wastewater control facilities; or
- b. If such alternative power source as described in paragraph a. above is not in existence and no date for its implementation appears in Part I, take such precautions as are necessary to maintain and operate the facility under its control in a manner that will minimize upsets and insure stable operation until power is restored.

9. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the federal act and the Wyoming Environmental Quality Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give the administrator of the Water Quality Division advance notice of any planned changes at the permitted facility or of any activity which may result in permit noncompliance.

10. 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.

11. Signatory Requirements

All applications, reports or information submitted to the administrator of the Water Quality Division shall be signed and certified.

- a. All permit applications shall be signed as follows:
  - (1) For a corporation: by a responsible corporate officer;
  - (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.
- b. All reports required by the permit and other information requested by the administrator of the Water Quality Division 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 and submitted to the administrator of the Water Quality Division; and

- (2) The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
- c. If an authorization under paragraph II.A.11.b. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph II.A.11.b must be submitted to the administrator of the Water Quality Division prior to or together with any reports, information or applications to be signed by an authorized representative.
- d. 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."

B. RESPONSIBILITIES

1. Inspection and Entry

If requested, the permittee shall provide written certification from the surface landowner(s), if different than the permittee, that the administrator or the administrator's authorized agent has access to all physical locations associated with this permit including well heads, discharge points, reservoirs, monitoring locations, and any waters of the state.

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

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

2. Transfer of Ownership or Control

In the event of any change in control or ownership of facilities from which the authorized discharges emanate, the permittee shall notify the succeeding owner or controller of the existence of this permit by letter, a copy of which shall be forwarded to the regional administrator of the Environmental Protection Agency and the administrator of the Water Quality Division. The administrator of the Water Quality Division shall then provide written notification to the new owner or controller of the date in which they assume legal responsibility of the permit. The permit may be modified or revoked and reissued to change the name of the permittee and incorporate such other requirements as described in the federal act.

3. Availability of Reports

Except for data determined to be confidential under Section 308 of the federal act, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Wyoming Department of Environmental Quality and the regional administrator of the Environmental Protection Agency. As required by the federal act, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the federal act.

4. Toxic Pollutants

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

5. Changes in Discharge of Toxic Substances

Notification shall be provided to the administrator of the Water Quality Division as soon as the permittee knows of, 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 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-dinitrophenol 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 in accordance with 40 CFR 122.21 (g) (7); or
  - (4) The level established by the director of the Environmental Protection Agency in accordance with 40 CFR 122.44 (f).
- b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - (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 in accordance with 40 CFR 122.21 (g) (7); or
- (4) The level established by the director of the Environmental Protection Agency in accordance with 40 CFR 122.44 (f).

6. Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. As long as the conditions related to the provisions of "Bypass of Treatment Facilities" (Part II.A.5), "Upset Conditions" (Part II.A.6), and "Power Failures" (Part II.A.8) are satisfied then they shall not be considered as noncompliance.

7. Need to Halt or Reduce Activity 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.

8. 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 federal act.

9. 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 or federal law or regulation. In addition, issuance of this permit does not substitute for any other permits required under the Clean Water Act or any other federal, state, or local law.

10. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights nor any infringement of federal, state or local laws or regulations.

11. 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 should be submitted at least 180 days before the expiration date of this permit.

12. Duty to Provide Information

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

13. Other Information

When 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 any report to the administrator of the Water Quality Division, it shall promptly submit such facts or information.

14. Permit Action

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

15. Permit Fees

Once this permit has been issued, the permittee will be assessed a \$100.00 per-year permit fee by the Water Quality Division. The fee year runs from January 1st through December 31st. This permit fee will continue to be assessed for as long as the permit is active, regardless of whether discharge actually occurs. This fee is not pro-rated. If the permit is active during any portion of the fee year, the full fee will be billed to the permittee for that fee year. In the event that this permit is transferred from one permittee to another, each party will be billed the full permit fee for the fee year in which the permit transfer was finalized.

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PART III

A. OTHER REQUIREMENTS

1. Flow Measurement

At the request of the administrator of the Water Quality Division, the permittee must be able to show proof of the accuracy of any flow measuring device used in obtaining data submitted in the monitoring report. The flow measuring device must indicate values of within plus or minus ten (10) percent of the actual flow being measured.

2. 208(b) Plans

This permit may be modified, suspended or revoked to comply with the provisions of any 208(b) plan certified by the Governor of the State of Wyoming.

3. Reopener Provision

This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations (and compliance schedule, if necessary) or other appropriate requirements if one or more of the following events occurs:

- a. The state water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit;
- b. A total maximum daily load (TMDL) and/or watershed management plan is developed and approved by the state and/or the Environmental Protection Agency which specifies a wasteload allocation for incorporation in this permit;
- c. A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit;
- d. Downstream impairment is observed and the permitted facility is contributing to the impairment;
- e. The limits established by the permit no longer attain and/or maintain applicable water quality standards;
- f. The permit does not control or limit a pollutant that has the potential to cause or contribute to a violation of a state water quality standard.
- g. If new applicable effluent guidelines and/or standards have been promulgated and the standards are more stringent than the effluent limits established by the permit.
- h. In order to protect water quality standards in neighboring states, effluent limits may be incorporated into this permit or existing limits may be modified to ensure that the appropriate criteria, water quality standards and assimilative capacity are attained.

4. Permit Modification

After notice and opportunity for a hearing, this permit may be modified, suspended or revoked in whole or in part during its term for cause including, but not limited to, the following:

- a. Violation of any terms or conditions of this permit;
- b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge; or
- d. If necessary to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b) (2) (C) and (D), 304 (b) (2) and 307 (a) (2) of the federal act, if the effluent standard or limitation so issued or approved:
  - (1) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
  - (2) Controls any pollutant not limited in the permit.

5. Toxicity Limitation - Reopener Provision

This permit may be reopened and modified (following proper administrative procedures) to include a new compliance date, additional or modified numerical limitations, a new or different compliance schedule, a change in the whole effluent protocol or any other conditions related to the control of toxicants if one or more of the following events occur:

- a. Toxicity was detected late in the life of the permit near or past the deadline for compliance;
- b. The toxicity reduction evaluation (TRE) results indicate that compliance with the toxic limits will require an implementation schedule past the date for compliance and the permit issuing authority agrees with the conclusion;
- c. The TRE results indicate that the toxicant(s) represent pollutant(s) that may be controlled with specific numerical limits and the permit issuing authority agrees that numerical controls are the most appropriate course of action;
- d. Following the implementation of numerical controls on toxicants, the permit issuing authority agrees that a modified whole effluent protocol is necessary to compensate for those toxicants that are controlled numerically;
- e. The TRE reveals other unique conditions or characteristics which, in the opinion of the permit issuing authority, justify the incorporation of unanticipated special conditions in the permit.

6. 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.

7. Penalties for Falsification of Reports

The federal act provides that any person who knowingly makes any false statement, representation or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation or by imprisonment for not more than two years per violation or both.

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