

**SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA 57501-3181**

**AUTHORIZATION TO DISCHARGE UNDER THE
SURFACE WATER DISCHARGE SYSTEM**

In compliance with the provisions of the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota (ARSD), Chapters 74:52:01 through 74:52:11,

the permittee

is authorized to discharge from the **temporary discharge activities described in the permittee's Notice of Intent form**
to **waters of the state identified in the permittee's Notice of Intent form**

in accordance with discharge point(s), effluent limits, monitoring requirements and other conditions set forth herein. Authorization for discharge is limited to those outfalls specifically listed in the permit.

This permit shall become effective September 1, 2011.

This permit and the authorization to discharge shall expire at midnight, August 31, 2016.

Signed this 30th day of August, 2011.



Steven M. Pirner
Secretary
Department of Environment and Natural Resources

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DEFINITIONS

30-day (and monthly) average means the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.

7-day (and weekly) average means the arithmetic mean of all samples collected during a consecutive 7-day period or calendar week, whichever is applicable. The calendar week which begins on Sunday and ends on Saturday, shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms. Weekly averages shall be calculated for all calendar weeks with Saturdays in the month. If a calendar week overlaps two months (i.e., the Sunday is in one month and the Saturday in the following month), the weekly average calculated for that calendar week shall be included in the data for the month that contains the Saturday.

ARSD means the Administrative Rules of South Dakota.

An **Authorized Release** is a discharge from a permitted outfall that meets all permit conditions and effluent limits.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage, or leaks, sludge, or waste disposal, or drainage from raw material storage.

BTEX means the sum of the concentrations of benzene, ethyl benzene, toluene, and xylene.

A **Bypass** is the intentional diversion of waste streams from any portion of a treatment facility.

Composite samples shall be flow proportioned. The composite sample shall contain at least four samples collected over the compositing period. Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six hours nor more than 24 hours. Acceptable methods for preparation of composite samples are as follows:

- a. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;
- b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;
- c. Constant sample volume, time interval between samples proportional to flow (i.e. sample taken every "X" gallons of flow); and
- d. Continuous collection of sample, with sample collection rate proportional to flow rate.

Daily Maximum (Daily Max.) is the maximum value allowable in any single sample or instantaneous measurement.

DMR means Discharge Monitoring Report.

EPA or U.S. EPA means United States Environmental Protection Agency.

Existing Source means any building, structure, facility or installation from which there is or may be a discharge of pollutants, which is not considered a New Source.

A **grab** sample, for monitoring requirements, is a single "dip and take" sample collected at a representative point in the discharge stream.

gpm means gallons per minute.

An **instantaneous** measurement, for monitoring requirements, is a single reading, observation, or measurement either taken at the facility or within 15 minutes of the sample.

New Source means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Federal Clean Water Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

- a. The building, structure, facility or installation is constructed at a site at which no other source is located; or
- b. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- c. The wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of (b.) or (c.) of this section but otherwise alters, replaces, or adds to existing process or production equipment. Construction of a new source has commenced if the owner or operator has:

- a. Begun, or caused to begin as part of a continuous onsite construction program:
 - (1) Any placement, assembly, or installation of facilities or equipment; or
 - (2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment.
- b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts of feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

pH is the measure of the hydrogen ion concentration of water or wastewater; expressed as the negative log of the hydrogen ion concentration. A pH of 7 is neutral. A pH less than 7 is acidic, and a pH greater than 7 is basic.

Process Wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

SDDENR means the South Dakota Department of Environment and Natural Resources.

Secretary means the Secretary of the South Dakota Department of Environment and Natural Resources, or authorized representative.

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.

Sewage Sludge is any solid, semi-solid or liquid residue that contains materials removed from domestic sewage during treatment. Sewage sludge includes, but is not limited to, primary and secondary solids and sewage sludge products.

TSS means **Total Suspended Solids**. TSS is a measure of the filterable solids present in a sample.

An **Unauthorized release** is a discharge from the lower end of the treatment or containment system through a release structure or over or through retention dikes that does not meet all permit conditions or effluent limits.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limits 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.

1.0 COVERAGE UNDER THIS PERMIT

1.1 Applicability of the General Permit

This general permit is potentially applicable to all facilities conducting temporary discharge activities within the State of South Dakota. The water discharged from these activities must be relatively uncontaminated and must not cause a violation of the South Dakota Surface Water Quality Standards.

1.2 Discharges Covered

The following types of discharges may be covered under this general permit:

1. Discharges of storm water and ground water from construction dewatering activities.
2. Discharges of water used for hydrostatic testing of vessels and pipelines.
3. Discharges of water from pump testing of wells.
4. Discharges of water from swimming pools, hot tubs, and other similar structures.
5. Discharges of petroleum contaminated ground water.
6. Discharges of ground water with other contaminants. The limits for these contaminants will be set on a case by case basis at the Surface Water Quality Standard for that pollutant.
7. Other short term discharges of relatively uncontaminated water.

1.3 Discharges Not Covered

The following discharges are not authorized by this general permit:

1. **Section 404 Permitted Discharges.** This general permit does not authorize a permittee to discharge fill material into waters of the state. Such discharges are required to obtain a Section 404 federal Clean Water Act permit from the U.S. Army Corps of Engineers.
2. **Discharges Threatening Water Quality.** This general permit does not authorize discharges the Secretary determines will cause, or have reasonable potential to cause or contribute to, violations of water quality standards. In such cases, the Secretary may deny coverage under the general permit or require the permittee to obtain an individual Surface Water Discharge permit.
3. **Discharges of Regulated Substances.** This general permit does not authorize the discharge of regulated substances, hazardous substances, or oil resulting from on-site spills. Permittees are subject to federal reporting requirements of 40 CFR Part 110, Part 117, and Part 302 relating to spills or other releases of oils or hazardous substances. Spills in excess of reportable quantities shall be immediately reported. Spills resulting in a sheen to water bodies must be immediately reported to the National Response Center at 800-424-8802.

1.4 Request for Authorization

In order to be considered eligible for authorization to discharge wastewater under the terms and conditions of this permit, the owner, operator, and/or authorized agent of any facility desiring to discharge must complete and submit, a Notice of Intent form and a Certification of Applicant form (located in Attachment A at the end of this permit) at least thirty days prior to the first anticipated date of discharge. This submittal shall also be considered a request for a temporary water use permit, if required.

Such information shall be submitted to the following address:

original to: South Dakota Department of Environment and Natural Resources
Surface Water Quality Program
Joe Foss Building
PMB2020
523 East Capitol
Pierre, South Dakota 57501-3182
Telephone: (605) 773-3351

The permit issuing authority shall have up to thirty days after receipt of the Notice of Intent form to request additional data and/or deny the authorization under this general permit for any particular discharge. For existing individually authorized discharges, coverage under the general permit will not be effective unless and until the individual permit is either revoked or inactivated. SDDENR may waive, at its discretion, the thirty-day period.

1.5 Terminating Coverage

1. Permittees wishing to terminate coverage under this general permit shall submit a Notice of Termination (NOT) signed in accordance with Section 4.14. The NOT form is found in Attachment B. Compliance with this general permit is required until a NOT is submitted and general permit coverage has been terminated.
2. Permittees shall not submit a NOT until all discharges authorized by this general permit are eliminated.
3. Permittees shall submit a NOT within thirty (30) days after all authorized discharges have ceased.

2.0 EFFLUENT LIMITS AND MONITORING REQUIREMENTS

2.1 Effluent Limits

Effective immediately and lasting through the life of this permit, the quality of effluent discharged by the facility shall, as a minimum, meet the limits as set forth below:

1. There shall be no discharge of any process-generated wastewater except wastewater resulting from activities described in the Notice of Intent Form and authorized by the Secretary.
2. Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard. Sludge/digester supernatant and filter backwash shall not be directly blended with or enter either the final plant discharge and/or waters of the State.
3. There shall be no discharge of sanitary wastewater from toilets or related facilities.
4. There shall be no discharge of floating solids or visible foam in other than trace amounts.
5. There shall be no discharge of toxic pollutants in toxic amounts.
6. No chemical may be added to the discharge unless prior permission for the use of the additive is specifically granted by the SDDENR.
7. The permittee shall take such steps as are necessary to prevent or minimize stream scouring or bank erosion caused by the discharge.

Limits for Oil and Grease

8. The concentration of Oil and Grease in any single sample shall not exceed 10 mg/L nor shall there be a visible sheen in the discharge. **(for discharges to all waters except those classified as domestic water supplies)**

OR

8. The concentration of Oil and Grease in any single sample shall not exceed 1 mg/L nor shall there be a visible sheen in the discharge. **(for discharges to waters classified as domestic water supplies)**

Limits for pH

9. The pH of the discharged water shall not be less than 6.5 standard units nor greater than 9.0 standard units at all times.

Limits for TSS

10. The Total Suspended Solids concentration shall not exceed 90 mg/L in any single sample. **(for discharges to all waters except those classified as coldwater permanent fish life propagation waters)**

OR

10. The Total Suspended Solids concentration shall not exceed 53 mg/L in any single sample. **(for discharges to waters classified as coldwater permanent fish life propagation waters)**

Limits for potentially petroleum contaminated water

11. The total BTEX concentration shall not exceed 100 µg/L in any single sample. BTEX shall be measured as the sum of benzene, ethyl benzene, toluene, and xylene.
12. The benzene concentration shall not exceed 5 µg/L in any single sample.

Limits for potentially toxics contaminated water

13. The individual toxics concentrations shall not exceed the values established on a case by case basis from the acute aquatic life water quality standards in any single sample.

Limits for potentially chlorinated water

14. The total residual chlorine concentration shall be non-detectable at the point the discharge enters the receiving waters in all samples. SDDENR considers the analytical detection limit for total residual chlorine to be 0.05 mg/L. Any sample results less than 0.05 mg/L will be considered non-detectable.

2.2 Self-Monitoring and Reporting Requirements

1. Daily logs. The permittee shall maintain a daily log relating to any discharge(s). The log shall contain:
 - a. flow information and data;
 - b. sample results;
 - c. records of visual observations; and
 - d. notations of any problems relating to treatment of the discharge.
2. Samples shall be taken as often as necessary to provide representative information as to the nature and volume of the discharge(s). At a minimum, samples of each discharge shall be taken as follows:

Parameter	Sample Frequency ¹	Sample Type ²
Flow Rate (gpm)	Daily	Measure or Estimate
Total Flow Volume (gallons)	Monthly	Measure or Estimate
pH (s.u.)	Weekly	Instantaneous ³
Oil and Grease	Daily	Visual
Oil and Grease (mg/L)	Contingent	Grab ^{4,5}
Total Suspended Solids ⁶ (mg/L)	Weekly	Visual/Grab

¹ If the duration of the discharge is shorter than the required sample frequency, a minimum of one sample shall be taken for all parameters.

² See definitions section of permit for definitions.

³ pH shall be taken within 15 minutes of sample collection with a pH meter. The pH meter must be capable of simultaneous calibration to two points on the pH scale that bracket the expected pH and are approximately three standard units apart. The pH meter must read to 0.01 standard units and be equipped with temperature compensation adjustment.

⁴ Oil and grease shall be visually monitored daily. If a visual sheen is observed, an oil and grease sample shall be taken and analyzed using SM5520 hexane extractable materials. An oil and grease sample shall be taken during the first day of the discharge if petroleum contaminated groundwater is expected.

⁵ An oil and grease sample shall be taken during the first day of the discharge if petroleum contaminated ground water is expected.

Benzene ⁷ (µg/L)	Weekly	Grab
Total BTEX ⁷ (µg/L)	Weekly	Grab
Toxics ⁸ (µg/L)	Weekly	Grab
Total Residual Chlorine ⁹ (mg/L)	Daily	Grab
There shall be no discharge of floating solids or visible pollutants in more than trace amounts.		
There shall be no discharge of process wastewater not identified in NOI or sanitary wastewater.		
No chemicals shall be added to the discharge without prior approval of SDDENR.		

⁶ In lieu of sampling for this parameter, the secretary may allow the facility to implement a pollution prevention plan that includes best management practices to prevent total suspended solids and other pollutants from entering the waters of the state.

⁷ Benzene and BTEX monitoring is only required if petroleum contamination is expected in the water being discharged. This monitoring will be required by the department on a case by case basis.

⁸ The specific toxics to be monitored for will be determined on a case by case basis based on the potential contamination at that site.

⁹ Total Residual Chlorine monitoring is only required for the discharge of potentially chlorinated water. This monitoring will be required by the department on a case by case basis.

3. If sampling performed by the permittee indicates a violation, the permittee shall notify SDDENR in accordance with the provisions in **Part 4.8** of this permit. The permittee shall also repeat the sampling and analysis and submit the results of the repeat analysis to the department within thirty days after becoming aware of the violation.

3.0 POLLUTION PREVENTION PLANS

3.1 Deadlines for Plan Preparation and Compliance

If the permittee develops a pollution prevention plan instead of TSS sampling, the plan must be developed and implemented prior to discontinuing TSS sampling.

3.2 Contents of the Plan

The plan shall include, at a minimum, the following items:

1. Site Description

Each plan shall provide a description of pollutant sources and other information as indicated below:

- a. The type of temporary discharge activity;
- b. Estimates of the total volume of water to be discharged;
- c. The name of the receiving waters; and
- d. A Site map indicating:
 - (1) Drainage patterns;
 - (2) Location of major structural and nonstructural controls identified in the plan;
 - (3) Location of areas where stabilization practices are expected to occur;
 - (4) Surface waters and extent of wetland acreage; and
 - (5) Location of discharge point(s).

2. Best Management Practices

The plan shall describe appropriate best management practices and when and where they will be implemented for each temporary discharge activity identified in the Notice of Intent.

3. Inspection Requirements

The permittee shall ensure that qualified personnel inspect the site on a daily basis. The inspection shall include the temporary discharge site, areas where the best management practices are being implemented, and the discharge location. These areas shall be inspected to ensure that the best management practices are operating correctly and for evidence of, or the potential for, pollutants entering the receiving waters. If any pollutants are suspected of being discharged, a sample must be taken for those parameters listed in **part 2.2** of this permit.

The permittee shall maintain a notebook recording information obtained during the inspection. At a minimum, the notebook shall include the following:

- a. Date and time of the inspection;
- b. Name of the inspector(s);
- c. Identification of operational problems and/or maintenance problems;
- d. Recommendations, as appropriate, to remedy identified problems;
- e. A brief description of any actions taken with regard to problems identified; and
- f. Other information, as appropriate.

The permittee shall maintain the notebook in accordance with proper record-keeping procedures and shall make the notebook available for inspection, upon request, by the Secretary or the U.S. Environmental Protection Agency.

3.3 Signature and Plan Review

1. The plan shall be signed in accordance with the signatory requirements and retained at the site where the temporary discharge is occurring.

2. The permittee shall make plans available upon request to the Secretary and in the case of a discharge through a municipal separate storm sewer system, to the operator of the municipal system.
3. The Secretary may notify the permittee at any time that the plan does not meet the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan and identify which provisions require modifications in order to meet the minimum requirements. Within seven days of notification, the permittee shall make the required changes to the plan and shall submit to the Secretary a written certification that the requested changes have been made.

3.4 Keeping Plans Current

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the state. The plan shall also be amended if the plan proves to be ineffective in eliminating or significantly minimizing pollutants present in the temporary discharge.

4.0 MONITORING, RECORDING AND REPORTING REQUIREMENTS

4.1 Representative Sampling

Samples taken in compliance with the monitoring requirements established under **Part 2.2** shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

4.2 Monitoring Procedures

Monitoring must be conducted according to test procedures approved under ARSD 74:52:03:06, a.b.r. 40 CFR, Part 136, unless other test procedures have been specified in this permit.

4.3 Reporting of Monitoring Results

Effluent monitoring results obtained during the previous month shall be summarized and reported on a Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed reporting period. If no discharge occurs during the reporting period, "no discharge" shall be reported. Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with the **Signatory Requirements** (see Part 4.14), and submitted to the Secretary at the following address:

original to: South Dakota Department of
 Environment and Natural Resources
 Surface Water Quality Program
 PMB 2020
 Joe Foss Building
 523 East Capitol Avenue
 Pierre, South Dakota 57501-3182

4.4 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.

4.5 Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under ARSD 74:52:03:06, a.b.r. 40 CFR 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 DMR. Such increased frequency shall also be indicated.

4.6 Records Contents

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The initials or name(s) of the individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The time analyses were initiated;
5. The initials or name(s) of individual(s) who performed the analyses;
6. References and written procedures, when available, for the analytical techniques or methods used; and,

7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

4.7 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 three years from the date of the sample, measurement, report or application. This period may be extended by request of the Secretary at any time. Data collected on site, copies of Discharge Monitoring Reports, and a copy of this permit must be maintained on site during the duration of activity at the permitted location.

4.8 Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee shall report any noncompliance which may endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the State of South Dakota at (605) 773-3231 and the EPA, Region VIII, Emergency Response Branch at (303) 293-1788.
2. The following occurrences of noncompliance shall be reported by telephone to the Secretary at (605) 773-3351 by the first workday (8:00 a.m. – 5:00 p.m. Central Time) following the day the permittee became aware of the circumstances:
 - a. Any unanticipated bypass which exceeds any effluent limit in the permit (See **Part 5.6 – Bypass of Treatment Facilities**);
 - b. Any upset which exceeds any effluent limit in the permit (See **Part 5.7 – Upset Conditions**); or
 - c. Violation of a maximum daily discharge limit for any of the pollutants listed in the permit to be reported within 24 hours.
3. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times;
 - c. The estimated time noncompliance is expected to continue if it has not been corrected; and,
 - d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
4. The Secretary may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Surface Water Quality Program, South Dakota Department of Environment and Natural Resources, Pierre, (605) 773-3351.
5. Reports shall be submitted to the addresses in **Part 4.3 – Reporting of Monitoring Results**.

4.9 Other Noncompliance Reporting

Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for **Part 4.3** are submitted. The reports shall contain the information listed in **Part 4.8.3**.

4.10 Changes in Discharge of Toxic Substances

Notification shall be provided to the Secretary as soon as the permittee knows of, or has reason to believe that any activity has occurred or will occur which would result in the discharge of a toxic pollutant, as defined in ARSD 74:52:01:01, which is not limited in the permit and 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;
3. Five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol;
4. One milligram per liter (1 mg/L) for antimony; or
5. Five (5) times the maximum concentration value reported for that pollutant in the permit application.

4.11 Planned Changes

The permittee shall give notice to the Secretary as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limits in the permit. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source (see ARSD, Chapter 74:52:01:01(30)).

4.12 Duty to Provide Information

The permittee shall furnish to the Secretary, within a reasonable time, any information which the Secretary 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 Secretary, upon request, copies of records required to be kept by this permit.

4.13 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 Secretary, it shall promptly submit such facts or information.

4.14 Signatory Requirements

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

1. All permit applications shall be signed as follows:
 - a. For a corporation: by a responsible corporate officer;
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
 - c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.
2. All reports required by the permit and other information requested by the Secretary shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described above and submitted to the Secretary; and,
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)
3. Changes to authorization. If an authorization under paragraph 2 of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph 2 of this section must be submitted to the Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.
 4. Certification. Any person signing a document under this 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.”

5.0 COMPLIANCE RESPONSIBILITIES

5.1 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. The permittee shall give the director advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.

5.2 Continuation of the Expired General Permit

1. An expired general permit continues in force and effect until a new general permit is issued. Any permittee with coverage under the general permit at the time of expiration will continue to have coverage until a new general permit is issued.
2. If the permittee wishes to continue an activity regulated by this general permit after its expiration date, the permittee must submit a Notice of Intent. Periodically during the term of this permit and at the time of reissuance, the permittee may be requested to reaffirm its eligibility to discharge under this general permit.

5.2 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.

5.3 Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) 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 a 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.

5.4 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.

5.5 Inspection and Entry

The permittee shall allow the Secretary or EPA, upon the presentation of credentials and other documents as may be required by law, to:

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

5.6 Bypass of Treatment Facilities

1. Bypass not exceeding limits. The permittee may allow any bypass to occur which does not cause effluent limits to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this section.
2. Notice:
 - a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 60 days before the date of the bypass.
 - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under **Part 4.8 – Twenty-four Hour Notice of Noncompliance Reporting**.
3. Prohibition of bypass.
 - a. Bypass is prohibited and the Secretary may take enforcement action against a permittee for a bypass, unless:
 - (1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,
 - (3) The permittee submitted notices as required under paragraph 2. of this section.
 - b. The Secretary may approve an anticipated bypass, after considering its adverse effects, if the Secretary determines that it will meet the three conditions listed above in paragraph 3.a. of this section.

5.7 Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limits if the requirements of paragraph 2. of this section 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 (i.e., Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limits).
2. 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:
 - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required under **Part 4.8 – Twenty-four Hour Notice of Noncompliance Reporting**; and

- d. The permittee complied with any remedial measures required under **Part 5.2 – Duty to Mitigate**.
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

5.8 Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Federal Clean Water 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.

5.9 Anticipated Noncompliance

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

5.10 Permit Actions

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.

5.11 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.

5.12 Availability of Reports

Except for data determined to be confidential under ARSD 74:52:02:17, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of SDDENR and EPA. Permit applications, permits and effluent data shall not be considered confidential.

5.13 Property Rights

The Secretary's issuance of this permit, adoption of design criteria, and approval of plans and specifications, does not convey any property rights of any sort, any exclusive privileges, any authorization to damage, injure or use any private property, any authority to invade personal rights, any authority to violate federal, state or local laws or regulations, or any taking, condemnation or use of eminent domain against any property owned by third parties. The State does not warrant that the permittee's compliance with this permit, design criteria, approved plans and specifications, and operation under this permit, will not cause damage, injury or use of private property, an invasion of personal rights, or violation of federal, state or local laws or regulations. The permittee is solely and severally liable for all damage, injury or use of private property, invasion of personal rights, infringement of federal, state or local laws and regulations, or taking or condemnation of property owned by third parties, which may result from actions taken under the permit.

5.14 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.

5.15 Requiring an Individual Permit or an Alternative General Permit

The Secretary may either deny coverage or require any person requesting coverage under the general permit to apply for, and obtain, an individual Surface Water Discharge permit or an alternative general permit. Cases where an individual or alternative general permit may be required include, but are not limited to the following:

1. The permittee is not in compliance with the conditions of the general permit;
2. A change has occurred in the availability of demonstrated technologies or practices for the control or abatement of pollutants applicable to construction sites;
3. Effluent limitation guidelines are promulgated for point sources covered by this general permit;
4. A water quality management plan containing requirements applicable to discharges covered by this general permit is approved;
5. The discharge is a significant contributor of pollution to waters of the state or it presents a health hazard; or
6. The discharge is to an impaired water body where the best management practices are not sufficient to implement the assigned waste load allocations.

5.16 Transfers

This permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Secretary at least 30 days in advance of the proposed transfer date;
2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,
3. The Secretary does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2. above.

5.17 Reopener Provision

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

1. Water Quality Standards: The 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.
2. Total Maximum Daily Load: Additional controls in the permit are necessary to implement a total maximum daily load approved by the Secretary and/or EPA.
3. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limits than contained in this permit.

6.0 PENALTIES FOR NONCOMPLIANCE

6.1 Penalties for Violations of Permit Conditions

Any person who violates a permit condition shall, upon conviction, be punished by a Class 1 misdemeanor. In addition to a jail sentence authorized by SDCL 22-6-2, a Class 1 misdemeanor imposed by SDCL, Chapter 34A-2, is subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, for damages to the environment of this state. Except as provided in permit conditions on **Part 5.6 – Bypass of Treatment Facilities** and **Part 5.7 – Upset Conditions**, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

6.2 Penalties for Tampering

Any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit is in violation of the provisions of SDCL 34A-2-77, and is subject to penalties under SDCL 34A-2-75. In addition to a jail sentence authorized by SDCL 22-6-2, such violators are subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state.

6.3 Penalties for Falsification of Reports

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 Class 1 misdemeanor. In addition to a jail sentence authorized by SDCL 22-6-2, a Class 1 misdemeanor imposed by SDCL, Chapter 34A-2, is subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, for damages to the environment of this state, or both.

6.4 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 Clean Water Act.

ATTACHMENT A

ATTACHMENT B