

United States Environmental Protection Agency  
Region 10  
1200 Sixth Avenue  
Seattle, Washington 98101

AUTHORIZATION TO DISCHARGE UNDER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

Hecla Mining Company - Grouse Creek Unit  
P.O. Box 647  
Challis, Idaho 83226

is authorized to discharge ~~wastewater~~ from the Grouse Creek Mine facility through Outfall 002 to receiving waters named Jordan Creek at latitude 44° 25' 19" N and longitude 114° 43' 53" W, in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective **[Date]**

This permit and the authorization to discharge shall expire at midnight, **[Date]**

Signed this **[day]** day of **[month][year]**

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Randall F. Smith  
Director  
Office of Water, Region 10  
U.S. Environmental Protection Agency

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**I. LIMITATIONS AND MONITORING REQUIREMENTS**

During the effective period of this permit, the permittee is authorized to discharge from Outfall 002 to Jordan Creek, subject to the restrictions set forth herein. ~~This permit does not authorize the discharge of any waste streams, including spills and other unintentional or non-routine discharges of pollutants, that are not part of the normal operation of the facility as disclosed in the permit application, or any pollutants that are not ordinarily present in such waste streams.~~ This permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams, and operations that have been clearly identified in the permit application process.

**A. Effluent Limitations and Monitoring**

1. The permittee shall limit and monitor discharges from Outfall 002 as specified in Table 1, below. The permittee shall comply with the effluent limits in the table at all times unless otherwise indicated, regardless of the frequency of monitoring or reporting required by other provisions of this permit.

Table 1 - Limitations and Monitoring Requirements for Outfall 002							
Parameter	units	Effluent Limitations				Monitoring Requirements	
		at Jordan Creek flow < 30 cfs <sup>1</sup>		at Jordan Creek flow ≥ 30 cfs <sup>1</sup>			
		Maximum Daily	Average Monthly	Maximum Daily	Average Monthly	Sample Frequency	Sample Type
Effluent Flow	mgd cfs	-	-	-	-	continuous	recording
Cadmium, total recoverable <sup>2</sup>	ug/l	1.1 7.5	0.56 <sup>+</sup> 3.7	0.82 <sup>+</sup> 4.4	0.41 2.2	weekly	grab
	lb/day	0.0065	0.0033	0.017	0.0086		
Chromium, total recoverable <sup>2</sup>	ug/l	16	8.8 7.7	16	8.0	weekly	grab
	lb/day	0.095	0.047	0.34	0.17		
Copper, total recoverable <sup>2</sup>	ug/l	7.3 35	3.0 14	4.8 14 <sup>3</sup>	2.0 5.6 <sup>3</sup>	weekly	grab
	lb/day	0.043	0.018	0.10	0.042		
Lead, total recoverable <sup>2</sup>	ug/l	2.0 <sup>+</sup> 19	1.0 <sup>+</sup> 9.5	2.6 <sup>+</sup> 8.1	1.3 <sup>+</sup> 4.0 <sup>4</sup>	weekly	grab
	lb/day	0.012	0.0059	0.055	0.027		
Mercury, total <sup>2</sup>	ug/l	0.020 0.18 <sup>3</sup>	0.0098 0.088 <sup>3</sup>	0.020 0.18 <sup>3</sup>	0.0098 0.088 <sup>3</sup>	weekly	grab

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Table 1 - Limitations and Monitoring Requirements for Outfall 002							
Parameter	units	Effluent Limitations				Monitoring Requirements	
		at Jordan Creek flow < 30 cfs <sup>1</sup>		at Jordan Creek flow ≥ 30 cfs <sup>1</sup>			
		Maximum Daily	Average Monthly	Maximum Daily	Average Monthly	Sample Frequency	Sample Type
	lb/day	0.00012	0.000058	0.00042	0.00021		
Silver total recoverable <sup>2</sup>	ug/l	0.80 <sup>+</sup> 3.6	0.40 <sup>+</sup> 1.8	1.1	0.55 <sup>+</sup> 0.60 <sup>4</sup>	weekly	grab
	lb/day	0.0047	0.0024	0.023	0.012		
Zinc, total recoverable <sup>2</sup>	ug/l	53 250	23 110	110 <sup>3</sup>	46 50 <sup>3</sup>	weekly	grab
	lb/day	0.31	0.14	2.3	0.96		
Cyanide, weak acid dissociable (WAD) <sup>2,5</sup>	ug/l	8.1 47 <sup>3</sup>	4.4 21 <sup>3</sup>	8.1 47 <sup>3</sup>	4.4 21 <sup>3</sup>	weekly	grab
	lb/day	0.048	0.026	0.17	0.092		
Total Suspended Solids	mg/l	30	20	30	20	weekly	grab
	lb/day	180	120	630	420		
Chronic Whole Effluent Toxicity (WET) <sup>2,6</sup>	TU <sub>c</sub>	2.2 16 <sup>3</sup>	1.4 9.8 <sup>3</sup>	3.0 16 <sup>3</sup>	1.9 9.8 <sup>3</sup>	quarterly	24-hour composite
Acute WET <sup>6</sup>	TU <sub>a</sub>	--	--	--	--	annually	24-hour composite
pH	s.u.	see Part I.A.2.		see Part 1.A.2.		daily	grab
Dilution Ratio	none	see Parts I.A.4. <sup>3</sup>		see Parts I.A.4. <sup>3</sup>		daily	calculation
Selenium, total recoverable	ug/l	--	--	--	--	monthly	grab
Ammonia, as N	mg/l	--	--	--	--	monthly	grab
Nitrate+nitrite	mg/l	--	--	--	--	monthly	grab
Hardness, as CaCO <sub>3</sub>	mg/l	--	--	--	--	monthly	grab
Temperature	°C	--	--	--	--	weekly	grab
Jordan Creek Flow <sup>7</sup>	cfs	--	--	--	--	weekly daily	recording

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Table 1 - Limitations and Monitoring Requirements for Outfall 002							
Parameter	units	Effluent Limitations				Monitoring Requirements	
		at Jordan Creek flow < 30 cfs <sup>1</sup>		at Jordan Creek flow ≥ 30 cfs <sup>1</sup>			
		Maximum Daily	Average Monthly	Maximum Daily	Average Monthly	Sample Frequency	Sample Type
Footnotes:							
1. The effluent limits will be determined by the average monthly flow in Jordan Creek directly upstream of the outfall location.							
2. Reporting is required within 24 hours of a maximum daily limit violation. See Part III.G.							
3. See Part I.A.5. for the copper (≥ 30 cfs flow tier), mercury, zinc (≥ 30 cfs flow tier), WET and dilution ratio compliance schedules.							
4. These limits are not quantifiable using EPA approved analytical methods. Therefore, EPA will consider the permittee in compliance with the effluent limits when the concentration is at or below the Minimum Level (ML). The MLs for these parameters are: cadmium - 0.5 ug/l, lead - 0.5 5 ug/l, silver - 1 ug/l							
5. Analysis for this pollutant may be conducted using EPA method OIA-1677.							
6. See Section I.B. of the permit for additional information on monitoring requirements for whole effluent toxicity.							
7. Jordan Creek flow must be representative of flow directly upstream of the outfall location.							

2. The pH range shall be between 6.5 - 9.0 standard units. The permittee shall report the number and duration of excursions during the month with the discharge monitoring report (DMR) for each month.
3. The permittee shall not discharge any floating solids, visible foam in other than trace amounts, or oily wastes that produce a sheen on the surface of the receiving water.
4. The dilution ratio shall be greater than or equal to 8:1. The dilution ratio shall be calculated each day by dividing the daily Jordan Creek flow upstream of the outfall (in cfs) by the maximum daily effluent flow (in cfs). The permittee shall report the minimum dilution ratio and the number and duration of excursions during the month with the DMR for each month. See Part I.A.5. for the dilution ratio compliance schedule.
5. Copper, Mercury, Zinc, WET, and Dilution Ratio Compliance Schedule.
  - a. The permittee shall comply with the copper (≥ 30 cfs flow tier only), mercury, zinc (≥ 30 cfs flow tier only), and WET effluent limitations in Table 1 on or before < insert date three years from the permit issuance date> .

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- b. The permittee shall comply with the dilution ratio effluent limitations in Table 1 and Part I.A.4. on or before October 1, 2002.
- c. Until compliance with the copper ( $\geq 30$  cfs flow tier only), mercury, zinc ( $\geq 30$  cfs flow tier only), WET, and dilution ratio effluent limitations is achieved, the permittee shall comply with the interim limitations in Table 2.

Table 2 - Interim Effluent Limitations for Outfall 002			
Parameter	Units	Maximum Daily Limit	Average Monthly Limit
Copper, total recoverable <sup>1</sup>	ug/l	35 <sup>2</sup>	14 <sup>2</sup>
Mercury, total <sup>1</sup>	ug/l	0.2	0.2
Zinc, total recoverable <sup>1</sup>	ug/l	200 <sup>2</sup>	100 <sup>2</sup>
WET	TU <sub>c</sub>	no interim limit	no interim limit
Dilution Ratio	none	no interim limit	no interim limit

Footnotes:  
1. Reporting is required within 24 hours of a maximum daily limit violation. See Part III.G.  
2. These interim limits apply to the  $\geq 30$  cfs Jordan Creek flow tier only.

- d. The permittee shall submit to IDEQ, for approval, and to EPA, a compliance plan that includes a schedule for long-term water treatment and the plans for future discharges from outfall 002. The submittal shall outline the permittee's plan for attaining compliance with the NPDES permit up to and beyond the compliance schedule. The compliance plan shall be submitted no later than October 1, 2002.
- e. Until compliance with the effluent limits is achieved, the permittee shall submit an annual Report of Progress to EPA and IDEQ which outlines the progress made towards achieving compliance. The report shall be submitted by April 1st of each year. The first report is due by April 1, 2002. At a minimum, the annual report must include:
  - i) An assessment of the previous years data and comparison to the final effluent limitations.
  - ii) A report on progress made toward meeting the final effluent limitations.

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iii) Further actions and milestones targeted for the upcoming year.

6. The permittee shall collect all effluent samples from the effluent stream prior to discharge into the receiving waters.

4.7. Method Detection Limits. For all effluent monitoring, the permittee shall use methods that can achieve a method detection limit (MDL) equal to 0.1 times less than the effluent limitation or the ML as specified in footnote 4 of Table 1. For parameters that do not have effluent limits, the permittee must use methods that can achieve MDLs less than or equal to those specified in Table 2.3 (Part I.C.), whichever is greater.

If the analytical result for any sample is below the MDL, the permittee shall report "less than {numeric MDL}" on the DMR. For purposes of averaging results, the permittee shall use 0 for all values below the MDL.

**B. Whole Effluent Toxicity Testing Requirements.** The permittee shall conduct quarterly acute and chronic toxicity tests on effluent samples from Outfall 002. Testing shall be conducted in accordance with subsections 1 through 6.8, below.

1. Testing shall be conducted on 24-hour composite samples of effluent. In addition, a split of each sample collected shall be analyzed for the chemical and physical parameters required in Part I.A above. When the timing of sample collection coincides with that of the sampling required in Part I.A., analysis of the split sample will fulfill the requirements of Part I.A. as well.

2. Acute Test Species and Methods

a. Acute tests shall be conducted once per year in April. The effluent collected for toxicity testing shall be collected at the same time as the receiving water surface water monitoring (see Part I.C.).

b. The permittee shall conduct 96-hour static renewal tests with the rainbow trout (*Oncorhynchus mykiss*).

c. The presence of acute toxicity shall be determined as specified in *Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms*, Fourth Edition, EPA/600-4-90-027F, August 1993.

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- d. Acute toxicity test results shall be reported in  $TU_a$  (acute toxic units), where  $TU_a = 100/NOEC$  (in percent effluent). See Part VI. for a definition of NOEC. Acute toxicity shall be reported for both the 24-hour NOEC and the 96-hour NOEC.

#### 4.3. Chronic Test Species and Methods

- a. ~~Tests~~ Chronic tests shall be run four times per year, during the months of ~~February, May, August, and November~~ January, April, July, and October. The effluent collected for toxicity testing shall be collected at the same time as the receiving water surface water monitoring (see Part I.C.).
- b. ~~Testing shall be conducted on 24-hour composite samples of effluent. In addition, a split of each sample collected shall be analyzed for the chemical and physical parameters required in Part I.A. above. When the timing of sample collection coincides with that of the sampling required in Part I.A., analysis of the split sample will fulfill the requirements of Part I.A. as well.~~
- c.b The permittee shall conduct tests with the water flea, *Ceriodaphnia dubia* (survival and reproduction test) and the fathead minnow, *Pimephales promelas* (larval survival and growth test), ~~and the green alga, *Selanastrum capricornutum* (growth test)~~ for the first three suites of tests. After this screening period, monitoring shall be conducted using the most sensitive species.
- d.c The presence of chronic toxicity shall be estimated as specified in *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, Third Edition, EPA/600/4-91/002, July 1994.
- e.d Results shall be reported in  $TU_c$  (chronic toxic units), where  $TU_c = 100/NOEC IC_{25}$ . See Part VI. for a definition of  $NOEC IC_{25}$ .

#### 4. Toxicity Triggers.

- a. For the purpose of determining compliance with Parts I.B.6. and I.B.7., the acute toxicity triggers are defined as toxicity exceeding 1  $TU_a$  at 24-hours (a 24-hour NOEC of 100% effluent) and 3  $TU_a$  at 96-hours (a 96-hour NOEC of 33% effluent).

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- b. For the purpose of determining compliance with Parts I.B.6. and I.B.7., the WET effluent limitations (average monthly limit of 9.8 TU, and maximum daily limit of 16 TU,) are defined as the chronic toxicity triggers.

## 2.5 Quality Assurance

- a. The toxicity testing on each organism shall include a series of at least five test dilutions and a control as follows: ~~The series shall bracket the WET effluent limits. For testing conducted on effluent when Jordan Creek flows are < 30 cfs, the series shall include and bracket dilutions of 45 percent effluent and 71 percent effluent. For testing conducted on effluent when Jordan Creek flows are ≥ 30 cfs, the series shall include and bracket dilutions of 33 percent effluent and 53 percent effluent.~~
  - i) The acute series shall range from 0% effluent to 100% effluent and include: a dilution of 33% effluent; two dilutions above 33% effluent; and, two dilutions below 33% effluent.
  - ii) The chronic series shall include: dilutions of 6.3% and 11% effluent, which are the receiving water concentrations (RWC) that correspond, respectively, to the maximum daily and average monthly WET effluent limits; two dilutions above the RWC; and, two dilutions below the RWCs.
- b. All quality assurance criteria and statistical analyses used for acute tests and reference toxicant tests shall be in accordance with *Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms*, Fourth Edition, EPA/600-4-90-027F, August 1993, and individual test protocols.
- b. All quality assurance criteria and statistical analyses used for chronic tests and reference toxicant tests shall be in accordance with *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, Third Edition, EPA/600-4-91-002, July 1994, and individual test protocols.

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- c. In addition to those quality assurance measures specified in the methodology, the following quality assurance procedures shall be followed:
- i) If organisms are not cultured in-house, concurrent testing with reference toxicants shall be conducted. If organisms are cultured in-house, monthly reference toxicant testing is sufficient. Reference toxicant tests shall be conducted using the same test conditions as the effluent toxicity tests.
  - ii) If either the reference toxicant tests or the effluent tests do not meet all test acceptability criteria as specified in the test methods manual, the permittee must re-sample and re-test within 14 days of receipt of the test results.
  - iii) Control and dilution water should be receiving water or lab water, as appropriate, as described in the manual. If the dilution water used is different from the culture water, a second control, using culture water shall also be used. In no case shall water that has not met test acceptability criteria be used for either dilution or control.

~~3. Preparation of Initial Investigation Toxicity Reduction Evaluation (TRE)~~

~~Workplan. The permittee shall submit to EPA a copy of the permittee's Initial Investigation Toxicity Reduction Evaluation (TRE) workplan within 90 days of the effective date of this permit. This plan shall describe the steps the permittee intends to follow in the event that an exceedence of any of the whole effluent toxicity (WET) limits in Table 1 (Part I.A.1) occurs. Any existing toxicity control plan may be modified for submittal under this section. The plan should include, at a minimum:~~

- ~~a. A description of the investigation and evaluation techniques that would be used to identify potential causes/sources of toxicity, effluent variability, and treatment system efficiency.~~
- ~~b. A description of the facility's methods of maximizing in-house treatment efficiency and good housekeeping practices and a list of all chemicals used in operation of the facility.~~
- ~~c. If a toxicity identification evaluation (TIE) is necessary, who will conduct it.~~

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4. 6. Accelerated Testing:

- a. ~~If the discharge exceeds a WET permit limit, then the permittee shall implement the initial investigation workplan. If implementation of the initial investigation workplan indicates the source of toxicity, then only one additional toxicity test is necessary. If toxicity is detected in this test, then Part 4.b., below, shall apply.~~
- b. a. If the discharge exceeds acute or chronic toxicity is detected above a trigger specified in Part I.B.4 or above a WET permit limit, then the permittee shall conduct six four more toxicity tests, bi-weekly, over an twelve eight week period. This accelerated testing shall commence within two weeks of receipt of the test results which indicate an exceedence. Part I.B.6.d., below, allows for the permittee to conduct only one accelerated test if the conditions under that part are met.
- c b. If none of the six four accelerated tests indicate toxicity above the toxicity trigger or permit limit, then the permittee may return to the normal testing frequency.
- d c. If a toxicity trigger or permit limit is exceeded in any of the six additional four accelerated tests, then the permittee shall initiate a TRE in accordance with Part 5 I.B.7. of this section.
- d. Initial Investigation. If the permittee demonstrates through an evaluation of facility operations that the cause of the exceedence is known and corrective actions have been implemented, only one accelerated test is necessary. If the toxicity trigger or permit limit is exceeded in this test, then the TRE requirements in Part I.B.7. shall apply. If the toxicity trigger or permit limit is not exceeded then the permittee may return to the normal testing frequency.

5. 7. Toxicity Reduction Evaluation and Toxicity Identification Evaluation (TIE):

- a. If a toxicity trigger or permit limit is exceeded during accelerated testing under Part 4.b.I.B.6.c. or d., then the permittee must initiate a TRE in accordance with ~~the TRE workplan and~~ *Generalized Methodology for Conducting Industrial Toxicity Reduction Evaluations* (EPA/600/2-88/070) within fifteen (15) days of the exceedence. ~~The permittee shall~~

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~~expeditiously develop a more detailed workplan, which includes:~~ At a minimum, the TRE must include:

- i) further actions to investigate and identify the cause of toxicity.
  - ii) actions the permittee will take to mitigate the impact of the discharge and to prevent the recurrence of toxicity; and
  - iii) a schedule for these actions.
- b. The permittee may initiate a Toxicity Identification Evaluation (TIE) as part of the TRE process in accordance with EPA guidance manuals, *Toxicity Identification Evaluation; Characterization of Chronically Toxic Effluents, Phase I* (EPA/600/6-91/005F), *Methods for Aquatic Toxicity Identification Evaluations, Phase II: Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity* (EPA/600/R-92/080), and *Methods for Aquatic Toxicity Identification Evaluations, Phase III: Toxicity Confirmation Procedures for Samples Exhibiting Acute and Chronic Toxicity* (EPA-600/R-92/081).
- c. If a ~~TIE~~ TRE is initiated prior to completion of the accelerated testing, the accelerated testing schedule may be terminated, or used as necessary in performing the TIE.

#### 6. 8. Reporting

- a. The permittee shall submit a full report of the results of the toxicity tests with the discharge monitoring reports (DMR) for the month ~~in which the test is conducted~~ following sample collection. ~~The full toxicity test report shall be submitted by the end of the month in which the DMR is submitted.~~
- b. The permittee shall submit the results of any accelerated testing under Part I.B.6., ~~with the DMR for the month in which the test is conducted~~ within two weeks of receipt of the results from the lab. The full report shall be submitted ~~by the end of the month in which the DMR is submitted~~ within four weeks of receipt of the results from the lab. If an initial investigation under Part I.B.6.d. indicates the source of toxicity and accelerated testing is unnecessary, the results of the investigation shall be submitted with the full report.

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- c. The full report of results shall include all relevant information outlined in Section 10, Report Preparation, of *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, Third Edition, EPA/600-4-91-002, July 1994. The full report shall include: toxicity test results; dates of sample collection and initiation of each test; the WET limits and toxicity triggers; effluent and receiving water flow rates and instream waste concentrations at the time of sample collection; summary statistics showing whether measured toxicity is above or below actual dilution occurring at the time of the test; and the results of the monitoring required in Part I.A. The Clarification of IDEQ Clean Water Act (CWA) Section 401 Certification (IDEQ, October 3, 2000) contains recommendations for additional information to be included in the toxicity test reports.

**C. Ambient Surface Water Monitoring Requirements.** The permittee shall ~~continue to provide surface water monitoring, sediment monitoring, and aquatic biological assessment of the receiving waters in accordance with the Grouse Creek Comprehensive Water Quality Monitoring Plan. The~~ monitor surface water quality monitoring program shall be conducted in accordance with subsections 1 through 5 6, below. The monitoring may be conducted pursuant to the Comprehensive Environmental Water Quality Monitoring Plan, so long as the minimum requirements of this section are met.

1. The permittee shall conduct surface water monitoring at existing monitoring locations S-3 and S-4 in Jordan Creek (~~S-1, S-2, S-3, S-4, S-5, S-6, S-11~~), ~~Grouse Creek (S-7, S-8)~~ and the Yankee Fork (~~S-9 and S-10~~) upstream and downstream of Outfall 002.
2. ~~All~~ Each location shall be sampled four times per year during ~~spring low flow (February or March), spring high flow (June), summer low flow (August), and fall low flow (November)~~ January, April, July, and October for the parameters listed in Table 3, except for temperature and upstream flow. Temperature shall be monitored according to paragraph C.3., below. Upstream flow shall be monitored according to Part I.A.1. (Table 1).
3. Temperature shall be monitored at locations S-3 and S-4 once in January, once in April, and daily from June 1 through October 1.
- 3-4. All ambient samples shall be grab samples.

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4. 5. Samples shall be analyzed for the parameters listed in Table 2 3 to achieve method detection limits (MDLs) that are equivalent to or less than those listed in Table 2 3. The permittee may request different MDLs. Such a request must be in writing and must be approved by EPA.
5. 6. The permittee shall submit an annual report summarizing of the results of the surface water monitoring to EPA and IDEQ by January 31<sup>st</sup> April 1<sup>st</sup> of the next year. The report shall include: the sample locations; dates of sample collection and analyses; analytical results; a discussion of sampling and laboratory methods, including quality assurance/quality control (QA/QC); and, data handling. The permittee may submit this information as part of the Water Quality Summary Report required under the Comprehensive Environmental Water Quality Monitoring Plan.

Table 2 3: Receiving Water Monitoring Parameters and MDLS		
Parameter	units	Method Detection Limit (MDL)
Cadmium, dissolved	ug/l	0.1
<del>Chromium, dissolved</del>	<del>ug/l</del>	4
Copper, dissolved	ug/l	1
Lead, dissolved	ug/l	0.1
Mercury, total	ug/l	0.0005
Selenium, total recoverable	ug/l	2
Silver, dissolved	ug/l	0.1
Zinc, dissolved	ug/l	2 10
Cyanide, weak acid dissociable <sup>1</sup>	ug/l	2
Ammonia, as N, total	mg/l	1
Nitrate+nitrite	mg/l	0.1
TSS	mg/l	--
pH	standard units	--
Temperature	°C	--
Turbidity	NTU	--
Hardness, as CaCO <sub>3</sub>	mg/l	--

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Table 2 3: Receiving Water Monitoring Parameters and MDLS		
Parameter	units	Method Detection Limit (MDL)
Dissolved Oxygen	mg/l	--
Flow	cfs	--
Footnote: 1. Analysis for this pollutant may be conducted using Method OIA-1677.		

- ~~6. The permittee shall submit the results of the benthic macroinvertebrate monitoring, fish population and species composition monitoring, and sediment monitoring conducted pursuant to the Comprehensive Water Quality Monitoring Plan to EPA by January 31<sup>st</sup> of the next year.~~
- ~~7. The permittee shall also submit the annual ambient monitoring reports under C.5. and C.6., above, to the National Marine Fisheries Service, Boise Field Office, 1387 S. Vinnell Way, Suite 377, Boise, Idaho 83709 by January 31st of the next year.~~

**D. Bioassessment Monitoring Requirements.** The permittee shall conduct biomonitoring in accordance with subsections 1 through 4, below. The biomonitoring may be conducted pursuant to the Comprehensive Environmental Water Quality Monitoring Plan or Grouse Creek Task Force recommendations or may be in conjunction with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Administrative Order on Consent (AOC) or Engineering Evaluation Cost Analysis (EECA), so long as the minimum requirements of this section are met.

- 1. The permittee shall annually conduct biomonitoring of macroinvertebrates and fish in Jordan Creek above outfall 002 and below the mixing zone of outfall 002.
- 2. Each location shall be monitored after seasonal high flow conditions have receded but before annual low flow conditions (in July or August).
- 3. The permittee must obtain collection permits from the Idaho Department of Fish and Game (IDFG) for collection of fish. Should IDFG deny the request for a collection permit due to potential concerns for the protection of species under the Endangered Species Act (ESA), the permittee (in concert with IDFG) must

submit alternative methods to IDEQ and EPA to acquire the necessary biomonitoring information.

4. The permittee shall submit an annual report of the results of the biomonitoring, including all data summarized in electronic form, to IDEQ and EPA by April 1st of the next year.

**E. Mercury Bioaccumulation Study.** For the first three years of the permit (**insert three years from the issuance date**), the permittee shall conduct a bioaccumulation study in accordance with subsections 1 through 5, below. The bioaccumulation study may be conducted in conjunction with any such studies under the CERCLA AOC, so long as the minimum requirements of this section are met.

1. The permittee shall annually monitor the concentration of mercury in fish (sculpins) in Jordan Creek at a location upstream of Outfall 002 and a location downstream of Outfall 002.
2. Sculpins shall be the test species. Four replicate samples shall be collected (4 samples upstream and 4 samples downstream). Should the IDFG deny the request for a collection permit due to potential concerns for the protection of species under the ESA, the permittee (in concert with the IDFG) must submit alternative methods to IDEQ and EPA to acquire information germane to the protection of resident species from mercury accumulation.
3. Trends Analysis.
  - a. The permittee must determine whether the concentrations of mercury present in sculpin tissue downstream show a statistically significant increase in comparison to upstream mercury tissue concentrations. The Clarification of IDEQ CWA Section 401 Certification (IDEQ, October 3, 2000) contains recommendations on how to determine statistical significance.
  - b. If the results indicate that the concentration of mercury in fish downstream is statistically significantly higher than the concentration upstream, then the permittee must notify IDEQ and EPA within 10 days of receiving the laboratory results.

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4. Impacts Analysis. The permittee must determine if the mercury concentrations in sculpin exceeds 0.3 mg mercury/kg. fresh weight. If the results of any one sculpin tissue analysis reveal that tissues contained greater than 0.3 mg/kg. of mercury, then permittee shall take the following steps:
  - a. Notify IDEQ and EPA of the findings of the bioaccumulation monitoring within 7 calender days of obtaining the results.
  - b. Once the laboratory has verified the results of the tissue analysis (a period of time not to exceed 14 calender days), the permittee shall immediately initiate an investigation of the sources of mercury and take steps to reduce mercury discharges. The Clarification of IDEQ CWA Section 401 Certification (IDEQ, October 3, 2000) contains recommendations on additional investigations and actions.
  - c. Prepare a report describing the results of the source identification and steps already implemented to reduce mercury concentrations in their discharge. The permittee shall submit the report to IDEQ and EPA within 60 days of receipt of the bioaccumulation results from the lab.
5. The permittee shall submit an annual report of the results of the mercury bioaccumulation study, including all data summarized in electronic form, to IDEQ and EPA by April 1st of the next year.

**D. F. Quality Assurance Plan.** The permittee shall develop a quality assurance plan (QAP) for all monitoring required by this permit. The plan shall be submitted to EPA for review within 120 days of the effective date of this permit. Any existing QAPs may be modified for submittal under this section.

1. The QAP shall be designed to assist in planning for the collection and analysis of environmental samples in support of the permit and in explaining data anomalies when they occur.
2. Throughout all sample collection and analysis activities, the Permittee shall use the EPA-approved QA/QC and chain-of-custody procedures described in *Requirements for Quality Assurance Project Plans* (EPA/QA/R-5) and *Guidance for Quality Assurance Project Plans* (EPA/QA/G-5). The QAP shall be prepared in the format which is specified in these documents.

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3. At a minimum, the QAP shall include the following:
  - a. Details on the number of samples, type of sample containers, preservation of samples, holding times, analytical methods, analytical detection and quantitation limits for each target compound, type and number of quality assurance field samples, precision and accuracy requirements, sample preparation requirements, sample shipping methods, and laboratory data delivery requirements.
  - b. A map indicating the location of each sampling point.
  - c. Qualification and training of personnel.
  - d. Name(s), address(es) and telephone number(s) of the laboratories, used by or proposed to be used by the Permittee.
4. The permittee shall amend the QAP whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAP.
5. Copies of the QAP shall be kept on site and made available to EPA and/or ~~Idaho~~ Division of Environmental Quality (IDEQ) upon request.

## II. BEST MANAGEMENT PRACTICES PLAN

- A. **Purpose.** Through implementation of the best management practices (BMP) plan, the permittee shall prevent or minimize the generation and the potential for the release of pollutants from the facility to the waters of the United States. ~~The BMP Plan must incorporate elements of pollution prevention. The BMP Plan shall apply to all the components and facilities of the Grouse Creek Unit.~~
- B. **Development and Implementation Schedule.** The permittee shall develop and implement a BMP Plan which achieves the objectives and the specific requirements listed below. A copy of the BMP Plan shall be submitted to EPA and IDEQ within 120 days of the effective date of the permit. Any existing BMP plans may be modified for submittal and approval under this section. The permittee must implement the provisions of the plan as conditions of this permit within 180 days of the effective date of this permit.

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

1. The number and quantity of pollutants and the toxicity of effluent generated, discharged or potentially discharges at the facility must be minimized by the permittee to the extent feasible by managing each waste stream in the most appropriate manner.
2. Under the BMP Plan and any Standard Operating Procedures included in the BMP Plan, the permittee must ensure proper operation and maintenance of water management and wastewater treatment systems.
3. Each facility component or system must be examined for its waste minimization opportunities and its potential for causing a release of significant amounts of pollutants to waters of the United States due to equipment failure, improper operation, etc.

**C.D. Elements of the BMP Plan.** The BMP Plan shall be consistent with the objectives above and the general guidance contained *Guidance Manual for Developing Best Management Practices* (EPA 833-B-93-004, October 1993) ~~and Storm Water Management For Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices (EPA 832-R-92-006)~~ or any subsequent revision to these the guidance documents. The BMP Plan shall include, at a minimum, the following items:

1. Statement of BMP policy. The Plan must include a statement of management commitment to provide the necessary financial, staff, equipment, and training resources to develop and implement the BMP plan on a continuing basis.
2. Structure, functions, and procedures of the BMP Committee. The Plan shall establish a BMP Committee responsible for developing, implementing, and maintaining the Plan.
- ~~3. Description of Activities. The Plan shall provide a description of the activities taking place at the site which affect or may affect storm water runoff or which may result in the discharge of pollutants to surface waters during dry weather.~~
- ~~4. Description of Potential Pollutant Sources. The Plan shall identify all activities and significant materials which may potentially be significant storm water~~

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~~pollutant sources (including sediment) or may result in the discharge of pollutants during dry weather. The Plan shall include at a minimum:~~

~~a. Drainage:~~

- ~~1. A site topographic map that indicates site boundaries, access and haul roads; location of storm water outfalls and outlines of drainage areas; storage and maintenance areas for equipment, fuel, chemicals, and explosives; materials handling areas; areas used for storage of overburden, materials, soils, tailings, or wastes; location and points of discharge of mine drainage or any other process water; and, springs, streams, wetlands and other surface waters.~~
- ~~2. For each area of the site that generates storm water discharges or may result in the discharge of pollutants during dry weather, the permittee shall provide a prediction of the direction of flow and an identification of the types of pollutants which are likely to be present in discharges.~~

~~b. Inventory of Exposed Materials. The Plan shall include an inventory of the types of materials handled at the site that potentially may be exposed to precipitation. The inventory shall include a description of the exposed materials; method and location of onsite storage and disposal; and materials management practices employed to minimize contact with storm water runoff and reduce pollutants in storm water runoff.~~

~~c. Spills and Leaks. The Plan shall include a list of significant spills and leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation, that drain to a storm water conveyance, or drain to surface waters. The list shall include significant spills or leaks occurring three years prior to the effective date of this permit and shall be updated as appropriate during the term of the permit.~~

~~d. 3. Risk Identification and Summary of Potential Pollutant Sources. Release Identification and Assessment. The Plan shall identify all activities, sites, and significant materials which may potentially be pollutant sources. The description shall specifically list any potential source of pollutants at the site, and for each pollutant source, any pollutant or pollutant parameter of concern shall be identified. A release identification is the systematic cataloging of areas at a facility with ongoing or potential releases to the~~

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environment. A release assessment is used to determine the impact on human health and the environment of any on-going or potential release identified. The identification and assessment process involves the evaluation of both current discharges and potential discharges.

5. 4. Measures and Controls. The permittee shall develop a description of pollution prevention controls, BMPs, and other measures appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in the Plan shall reflect identified potential sources of pollutants at the facility. The description of management controls shall address the following minimum components:

- a. Good Housekeeping. ~~Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges or other discharges to surface waters.~~ A program by which the facility is kept in a clean and orderly fashion to prevent releases to the environment.
- b. Preventative Maintenance. ~~A preventative maintenance program shall be developed that includes inspection and maintenance of storm water management devices, inspection and testing of facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment systems.~~ A program focused on preventing releases caused by equipment problems, rather than repair of equipment after problems occur.

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~~3. Spill Prevention and Response Procedures. Areas where spills could result in the discharge of pollutant shall be identified clearly in the Plan. The description of each area shall include procedures for spill prevention and and procedures for cleaning up spills.~~

- ~~d. c. Inspections and Comprehensive Site Compliance Evaluations. The Plan shall include provisions for qualified personnel to inspect BMPs and designated equipment and facility areas at least on a monthly basis, however, inspections are not required when adverse weather conditions make the site inaccessible. Inspections shall include, at a minimum, all material handling and storage areas, storm water control and containment structures, and erosion control systems. Records of inspection shall be maintained. The Plan shall also include provisions for conducting comprehensive site compliance evaluations (Part III.D., below). A~~

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program established to oversee facility operations and identify actual or potential environmental releases and to ensure that BMPs are being implemented..

- d. Security. A program designed to avoid releases due to accidental or intentional entry.
- d. e. Employee Training. ~~The Plan shall outline employee training programs related to implementation of the BMP Plan and specify how often training will take place.~~ A program developed to instill in employees an understanding of the BMP Plan.
- e. f. Recordkeeping and Internal Reporting Procedures. ~~The following will be documented and incorporated into the Plan: a description of incidents (such as spills, or other discharges), description of the quantity and quantity of storm water discharges, inspections, maintenance activities, and training sessions.~~ A program designed to maintain relevant information and foster communication.

~~d. Sediment and Erosion Control. The Plan shall identify areas that have a high potential for significant erosion of soil and/or other materials and identify BMPs and other measures to be used to limit erosion and/or remove sediment from storm water runoff.~~

- 6. 5. Specific Best Management Practices. The Plan shall establish specific BMPs or other measures which ensure that the following specific requirements are met:
  - a. Ensure proper management of solid and hazardous waste in accordance with regulations promulgated under the Resource Conservation and Recovery Act (RCRA). Management practices required under RCRA regulations shall be referenced in the BMP Plan.
  - b. Ensure proper management of materials in accordance with Spill Prevention, Control, and Countermeasure (SPCC) plans under Section 311 of the Act and 40 CFR Part 112. The BMP Plan may incorporated any part of such plans into the BMP Plan by reference.
  - c. Removed Substances. Solids, sludges, or other pollutants removed in the course of treatment or control of water and wastewaters shall be disposed

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of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

**D. Comprehensive Site Compliance Evaluation.** ~~Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the Plan, but in no case less than twice a year. Such evaluations shall include:~~

- ~~1. Site Evaluation. Areas contributing to a storm water discharges, areas where a discharge of pollutants to surface waters may occur during dry weather, and areas susceptible to leaks or spills shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system or surface waters. Structural and non-structural BMPs and other measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented. Inspection of equipment needed to implement the Plan, such as spill response equipment, shall be made.~~
- ~~2. Corrective Action. Based on results of the site evaluation and inspection, the BMP Plan shall be revised, as appropriate, within 30 days of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.~~

**E. Annual Report Review and Certification.** ~~The permittee shall prepare an annual report and certification that shall be submitted to EPA and IDEQ by January 31st of each year.~~

- ~~1. Annual Report Review. The permittee shall prepare an annual report summarizing the comprehensive site evaluations and inspections performed during the year. The report shall include the scope and dates of the inspections/evaluations, major observations related to implementation of the Plan, corrective actions taken as a result of the inspections/evaluations, description of the quantity and quality of storm water discharged, and Plan modification made during the year. The report shall also identify any incidents of non-compliance. Where a report does not identify any incidents of noncompliance, the report shall contain the certification under paragraph E.2., below: An annual review of the BMP Plan shall be conducted by the responsible manager and BMP committee.~~
- ~~2. Annual Certification. The Permittee shall prepare a certified statement that the above reviews (inspections and evaluations) have been completed and that the BMP Plan fulfills the requirements set forth in the permit. This statement shall~~

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be signed in accordance with Part V.E. (Signatory Requirements) of this permit. This statement shall be submitted to EPA ~~with the Annual Report~~ on or before January 31<sup>st</sup> of each year of operation under this permit ~~after the initial BMP submittal (the initial statement shall be submitted to EPA six months after submittal of the BMP Plan).~~

**F. Documentation.** The permittee shall maintain a copy of the BMP Plan at the facility and make it available to EPA or an authorized representative upon request. All offices of the permittee which are required to maintain a copy of the NPDES permit shall also maintain a copy of the BMP Plan.

**G. BMP Plan Modification.**

1. The permittee shall amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants or their release or potential release to the receiving waters.
2. Modification for Ineffectiveness. At any time, if the BMP Plan proves to be ineffective in achieving the general objective of preventing and minimizing the generation of pollutants and their release and potential release to the receiving waters and/or the specific requirements above, the permit and/or the BMP Plan shall be subject to modification to incorporate revised BMP requirements.
3. Any changes to the BMP Plan shall be consistent with the objectives and specific requirements listed above. All changes in the BMP Plan shall be reported to EPA ~~in the Annual Report required under Part E, above~~ writing.

### III. MONITORING, RECORDING AND REPORTING REQUIREMENTS

**A. Representative Sampling (Routine and Non-Routine Discharges).** The permittee shall collect all effluent samples from the effluent stream prior to discharge into the receiving waters. Samples and measurements taken for the purpose of monitoring shall be representative of the ~~volume and nature of the monitored discharge~~ activity.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the permittee shall collect additional samples at the appropriate outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be

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detected by a routine sample. The permittee shall analyze the additional samples for those parameters limited in Part I.A. of this permit that are likely to be affected by the discharge.

The permittee shall collect such additional samples as soon as the spill, discharge, or bypassed effluent reaches the outfall. The samples shall be analyzed in accordance with paragraph III.C (“Monitoring Procedures”). The permittee shall report all additional monitoring in accordance with paragraph III.D (“Additional Monitoring by Permittee”).

- B. Reporting of Monitoring Results.** The permittee shall summarize monitoring results each month on the Discharge Monitoring Report (DMR) form (EPA No. 3320-1). The permittee shall submit reports monthly, postmarked by the ~~10th~~ 20th day of the following month. The permittee shall sign and certify all DMRs, and all other reports, in accordance with the requirements of Part V.E. of this permit (“Signatory Requirements”). The permittee shall submit the legible originals of these documents to the Director, Office of Water, with copies to IDEQ at the following addresses:

United States Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, OW-133  
Seattle, Washington 98101

Idaho ~~Division~~ Department of Environmental Quality  
Idaho Falls Regional Office  
900 North Skyline, Suite B  
Idaho Falls, Idaho 83402

- C. Monitoring Procedures.** Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures have been specified in this permit.
- D. Additional Monitoring by Permittee.** If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the permittee shall include the results of this monitoring in the calculation and reporting of the data submitted in the DMR. ~~The Permittee shall indicate on the DMR whenever it has performed additional monitoring, and shall explain why it performed such monitoring.~~

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Upon request by the Director, the permittee shall submit results of any other sampling, regardless of the test method used.

**E. Records Contents.** ~~All effluent monitoring records shall bear the handwritten signature of the person who prepared them. In addition, all records~~ Records of monitoring information shall include:

1. the date, exact place, and time of sampling or measurements;
2. the names of the individual(s) who performed the sampling or measurements;
3. the date(s) analyses were performed;
4. the names of the individual(s) who performed the analyses;
5. the analytical techniques or methods used; and
6. the results of such analyses.

**F. Retention of Records.** The permittee shall retain records of all monitoring information, including, ~~but not limited to,~~ all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of DMRs, a copy of the NPDES permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report or application, ~~or for the term of this permit, whichever is longer.~~ This period may be extended by request of the Director or IDEQ at any time.

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

1. The permittee shall report the following occurrences of noncompliance by telephone within 24 hours from the time the permittee becomes aware of the circumstances:
  - a. any noncompliance that may endanger health or the environment;
  - b. any unanticipated bypass ~~that results in or contributes to an exceedence of~~ which exceeds any effluent limitation in the permit (See Part IV.G.F., "Bypass of Treatment Facilities");

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- ~~c. any upset that results in or contributes to an exceedance of which exceeds any effluent limitation in the permit (See Part IV.H.G., "Upset Conditions"); or~~
    - d. any violation of a maximum daily discharge limitation for any of the pollutants listed in Table 1 and Table 2 of Section I.A. of the permit requiring 24-hour reporting.
  2. The permittee shall also provide a written submission within five days of the time that the permittee becomes aware of any event required to be reported under subpart 1 above. The written submission shall contain:
    - a. a description of the noncompliance and its cause;
    - b. the period of noncompliance, including exact dates and times;
    - c. the estimated time noncompliance is expected to continue if it has not been corrected; and
    - d. steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
    - ~~e. the results of any monitoring data required under Paragraph III.A, "Representative Sampling (Routine and Non-Routine Discharges)."~~
  3. The Director may, ~~at his sole discretion,~~ waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the NPDES Compliance Hotline in Seattle, Washington, by telephone, (206) 553-1846.
  4. Reports shall be submitted to the addresses in Part III.B ("Reporting of Monitoring Results").

**H. Other Noncompliance Reporting.** The permittee shall report all instances of noncompliance not required to be reported within 24 hours, at the time that monitoring reports for Part III.B ("Reporting of Monitoring Results") are submitted. The reports shall contain the information listed in Part III.G.2 of this permit ("Twenty-four Hour Notice of Noncompliance Reporting").

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**I. Changes in Discharge of Toxic Substances.** The permittee shall notify the Director and IDEQ as soon as it knows, or has reason to believe:

1. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in the permit, if that discharge may reasonably be expected to exceed the highest of the following "notification levels":
  - a. One hundred micrograms per liter (100 ug/l);
  - b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
  - c. 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
  - d. The level established by the Director in accordance with 40 CFR 122.44(f).
2. That any activity has occurred or will occur that would result in any discharge, on a non-routine or infrequent basis, of any toxic pollutant that is not limited in the permit, if that discharge may reasonably be expected to exceed the highest of the following "notification levels":
  - a. Five hundred micrograms per liter (500 ug/l);
  - b. One milligram per liter (1 mg/l) for antimony;
  - c. 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
  - d. The level established by the Director in accordance with 40 CFR 122.44(f).

**J. Compliance Schedules.** Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance

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schedule of this permit must be submitted no later than 14 days following each schedule date.

#### IV. COMPLIANCE RESPONSIBILITIES

**A. Duty to Comply.** The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application.

#### **B. Penalties for Violations of Permit Conditions**

1. ~~Civil and Administrative Penalties.~~ Any Pursuant to 40 CFR Part 19 and the Act, any person who violates a permit condition implementing Sections section 301, 302, 306, 307, 308, 318, or 405 of the Act ~~shall be~~, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil ~~or administrative~~ penalty, not to exceed the maximum amounts authorized by Sections 309(d) ~~and 309(g)~~ of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$27,500 per day for each violation).
2. Administrative Penalties. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Pursuant to 40 CFR 19 and the Act, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$27,500). Pursuant to 40 CFR 19 and the Act, penalties for Class II violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$11,000 per day

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for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$137,500).

2. 3. Criminal Penalties:

- a. Negligent Violations. ~~Any~~ The Act provides that any person who negligently violates a ~~permit condition implementing Sections~~ sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both. ~~shall, upon conviction, be punished by a fine and/or imprisonment as specified in Section 309(c)(1) of the Act.~~
- b. Knowing Violations. Any person who knowingly violates a ~~permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act~~ shall, upon conviction, be punished by a fine and/or imprisonment as specified in ~~Section 309(c)(2) of the Act.~~ such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.
- c. Knowing Endangerment. Any person who knowingly violates a ~~permit condition implementing Sections~~ section 301, 302, 303, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine and/or imprisonment as specified in ~~Section 309(c)(3) of the Act.~~ of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more

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

- d. ~~False Statements. Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly~~ 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 Act permit, shall, upon conviction, be punished by a fine ~~and/or imprisonment as specified in Section 309(c)(4) of the Act.~~ of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

~~Except as provided in permit conditions in Part IV.G, ("Bypass of Treatment Facilities") and Part IV.H, ("Upset Conditions"), nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.~~

- C. Need to Halt or Reduce Activity not a Defense.** It shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this permit.
- D. Duty to Mitigate.** The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.
- E. Proper Operation and Maintenance.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related

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appurtenances) that 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.

~~**F. Removed Substances.** Solids, sludges, or other pollutants removed in the course of treatment or control of water and wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.~~

### **G. F. Bypass of Treatment Facilities**

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this Part.
2. Notice.
  - a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.
  - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part III.G ("Twenty-four Hour Notice of Noncompliance Reporting").
3. Prohibition of bypass.
  - a. Bypass is prohibited, and the Director ~~or IDEQ~~ may take enforcement action against the permittee for a bypass, unless:
    - i) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
    - ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment shall have

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been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

- iii) The permittee submitted notices as required under paragraph 2 of this Part.
- b. The Director ~~and IDEQ~~ may approve an anticipated bypass, after considering its adverse effects, if the Director ~~and IDEQ~~ determines that it will meet the three conditions listed above in paragraph 3.a. of this Part.

#### **H. G. Upset Conditions**

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the permittee meets the requirements of paragraph 2 of this Part. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
2. Conditions necessary for a demonstration of upset. To establish the affirmative defense of upset, the permittee 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 III.G, “Twenty-four Hour Notice of Noncompliance Reporting;” and
  - d. The permittee complied with any remedial measures required under Part IV.D, “Duty to Mitigate.”
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

**I. H. Toxic Pollutants.** The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within

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the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

**J. I. Planned Changes.** The permittee shall give notice to the Director and IDEQ as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under Part III.I (“Changes in Discharge of Toxic Substances”).

**K. J. Anticipated Noncompliance.** The permittee shall give advance notice to the Director and IDEQ of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

## V. GENERAL PROVISIONS

- A. 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.
- B. Duty to Reapply.** If the permittee intends to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit.
- C. Duty to Provide Information.** The permittee shall furnish to the Director and IDEQ, within the time specified in the request, any information that the Director or IDEQ may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director or IDEQ, upon request, copies of records required to be kept by this permit.

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- D. Other Information.** When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to the Director or IDEQ, it shall promptly submit the omitted facts or corrected information.
- E. Signatory Requirements.** All applications, reports or information submitted to the Director and IDEQ 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 Director or IDEQ 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 Director and IDEQ, and
    - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company.
  3. Changes to authorization. If an authorization under Part V.E.2 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 V.E.2. must be submitted to the Regional Administrator and IDEQ prior to or together with any reports, information, or applications to be signed by an authorized representative.

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4. Certification. Any person signing a document under this Part shall make the following certification:

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

- F. Availability of Reports.** Except for data determined to be confidential under 40 CFR 2, all reports prepared in accordance with this permit shall be available for public inspection at the offices of the Director and IDEQ. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.
- G. Inspection and Entry.** The permittee shall allow the Director, IDEQ, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:
1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
  2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
  3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
  4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.
- H. Oil and Hazardous Substance Liability.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any

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responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

**I. Property Rights.** The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private persons or property or any invasion of personal other private rights, nor any infringement of federal, state or local laws or regulations.

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

**K. J. Transfers.** This permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Director 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 Director 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 the notice described in paragraph 3 above is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2 above.

~~**K. State Laws.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.~~

**M.L. Reopener Clause.** This permit is subject to modification, revocation and reissuance, or termination at the request of any interested person (including the permittee) or upon EPA initiative. However, permits may only be modified, revoked or reissued, or terminated for the reasons specified in 40 CFR 122.62 or 122.64, and 40 CFR 124.5. This includes new information which was not available at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance, including but not limited to future monitoring results, results of the

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CERCLA EECA, and/or results of the ESA section 7 consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service. All requests for permit modification must be addressed to EPA in writing and shall contain facts or reasons supporting the request.

## VI. DEFINITIONS

1. "Administrator" means the Administrator of the EPA, or an authorized representative.
2. "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.
3. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
- ~~4.~~ "Chronic toxic unit" ("TU<sub>c</sub>") is a measure of chronic toxicity. The number of chronic toxic units in the effluent is calculated as 100/NOEC, where the NOEC is measured in percent effluent.
- ~~5.~~ "Chronic toxicity" measures a sublethal effect (e.g., reduced growth, reproduction) in an effluent compared to that of the control organisms.
6. 4. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.
7. 5. "Director" means the Director of the Office of Water, EPA, or an authorized representative.
8. 6. "DMR" means discharge monitoring report.
- ~~9.~~ 7. "EPA" means the United States Environmental Protection Agency.

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- ~~10.~~ "Final effluent" means effluent downstream from the last treatment unit and at, or upstream from, the point where a permitted outfall enters navigable waters, and through which all waste streams pass that are discharged from the outfall.
- ~~11.~~ 8. "Grab" sample is a single an individual sample or measurement taken at a specific time or collected over as short a period of time as is feasible not exceeding 15 minutes.
9. "IC<sub>25</sub>" means inhibition concentration 25. The IC<sub>25</sub> is a point estimate of the toxicant concentration that would cause a 25% reduction in a nonlethal biological measurement of the test organisms, such as reproduction or growth.
- ~~12.~~10. "IDEQ" means Idaho ~~Division~~ Department of Environmental Quality.
- ~~13.~~11. "Maximum daily discharge limitation" means the highest allowable "daily discharge."
- ~~14.~~12. "Method Detection Level Limit (MDL)" means the minimum concentration of an analyte a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero as determined by a specific laboratory method, and is determined from analysis of a sample in a given matrix containing the analyte.
- ~~15.~~13. "NOEC" means no observed effect concentration. The NOEC is the highest tested concentration of toxicant effluent to which organisms are exposed in a full life-cycle or partial life-cycle (short-term) test, that causes no observable adverse effect at a specific time of observation effects on the test organisms (e.g. i.e., the highest concentration of toxicant to in which the values for the observed responses are not statistically significantly different from the controls).
- ~~16.~~14. "QA/QC" means quality assurance/quality control.
- ~~17.~~15. "Regional Administrator" means the EPA Region 10 Regional Administrator, or an authorized representative.
- ~~18.~~16. "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.

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- 19.17. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
20. ~~"Waste stream" means any non-de minimus stream of pollutants within the permittee's facility that enters any permitted outfall or navigable waters. This includes spills and other unintentional, non-routine or unanticipated discharges.~~
- 21.18. "24-hour composite" sample means a ~~flow-proportioned mixture of not less than~~ combination of at least 8 discrete sample aliquots. ~~Each aliquot shall be a grab sample of not less than~~ of at least 100 milliliters, collected at periodic intervals from the same location, during the operating hours of the facility over a 24 hour period. The composite must be flow proportional. The sample aliquots must ~~and shall~~ be collected and stored in accordance with procedures prescribed in the most recent edition of *Standard Methods for the Examination of Water and Wastewater*.

