

## **EXHIBIT B**



REGION 6  
1445 ROSS AVENUE  
DALLAS, TEXAS 75202-2733

NPDES Permit No. **NM0030996**

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AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT  
DISCHARGE ELIMINATION SYSTEM

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

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

is authorized to discharge from a facility located 35 miles north of Milan, in Grants, McKinley County, New Mexico. The discharges from multiple outfalls will be to receiving waters named Kim-me-ni-oli Valley Tributary, thence into Chaco River, a tributary of San Juan River in Segment No. 20.6.4.97 of the San Juan River Basin.

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

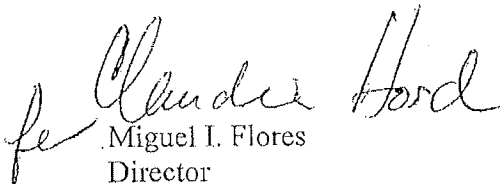
This is a first-time issued permit.

This permit shall become effective on **February 1, 2009**

This permit and the authorization to discharge shall expire at midnight, **January 31, 2013**

Issued on **December 29, 2008**

Prepared by

  
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Permits & Technical Section (6WQ-PP)

NPDES NO. NM0030996

2

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PART I – REQUIREMENTS FOR NPDES PERMITS

SECTION A. LIMITATIONS AND MONITORING REQUIREMENTS

The discharges are located at the following coordinates:

Outfall No.	Latitude	Longitude
001	35°39'02.02"	107°51'22.65"
002	35°38'28.46"	107°50'19.11"
003	35°39'08.37"	107°51'53.32"
004	35°39'06.06"	107°51'58.08"
005	35°38'47.44"	107°52'27.50"
006	35°38'57.61"	107°52'27.50"
007	35°38'25.87"	107°50'44.93"
008	35°38'35.86"	107°38'35.86"
009	35°38'29.58"	107°51'19.92"
010	35°38'33.09"	107°51'17.77"
011	35°38'50.27"	107°51'13.36"
012	35°38'50.73"	107°51'17.55"
013	35°39'44.69"	107°52'05.32"
014	35°39'47.57"	107°52'31.75"
015	35°39'57.04"	107°52'22.27"
016	35°40'00.32"	107°52'55.30"
017	35°40'00.18"	107°53'09.12"
018	35°38'52.74"	107°51'34.11"
019	35°39'23.43"	107°51'44.87"
020	35°41'45.82"	107°55'03.03"
021	35°41'44.48"	107°54'36.72"
022	35°40'02.48"	107°52'24.14"
023	35°40'03.58"	107°53'32.60"
024	35°40'05.61"	107°53'47.06"
025	35°40'03.87"	107°54'20.23"
026	35°40'07.57"	107°54'38.62"
027	35°40'42.21"	107°54'24.03"
028	35°40'36.00"	107°54'50.06"
029	35°40'42.23"	107°54'46.87"

1. Outfalls Associated with Coal Preparation Areas

During the period beginning the effective date of the permit and lasting through the expiration date of the permit (unless otherwise noted), the permittee is authorized to discharge process water from sediment ponds in coal preparation areas. Such discharges shall be limited and monitored (samples must be collected beginning within the first 30 minutes (or as soon as practical, but not to exceed 1 hour) of the discharge) by the permittee as specified below and be monitored for additional pollutants as specified as section B. of this part:

EFFLUENT CHARACTERISTICS		DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
		Standard Units			
POLLUTANT	STORET CODE	MINIMUM	MAXIMUM	MEASUREMENT FREQUENCY	SAMPLE TYPE
pH	00400	6	9	1/Day	Grab

EFFLUENT CHARACTERISTICS		DISCHARGE LIMITATIONS ug/l, UNLESS NOTED		MONITORING & REPORTING REQUIREMENTS	
Pollutant	Storet Code	Monthly Avg	Daily Max	Measurement Frequency	Sample Type
Flow	50050	Report MGD	Report MGD	1/Day	Estimate *1
Total Suspended Solids *2	00530	35 mg/l	70 mg/l	1/Day	Grab
Total Iron *2	01045	3.5 mg/l	7.0 mg/l	1/Day	Grab

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

Footnotes:

\*1 "Estimate" flow measurements shall not be subject to the accuracy provisions established at Part III.C.6. The daily flow value may be estimated using best engineering judgment.

\*2 If a discharge is caused by precipitation within any 24 hour period less than or equal to the 10-year, 24-hour precipitation event, the discharge may comply with 0.5 ml/l settleable solids instead of TSS and Iron.

\*3 When the first discharge occurs in each calendar year. If a storm event causes discharges at more than one outfall, a representative sample from coal preparation area may be used for WET testing.

2. Outfalls Associated with Mine Drainage in Active Mining Areas

During the period beginning the effective date of the permit and lasting through the expiration date of the permit (unless otherwise noted), the permittee is authorized to discharge mine drainage in active mining areas. Such discharges shall be limited and monitored (samples must be collected beginning within the first 30 minutes (or as soon as practical, but not to exceed 1 hour) of the discharge) by the permittee as specified below and be monitored for additional pollutants as specified as section B. of this part:

EFFLUENT CHARACTERISTICS		DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
		Standard Units			
POLLUTANT	STORET CODE	MINIMUM	MAXIMUM	MEASUREMENT FREQUENCY	SAMPLE TYPE
pH	00400	6	9	1/Day	Grab

EFFLUENT CHARACTERISTICS		DISCHARGE LIMITATIONS		MONITORING & REPORTING REQUIREMENTS	
		ug/l, UNLESS NOTED			
Pollutant	Storet Code	Monthly Avg	Daily Max	Measurement Frequency	Sample Type
Flow	50050	Report MGD	Report MGD	1/Day	Estimate *1
Total Suspended Solids *2	00530	35 mg/l	70 mg/l	1/Day	Grab
Total Iron *2	01045	3.0 mg/l	6.0 mg/l	1/Day	Grab

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

Footnotes:

\*1 "Estimate" flow measurements shall not be subject to the accuracy provisions established at Part III.C.6. The daily flow value may be estimated using best engineering judgment.

\*2 If a discharge is caused by precipitation within any 24 hour period less than or equal to the 10-year, 24-hour precipitation event, the discharge may comply with 0.5 ml/l settleable solids instead of TSS and Iron.

\*3 When the first discharge occurs in each calendar year. If a storm event causes discharges at more than one outfall, a representative sample from the most disturbed area may be used for WET testing.

3. Outfall 018

During the period beginning the effective date of the permit and lasting through the expiration date of the permit (unless otherwise noted), the permittee is authorized to discharge treated sanitary waste. Such discharges shall be limited and monitored (samples must be collected beginning within the first 30 minutes (or as soon as practical, but not to exceed 1 hour) of the discharge) by the permittee as specified below:

EFFLUENT CHARACTERISTICS		DISCHARGE LIMITATIONS Standard Units		MONITORING REQUIREMENTS	
POLLUTANT	STORET CODE	MINIMUM	MAXIMUM	MEASUREMENT FREQUENCY	SAMPLE TYPE
PH	00400	6	9	1/Day	Grab

EFFLUENT CHARACTERISTICS		DISCHARGE LIMITATIONS Ug/l, UNLESS NOTED		MONITORING & REPORTING REQUIREMENTS	
Pollutant	Storet Code	Monthly Avg	Daily Max	Measurement Frequency	Sample Type
Flow	50050	Report MGD	Report MGD	1/Day	Estimate *1
Biochemical Oxygen Demand, 5-day	00310	30 mg/l	45 mg/l	1/Week	Grab
Total Suspended Solids	00530	30 mg/l	45 mg/l	1/Week	Grab
E. Coli Bacteria *2	51040	548 cfu	2507 cfu	1/Week	Grab
Total Residual Chlorine	50060	NA	0.019 mg/l *3	1/Week	Grab

EFFLUENT CHARACTERISTICS	DISCHARGE MONITORING		MONITORING REQUIREMENTS	
WHOLE EFFLUENT TOXICITY TESTING (48-Hour Static Renewal)	30-DAY AVG	48-HR MINIMUM	MEASUREMENT FREQUENCY	SAMPLE TYPE
Daphnia pulex	Report	Report	Once/5 Years *4	Grab

Footnotes:

- \*1 "Estimate" flow measurements shall not be subject to the accuracy provisions established at Part III.C.6. The daily flow value may be estimated using best engineering judgment.
- \*2 Colony forming units (cfu) per 100 ml.
- \*3 Instantaneous maximum and can not be averaged for reporting purpose.
- \*4 Test should be taken when the first discharge occurs.

#### 4. Outfalls Associated with Reclamation Areas

- (1) This subpart applies to drainage at western alkaline coal mining operations from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas where the discharge, before any treatment, meets all the following requirements:
    - (a) pH is equal to or greater than 6.0;
    - (b) Dissolved iron concentration is less than 10 mg/L; and
    - (c) Net alkalinity is greater than zero.
  - (i) The term *brushing and grubbing area* means the area where woody plant materials that would interfere with soil salvage operations have been removed or incorporated into the soil that is being salvaged.
  - (ii) The term *regraded area* means the surface area of a coal mine that has been returned to required contour.
  - (iii) The term *sediment* means undissolved organic and inorganic material transported or deposited by water.
  - (iv) The term *sediment yield* means the sum of the soil losses from a surface minus deposition in macro-topographic depressions, at the toe of the hillslope, along field boundaries, or in terraces and channels sculpted into the hillslope.
  - (v) The term *topsoil stockpiling area* means the area outside the mined-out area where topsoil is temporarily stored for use in reclamation, including containment berms.
  - (vi) The term *western coal mining operation* means a surface or underground coal mining operation located in the interior western United States, west of the 100th meridian west longitude, in an arid or semiarid environment with an average annual precipitation of 26.0 inches or less.
- (2) At least 6 months prior to entering into the reclamation process, the operator must submit a site specific Sediment Control Plan (Plan) to the permitting authority that is designed to prevent an increase in the average annual sediment yield from pre-mined, undisturbed conditions. The Sediment Control Plan must identify best management practices (BMPs) and also must describe design specifications, construction specifications, maintenance schedules, criteria for inspection, as well as expected performance and longevity of the best management practices. The Sediment Control Plan must be approved by the permitting authority and be incorporated into the permit as an effluent limitation. If the Plan is approved by the SMCRA agency, the Plan is considered to meet EPA's approval process, unless EPA disapproves the Plan within 90 days upon the reception of the Plan.
  - (3) Using watershed models, the operator must demonstrate that implementation of the Sediment Control Plan will result in average annual sediment yields that will not be greater



than the sediment yield levels from premined, undisturbed conditions. The operator must use the same watershed model that was, or will be, used to acquire the SMCRA permit.

- (4) The operator must submit an annual Sediment Control Report every 12 months from the approval of the Sediment Control Plan. This report shall demonstrate that the facility has met requirements set forth in above sub-sections (2) and (3).
- (5) The permittee shall also send a copy of the approved Plan and annual reports to the State of New Mexico Environment Department.
- (6) Alternative Effluent Limitations. The permittee may choose to comply with the following effluent limitations instead of Sediment Control Plan as required in Items (1) – (5) above.

Total Settleable Solids: 0.5 ml/l maximum not to be exceeded  
pH: within the range of 6.0 to 9.0 at all times

#### FLOATING SOLIDS, VISIBLE FOAM AND/OR OILS

There shall be no discharge of floating solids or visible foam in other than trace amounts. There shall be no discharge of visible films of oil, globules of oil, grease or solids in or on the water, or coatings on stream banks.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the points of discharge from the associate sediment ponds prior to the receiving stream.

#### TOXICS

No discharge shall contain any substance, including but not limited to selenium, DDT, PCB's and dioxin, at a level which, when added to background concentration, can lead to bioaccumulation to toxic levels in any animal species

## B. SAMPLE AND TEST REQUIREMENTS

The permittee shall monitor all pollutants listed below at each outfall, except Outfall 018, once per calendar year when a discharge occurs.

POLLUTANTS	CAS No.	STORET
Radioactivity, Nutrients, and Chlorine		
Aluminum, dissolved	7429-90-5	01106
Boron, dissolved	7440-42-8	01022
Cobalt, dissolved	7440-48-4	01037
Vanadium, dissolved	7440-62-2	01087
Ra-226 and Ra-228 (pCi/l)		11503
Tritium (pCi/l)		04124
Gross Alpha (pCi/l)		80029
Total Residual Chlorine	7782-50-5	50060
METALS AND CYANIDE		
Antimony, dissolved (P)	7440-36-0	01097
Arsenic, dissolved (P)	7440-38-2	01000
Cadmium, dissolved	7440-43-9	01025
Chromium, dissolved	18540-29-9	01034
Copper, dissolved	7440-50-8	01042
Lead, dissolved	7439-92-1	01049
Mercury, total	7439-97-6	71900
Nickel, dissolved (P)	7440-02-0	01065
Selenium, dissolved (P)	7782-49-2	01145
Silver, dissolved	7440-22-4	01077
Thallium, dissolved (P)	7440-28-0	01059
Zinc, Dis.	7440-66-6	01080
Cyanide, weak acid dissociable	57-12-5	00718
DIOXIN		
2,3,7,8-TCDD	1764-01-6	34675
VOLATILE COMPOUNDS		
Tetrachloroethylene	127-18-4	34475
ACID COMPOUNDS		
Pentachlorophenol	87-86-5	39032
BASE/NEUTRAL		

Benzo(a)pyrene	50-32-8	34247
Hexachlorobenzene	118-74-1	39700
PESTICIDES AND PCBS		
Aldrin	309-00-2	39330
Gamma-BHC	58-89-9	39340
Chlordane	57-74-9	39350
4,4'-DDT and derivatives	50-29-3	39300
Dieldrin	60-57-1	39380
Alpha-Endosulfan	959-98-8	34361
Beta-Endosulfan	33213-65-9	34356
Endrin	72-20-8	39390
Heptachlor	76-44-8	39410
Heptachlor Epoixde	1024-57-3	39420
PCBs	1336-36-3	39516
Toxaphene	8001-35-2	39400

#### C. DISCHARGE MONITORING REPORTS

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

Reporting periods shall end on the last day of the months March, June, September, and December.

The permittee is required to submit regular quarterly reports as described above postmarked no later than the 28<sup>th</sup> day of the month following each reporting period.

#### D. DOCUMENTS AND APPLICATION FOR RENEWAL

A copy of documents and reports required in the permit and application for permit renewal shall be sent to New Mexico Environment Department (NMED) at the mailing address listed in Part III.D.4 of this permit.

## PART II - OTHER CONDITIONS

### A. 24-HOUR ORAL REPORTING: DAILY MAXIMUM LIMITATION VIOLATIONS

Under the provisions of Part III.D.7.b.(3) of this permit, violations of daily maximum limitations for the following pollutants shall be reported orally to EPA Region 6, Compliance and Assurance Division, Water Enforcement Branch (6EN-W), Dallas, Texas, and concurrently to NMED within 24 hours from the time the permittee becomes aware of the violation followed by a written report in five days.

None.

### B. MINIMUM QUANTIFICATION LEVEL (MQL)

If any individual analytical test result is less than the minimum quantification level listed in Appendix A, a value of zero (0) may be used for that individual result for the Discharge Monitoring Report (DMR) calculations and reporting requirements.

The permittee may develop an effluent specific method detection limit (MDL) in accordance with Appendix B to 40CFR136. For any pollutant for which the permittee determines an effluent specific MDL, the permittee shall send to the EPA Region 6 NPDES Permits Branch (6WQ-P) a report containing QA/QC documentation, analytical results, and calculations necessary to demonstrate that the effluent specific MDL was correctly calculated. An effluent specific minimum quantification level (MQL) shall be determined in accordance with the following calculation:

$$\text{MQL} = 3.3 \times \text{MDL}$$

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

### C. PERMIT MODIFICATION AND REOPENER

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

The permit may be reopened and modified if new information is received that was not available at the time of permit issuance that would have justified the application of different permit conditions at the time of permit issuance.

### D. SMCRA BOND RELEASE

When the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work has been satisfactorily completed on a watershed or a specific part of a disturbed area, the permittee may request to terminate the corresponding NPDES discharge points to

that specific drainage area. The permittee must also demonstrate that the Phase III bond for that particular drainage area has been released before permit coverage can be terminated.

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

I. SCOPE AND METHODOLOGY

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

APPLICABLE TO FINAL OUTFALL(S): See Part I

REPORTED ON DMR AS FINAL OUTFALL: Same as above

CRITICAL DILUTION (%): 100%

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

COMPOSITE SAMPLE TYPE: Defined at PART I

TEST SPECIES/METHODS: 40 CFR Part 136

Daphnia pulex acute static renewal 48-hour definitive toxicity test using EPA/600/4-90/027F, or the latest update thereof. A minimum of five (5) replicates with eight (8) organisms per replicate must be used in the control and in each effluent dilution of this test.

- b. The NOEC (No Observed Lethal Effect Concentration) is defined as the greatest effluent dilution at and below which lethality that is statistically different from the control (0% effluent) at the 95% confidence level does not occur. Acute test failure is defined as a demonstration of a statistically significant lethal effect at test completion to a test species at or below the critical dilution.
- c. This permit may be reopened to require whole effluent toxicity limits, chemical specific effluent limits, additional testing, and/or other appropriate actions to address toxicity.
- d. Test failure is defined as a demonstration of statistically significant lethal effects to a test species at or below the effluent critical dilution.

2. PERSISTENT LETHALITY

The requirements of this subsection apply only when a toxicity test demonstrates significant lethal effects at or below the critical dilution. Significant lethal effects are herein defined as a statistically significant difference at the 95% confidence level between the survival of the appropriate test organism in a specified effluent dilution and the control (0% effluent).

- a. Part I Testing Frequency Other Than Monthly

- i. The permittee shall conduct a total of two (2) additional tests for any species that demonstrates significant lethal effects at or below the critical dilution. The two additional tests shall be conducted monthly during the next two consecutive months. The permittee shall not substitute either of the two additional tests in lieu of routine toxicity testing. The full report shall be prepared for each test required by this section in accordance with procedures outlined in Item 4 of this section and submitted with the period discharge monitoring report (DMR) to the permitting authority for review.
- ii. If one or both of the two additional tests demonstrates significant lethal effects at or below the critical dilution, the permittee shall initiate Toxicity Reduction Evaluation (TRE) requirements as specified in Item 5 of this section. The permittee shall notify EPA in writing within 5 days of the failure of any retest, and the TRE initiation date will be the test completion date of the first failed retest. A TRE may also be required due to a demonstration of intermittent lethal effects at or below the critical dilution, or for failure to perform the required retests.
- iii. If one or both of the two additional tests demonstrates significant lethal effects at or below the critical dilution, the permittee shall henceforth increase the frequency of testing for this species to once per quarter for the life of the permit.
- iv. The provisions of Item 2.a are suspended upon submittal of the TRE Action Plan.

### 3. REQUIRED TOXICITY TESTING CONDITIONS

#### a. Test Acceptance

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

- i. Each toxicity test control (0% effluent) must have a survival equal to or greater than 90%.
- ii. The percent coefficient of variation between replicates shall be 40% or less in the control (0% effluent) for: *Daphnia pulex* survival test.
- iii. The percent coefficient of variation between replicates shall be 40% or less in the critical dilution, unless significant lethal effects are exhibited for: *Daphnia pulex* survival test.

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

b. Statistical Interpretation

For the *Daphnia pulex* survival test, the statistical analyses used to determine if there is a statistically significant difference between the control and the critical dilution shall be in accordance with the methods for determining the No Observed Effect Concentration (NOEC) as described in EPA/600/4-90/027F or the most recent update thereof.

If the conditions of Test Acceptability are met in Item 3.a above and the percent survival of the test organism is equal to or greater than 90% in the critical dilution concentration and all lower dilution concentrations, the test shall be considered to be a passing test, and the permittee shall report an NOEC of not less than the critical dilution for the DMR reporting requirements found in Item 4 below.

c. Dilution Water

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

- (A) toxicity tests conducted on effluent discharges to receiving water classified as intermittent streams; and
- (B) toxicity tests conducted on effluent discharges where no receiving water is available due to zero flow conditions.

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

- (A) a synthetic dilution water control which fulfills the test acceptance requirements of Item 3.a was run concurrently with the receiving water control;
- (B) the test indicating receiving water toxicity has been carried out to completion (i.e., 48 hours);
- (C) the permittee includes all test results indicating receiving water toxicity with the full report and information required by Item 4 below; and
- (D) the synthetic dilution water shall have a pH, hardness, and alkalinity similar to that of the receiving water or closest downstream perennial water not adversely affected by the

discharge, provided the magnitude of these parameters will not cause toxicity in the synthetic dilution water.

d. Samples and Composites

- i. The permittee shall collect two flow-weighted composite samples from the outfall(s) listed at Item 1.a above.
- ii. The permittee shall collect a second composite sample for use during the 24-hour renewal of each dilution concentration. The permittee must collect the composite samples so that the maximum holding time for any effluent sample shall not exceed 36 hours. The permittee must have initiated the toxicity test within 36 hours after the collection of the last portion of the first composite sample. Samples shall be chilled to 4 degrees Centigrade during collection, shipping, and/or storage.
- iii. The permittee must collect the composite samples such that the effluent samples are representative of any periodic episode of chlorination, biocide usage or other potentially toxic substance discharged on an intermittent basis.
- iv. If the flow from the outfall(s) being tested ceases during the collection of effluent samples, the requirements for the minimum number of effluent samples, the minimum number of effluent portions and the sample holding time are waived during that sampling period. However, the permittee must collect an effluent composite sample volume during the period of discharge that is sufficient to complete the required toxicity tests with daily renewal of effluent. When possible, the effluent samples used for the toxicity tests shall be collected on separate days. The effluent composite sample collection duration and the static renewal protocol associated with the abbreviated sample collection must be documented in the full report required in Item 4 of this section.

4. REPORTING

- a. The permittee shall prepare a full report of the results of all tests conducted pursuant to this Part in accordance with the Report Preparation Section of EPA/600/4-90/027F, for every valid or invalid toxicity test initiated, whether carried to completion or not. The permittee shall retain each full report pursuant to the provisions of PART III.C.3 of this permit. The permittee shall submit full reports upon the specific request of the Agency. For any test which fails, is considered invalid or which is terminated early for any reason, the full report must be submitted for agency review.
- b. A valid test must be reported on the DMR during each reporting period specified in PART I of this permit unless the permittee is performing a TRE which may increase the frequency of testing and reporting. Only ONE set of biomonitoring data is to be recorded on the DMR for each reporting period. The data submitted



should reflect the LOWEST Survival results during the reporting period. All invalid tests, repeat tests (for invalid tests), and retests (for tests previously failed) performed during the reporting period must be attached to the DMR for EPA review.

- c. The permittee shall report the following results of each valid toxicity test on the subsequent monthly DMR for that reporting period in accordance with PART III.D.4 of this permit. Submit retest information clearly marked as such with the following month's DMR. Only results of valid tests are to be reported on the DMR.
- i. *Daphnia pulex*
- (A) If the NOEC for survival is less than the critical dilution, enter a "1"; otherwise, enter a "0" for Parameter No. TEM3D.
- (B) Report the NOEC value for survival, Parameter No. TOM3D.
- (C) Report the highest (critical dilution or control) Coefficient of Variation, Parameter No. TQM3D.
- d. Enter the following codes on the DMR for retests only:
- i. For retest number 1, Parameter 22415, enter a "1" if the NOEC for survival is less than the critical dilution; otherwise, enter a "0."
- ii. For retest number 2, Parameter 22416, enter a "1" if the NOEC for survival is less than the critical dilution; otherwise, enter a "0."

#### Monitoring Frequency Reduction

- a. The permittee may apply for a testing frequency reduction upon the successful completion of the first four consecutive quarters of testing, with no lethal effects demonstrated at or below the critical dilution in any test. If granted, the monitoring frequency for the test species may be reduced to once per six-months.
- b. **CERTIFICATION** - The permittee must certify in writing that no test failures have occurred and that all tests meet all test acceptability criteria in item 3.a. above. In addition the permittee must provide a list with each test performed including test initiation date, species, NOECs for lethal effects and the maximum coefficient of variation for the controls. Upon review and acceptance of this information the agency will issue a letter of confirmation of the monitoring frequency reduction. A copy of the letter will be forwarded to the agency's Permit Compliance System section to update the permit reporting requirements.
- c. **SURVIVAL FAILURES** - If any test fails the survival endpoint at any time during the life of this permit, two monthly retests are required and the monitoring frequency for the affected test species shall be increased to once per quarter until

the permit is re-issued. Monthly retesting is not required if the permittee is performing a TRE.

- d. This monitoring frequency reduction applies only until the expiration date of this permit, at which time the monitoring frequency for the test species reverts to once per quarter until the permit is re-issued.

#### 5. TOXICITY REDUCTION EVALUATION (TRE)

- a. Within ninety (90) days of confirming lethality in the retests, the permittee shall submit a Toxicity Reduction Evaluation (TRE) Action Plan and Schedule for conducting a TRE. The TRE Action Plan shall specify the approach and methodology to be used in performing the TRE. A Toxicity Reduction Evaluation is an investigation intended to determine those actions necessary to achieve compliance with water quality-based effluent limits by reducing an effluent's toxicity to an acceptable level. A TRE is defined as a step-wise process which combines toxicity testing and analyses of the physical and chemical characteristics of a toxic effluent to identify the constituents causing effluent toxicity and/or treatment methods which will reduce the effluent toxicity. The TRE Action Plan shall lead to the successful elimination of effluent toxicity at the critical dilution and include the following:

- i. Specific Activities. The plan shall detail the specific approach the permittee intends to utilize in conducting the TRE. The approach may include toxicity characterizations, identifications and confirmation activities, source evaluation, treatability studies, or alternative approaches. When the permittee conducts Toxicity Characterization Procedures the permittee shall perform multiple characterizations and follow the procedures specified in the documents "Methods for Aquatic Toxicity Identification Evaluations: Phase I Toxicity Characterization Procedures" (EPA-600/6-91/003) or alternate procedures. When the permittee conducts Toxicity Identification Evaluations and Confirmations, the permittee shall perform multiple identifications and follow the methods specified in the documents "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), as appropriate.

The documents referenced above may be obtained through the National Technical Information Service (NTIS) by phone at (703) 487-4650, or by writing:

U.S. Department of Commerce  
National Technical Information Service  
5285 Port Royal Road  
Springfield, VA 22161

- ii. Sampling Plan (e.g., locations, methods, holding times, chain of custody, preservation, etc.). The effluent sample volume collected for all tests shall be adequate to perform the toxicity test, toxicity characterization, identification and confirmation procedures, and conduct chemical specific analyses when a probable toxicant has been identified;

Where the permittee has identified or suspects specific pollutant(s) and/or source(s) of effluent toxicity, the permittee shall conduct, concurrent with toxicity testing, chemical specific analyses for the identified and/or suspected pollutant(s) and/or source(s) of effluent toxicity. Where lethality was demonstrated within 24 hours of test initiation, each composite sample shall be analyzed independently. Otherwise the permittee may substitute a composite sample, comprised of equal portions of the individual composite samples, for the chemical specific analysis;

- iii. Quality Assurance Plan (e.g., QA/QC implementation, corrective actions, etc.); and
  - iv. Project Organization (e.g., project staff, project manager, consulting services, etc.).
- b. The permittee shall initiate the TRE Action Plan within thirty (30) days of plan and schedule submittal. The permittee shall assume all risks for failure to achieve the required toxicity reduction.
  - c. The permittee shall submit a quarterly TRE Activities Report, with the Discharge Monitoring Report in the months of January, April, July and October, containing information on toxicity reduction evaluation activities including:
    - i. any data and/or substantiating documentation which identifies the pollutant(s) and/or source(s) of effluent toxicity;
    - ii. any studies/evaluations and results on the treatability of the facility's effluent toxicity; and
    - iii. any data which identifies effluent toxicity control mechanisms that will reduce effluent toxicity to the level necessary to meet no significant lethality at the critical dilution.

A copy of the TRE Activities Report shall also be submitted to the state agency.

- d. The permittee shall submit a Final Report on Toxicity Reduction Evaluation Activities no later than twenty-eight (28) months from confirming lethality in the retests, which provides information pertaining to the specific control mechanism selected that will, when implemented, result in reduction of effluent toxicity to no significant lethality at the critical dilution. The report will also provide a specific corrective action schedule for implementing the selected control mechanism.

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A copy of the Final Report on Toxicity Reduction Evaluation Activities shall also be submitted to the state agency.

- c. Quarterly testing during the TRE is a minimum monitoring requirement. EPA recommends that permittees required to perform a TRE not rely on quarterly testing alone to ensure success in the TRE, and that additional screening tests be performed to capture toxic samples for identification of toxicants. Failure to identify the specific chemical compound causing toxicity test failure will normally result in a permit limit for whole effluent toxicity limits per federal regulations at 40 CFR 122.44(d)(1)(v).

## APPENDIX A of PART II

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

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

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

(MQL's Revised November 1, 2007)

## Footnotes:

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

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

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

**2. DUTY TO COMPLY**

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

**3. TOXIC POLLUTANTS**

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

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

**4. DUTY TO REAPPLY**

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

**5. PERMIT FLEXIBILITY**

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

**6. PROPERTY RIGHTS**

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

**7. DUTY TO PROVIDE INFORMATION**

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

**8. CRIMINAL AND CIVIL LIABILITY**

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

**9. OIL AND HAZARDOUS SUBSTANCE LIABILITY**

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

**10. STATE LAWS**

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

11. SEVERABILITY

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

B. PROPER OPERATION AND MAINTENANCE

1. NEED TO HALT OR REDUCE NOT A DEFENSE

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

2. DUTY TO MITIGATE

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

3. PROPER OPERATION AND MAINTENANCE

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

4. BYPASS OF TREATMENT FACILITIES

a. BYPASS NOT EXCEEDING LIMITATIONS

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

b. NOTICE

(1) ANTICIPATED BYPASS

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

(2) UNANTICIPATED BYPASS

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

c. PROHIBITION OF BYPASS

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

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

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

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

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



5. UPSET CONDITIONS

a. EFFECT OF AN UPSET

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

b. CONDITIONS NECESSARY FOR A DEMONSTRATION OF UPSET

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

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

c. BURDEN OF PROOF

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

6. REMOVED SUBSTANCES

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

7. PERCENT REMOVAL (PUBLICLY OWNED TREATMENT WORKS)

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

C. MONITORING AND RECORDS

1. INSPECTION AND ENTRY

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

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

2. REPRESENTATIVE SAMPLING

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

3. RETENTION OF RECORDS

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

4. RECORD CONTENTS

Records of monitoring information shall include:

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

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

5. MONITORING PROCEDURES

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

6. FLOW MEASUREMENTS

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

D. REPORTING REQUIREMENTS

1. PLANNED CHANGES

a. INDUSTRIAL PERMITS

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

- (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR Part 122.29(b); or,
- (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements listed at Part III.D.10.a.

b. MUNICIPAL PERMITS

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

2. ANTICIPATED NONCOMPLIANCE

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

3. TRANSFERS

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act.

4. DISCHARGE MONITORING REPORTS AND OTHER REPORTS

Monitoring results must be reported on Discharge Monitoring Report (DMR) Form EPA No. 3320-1 in accordance with the "General Instructions" provided on the form. The permittee shall submit the original DMR signed and certified as required by

Part III.D.11 and all other reports required by Part III.D. to the EPA at the address below. Duplicate copies of DMR's and all other reports shall be submitted to the appropriate State agency (ies) at the following address (es):

EPA:

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

New Mexico:

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

5. ADDITIONAL MONITORING BY THE PERMITTEE

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

6. AVERAGING OF MEASUREMENTS

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

7. TWENTY-FOUR HOUR REPORTING

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

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

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

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

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

8. OTHER NONCOMPLIANCE

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

9. OTHER INFORMATION

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

10. CHANGES IN DISCHARGES OF TOXIC SUBSTANCES

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

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

- (1) One hundred micrograms per liter (100 µg/L);

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

#### II. SIGNATORY REQUIREMENTS

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

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

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

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

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

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

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

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

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

- b. ALL REPORTS required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization is made in writing by a person described above;
- (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,
- (3) The written authorization is submitted to the Director.

c. CERTIFICATION

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

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

12. AVAILABILITY OF REPORTS

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

E. PENALTIES FOR VIOLATIONS OF PERMIT CONDITIONS1. CRIMINALa. NEGLIGENT VIOLATIONS

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

b. KNOWING VIOLATIONS

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

c. KNOWING ENDANGERMENT

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

d. FALSE STATEMENTS

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

2. CIVIL PENALTIES

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

3. ADMINISTRATIVE PENALTIES

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

a. CLASS I PENALTY

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

b. CLASS II PENALTY

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

F. DEFINITIONS

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

1. ACT means the Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.
2. ADMINISTRATOR means the Administrator of the U.S. Environmental Protection Agency.
3. APPLICABLE EFFLUENT STANDARDS AND LIMITATIONS means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards or performance, toxic effluent standards and prohibitions, and pretreatment standards.
4. APPLICABLE WATER QUALITY STANDARDS means all water quality standards to which a discharge is subject under the Act.
5. BYPASS means the intentional diversion of waste streams from any portion of a treatment facility.
6. DAILY DISCHARGE means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the sampling day. "Daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge" determination of concentration shall be arithmetic average (weighted by flow value) of all samples collected during that sampling day.
7. DAILY MAXIMUM discharge limitation means the highest allowable "daily discharge" during the calendar month.
8. DIRECTOR means the U.S. Environmental Protection Agency Regional Administrator or an authorized representative.
9. ENVIRONMENTAL PROTECTION AGENCY means the U.S. Environmental Protection Agency.
10. GRAB SAMPLE means an individual sample collected in less than 15 minutes.
11. INDUSTRIAL USER means a non-domestic discharger, as identified in 40 CFR 403, introducing pollutants to a publicly owned treatment works.
12. MONTHLY AVERAGE (also known as DAILY AVERAGE) discharge limitations means the highest allowable average of "daily discharge(s)" over a calendar month, calculated as the sum of all "daily discharge(s)" measured during a calendar month divided by the number of "daily discharge(s)" measured during that month. When the permit establishes daily average concentration effluent limitations or conditions, the daily average concentration means the arithmetic average (weighted by flow) of all "daily discharge(s)" of concentration determined during the calendar month where C = daily concentration, F = daily flow, and n = number of daily samples: daily average discharge =
 
$$\frac{C_1F_1 + C_2F_2 + \dots + C_nF_n}{F_1 + F_2 + \dots + F_n}$$
13. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402, and 405 of the Act.
14. SEVERE PROPERTY DAMAGE means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
15. SEWAGE SLUDGE means the solids, residues, and precipitates separated from or created in sewage by the unit processes of a publicly owned treatment works. Sewage as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff that are discharged to or otherwise enter a publicly owned treatment works.
16. TREATMENT WORKS means any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage and industrial wastes of a liquid nature to implement Section 201 of the Act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, sewage collection systems, pumping, power and other equipment, and their appurtenances, extension, improvement, remodeling, additions, and alterations thereof.

17. UPSET means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
18. FOR FECAL COLIFORM BACTERIA, a sample consists of one effluent grab portion collected during a 24-hour period at peak loads.
19. The term "MGD" shall mean million gallons per day.
20. The term "mg/L" shall mean milligrams per liter or parts per million (ppm).
21. The term "µg/L" shall mean micrograms per liter or parts per billion (ppb).
22. MUNICIPAL TERMS
  - a. 7-DAY AVERAGE or WEEKLY AVERAGE, other than for fecal coliform bacteria, is the arithmetic mean of the daily values for all effluent samples collected during a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week. The 7-day average for fecal coliform bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.
  - b. 30-DAY AVERAGE or MONTHLY AVERAGE, other than for fecal coliform bacteria, is the arithmetic mean of the daily values for all effluent samples collected during a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. The 30-day average for fecal coliform bacteria is the geometric mean of the values for all effluent samples collected during a calendar month.
  - c. 24-HOUR COMPOSITE SAMPLE consists of a minimum of 12 effluent portions collected at equal time intervals over the 24-hour period and combined proportional to flow or a sample collected at frequent intervals proportional to flow over the 24-hour period.
  - d. 12-HOUR COMPOSITE SAMPLE consists of 12 effluent portions collected no closer together than one hour and composited according to flow. The daily sampling intervals shall include the highest flow periods.
  - e. 6-HOUR COMPOSITE SAMPLE consists of six effluent portions collected no closer together than one hour (with the first portion collected no earlier than 10:00 a.m.) and composited according to flow.
  - f. 3-HOUR COMPOSITE SAMPLE consists of three effluent portions collected no closer together than one hour (with the first portion collected no earlier than 10:00 a.m.) and composited according to flow.



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

JAN 16 2009

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7007 3020 0002 5102 8607)

REPLY TO: 6WQ-NP

Mr. Mark Hiles  
Environmental Systems Manager  
Lee Ranch Coal Company (El Segundo Mine)  
P.O. Box 757  
Grants, NM 87020

FEB 2 2009

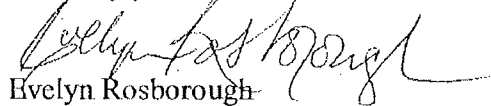
Re: Administrative Change -- NM0030996 -- Lee Ranch Coal Company (El Segundo Mine)

Dear Mr. Hiles:

Enclosed is the revised cover page, NPDES Permit NM0030996 -- Lee Ranch Coal Company (El Segundo Mine). The revision reflects an administrative change in the expiration date from January 31, 2013 to January 31, 2014. Please replace the original page with the corrected copy.

Please accept our apologies for any inconvenience this may have caused. If you should have any questions, please do not hesitate to contact me at (214) 665-7515.

Sincerely yours,

  
Evelyn Rosborough  
Environmental Protection Specialist  
Water Quality Protection Division (6WQ)

Enclosure

cc: New Mexico Environment Department





NOTICE: This permit includes minor revisions made in accordance with the Regional Administrator's determination. Please retain this permit as your official copy.

REGION 6  
1445 ROSS AVENUE  
DALLAS, TEXAS 75202-2733

NPDES Permit No. **NM0030996**

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AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT  
DISCHARGE ELIMINATION SYSTEM

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

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

is authorized to discharge from a facility located 35 miles north of Milan, in Grants, McKinley County, New Mexico. The discharges from multiple outfalls will be to receiving waters named Kim-me-ni-oli Valley Tributary, thence into Chaco River, a tributary of San Juan River in Segment No. 20.6.4.97 of the San Juan River Basin.

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

This is a first-time issued permit.

This permit shall become effective on **February 1, 2009**

This permit and the authorization to discharge shall expire at midnight, **January 31, 2014**

Issued on **December 29, 2008**

Prepared by

*fe* *Claudia Hord*  
Miguel I. Flores  
Director

Water Quality Protection Division (6WQ)

*Isaac Chen*

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