

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 (CWA), 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act,"

CITY OF FRUITLAND
(Payette River Facility)

is authorized to discharge from a facility located in Fruitland (Payette County), Idaho, to receiving waters named Payette River at River Mile 3.9, at the following location:

<u>Outfall No.</u>	<u>Latitude</u>	<u>Longitude</u>
001	44°50.6'00" N	116°55.1'51.5" W

in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective **December 31, 2001**.

This permit and the authorization to discharge shall expire at midnight, **January 2, 2007**.

Signed this **28th** day of **November 28, 2001**.

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

TABLE OF CONTENTS

Cover Sheet--Issuance and Expiration Dates

I.	SPECIFIC LIMITATIONS AND MONITORING REQUIREMENTS	3
A.	Effluent Limitations and Monitoring Requirements.	3
B.	Quality Assurance Requirements.	5
C.	6
D.	Facility Planning Requirement.	8
II.	MONITORING, RECORDING AND REPORTING REQUIREMENTS	8
A.	Representative Sampling (Routine and Non-Routine Discharges).	8
B.	Reporting of Monitoring Results.	8
C.	Monitoring Procedures.	9
D.	Additional Monitoring by Permittee.	9
E.	Records Contents.	9
F.	Retention of Records.	9
G.	Twenty-four Hour Notice of Noncompliance Reporting.	10
H.	Other Noncompliance Reporting	10
I.	Notice of New Introduction of Pollutants.	11
III.	COMPLIANCE RESPONSIBILITIES	11
A.	Duty to Comply.	11
B.	Penalties for Violations of Permit Conditions.	11
C.	Need to Halt or Reduce Activity not a Defense.	13
D.	Duty to Mitigate.	13
E.	Proper Operation and Maintenance.	13
F.	Bypass of Treatment Facilities.	13
G.	Upset Conditions.	14
H.	Toxic Pollutants.	14
I.	Planned Changes.	14
J.	Anticipated Noncompliance.	15
IV.	GENERAL PROVISIONS	15
A.	Permit Actions.	15
B.	Duty to Reapply.	15
C.	Duty to Provide Information.	15
D.	Other Information.	15
E.	Signatory Requirements.	15
F.	Availability of Reports.	16
G.	Inspection and Entry	16
H.	Property Rights	17
I.	Transfers.	17
J.	State Laws.	17
K.	Reopener.	17
V.	DEFINITIONS	17

I. SPECIFIC LIMITATIONS AND MONITORING REQUIREMENTS

During the effective period of this permit, the permittee is authorized to discharge pollutants from the outfalls specified herein to the Payette River, within the limits and subject to the conditions set forth herein. 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 Requirements.

1. The permittee must limit and monitor discharges from Outfall 001 as specified in Table 1, below. All figures represent maximum effluent limits unless otherwise indicated. The permittee must comply with the effluent limits in the tables at all times unless otherwise indicated, regardless of the frequency of monitoring or reporting required by other provisions of this permit.

Table 1. Effluent Limitations and Monitoring Requirements						
PARAMETER	EFFLUENT LIMITATIONS			MONITORING REQUIREMENTS		
	Average Monthly Limit	Average Weekly Limit	Daily Maximum Limit	Sample Location	Sample Frequency	Sample Type
Flow, MGD	Report	---	Report	Influent or effluent	Continuous	Recording
Biochemical Oxygen Demand (BOD ₅)	45 mg/l	65 mg/l	---	Influent and Effluent	1/week	24 hr comp
	230 lb/day	370 lb/day	---			
Total Suspended Solids	70 mg/l	105 mg/l	---	Influent and Effluent	1/week	24 hr comp
	440 lb/day	640 lb/day	---			
Ammonia (as N), mg/L	Report	---	Report	Effluent	1/quarter ¹	24 hr comp
Total Residual Chlorine ²	0.5 mg/L	0.75 mg/l	---	Effluent	5/week	grab
	1.5 lb/day	2.2 lb/day	---			
Dissolved Oxygen	---	---	Report minimum	Effluent	1/quarter	grab
Fecal Coliform Bacteria May 1 – September 30	50/100 ml	200/100 ml ³	---	Effluent	1/week	grab
Fecal Coliform Bacteria October 1 – April 30	---	200/100 ml ³	---	Effluent	1/week	grab
<i>E. coli</i> Bacteria ⁴	126/100 ml ⁵	---	406/100 ml ⁶	Effluent	1/week	grab
Total Kjeldahl Nitrogen, mg/L	---	---	Report	effluent	1/quarter ¹	24 hr comp
Nitrate - Nitrite (as N), mg/L	---	---	Report	effluent	1/quarter ¹	24 hr comp
Total Phosphorus (as P), mg/L	---	---	Report	effluent	1/quarter ¹	24 hr comp
Orthophosphorous (as P), mg/L	---	---	Report	effluent	1/quarter ¹	24 hr comp

Table 1. Effluent Limitations and Monitoring Requirements						
PARAMETER	EFFLUENT LIMITATIONS			MONITORING REQUIREMENTS		
	Average Monthly Limit	Average Weekly Limit	Daily Maximum Limit	Sample Location	Sample Frequency	Sample Type
Mercury ⁷	—	—	Report	Effluent	1/quarter	24 hr comp
1	Sampling must continue until a total of 12 quarterly samples have been collected and analyzed.					
2	These limits shall become effective two years after the effective date of the permit. See I.A.5 below for more requirements.					
3	The average weekly fecal coliform count must not exceed a geometric mean of 200/100 ml based on a minimum of five (5) samples per week. See Part V. for the definition of geometric mean. See Part I.A.6 below for more fecal coliform monitoring requirements.					
4	Reporting is required within 24 hours if the maximum daily limit is violated.					
5	A geometric mean of 126 organisms per 100 ml must be based on a minimum of 5 samples taken every 3 to 5 days over a thirty day period.					
6	This is an instantaneous maximum.					
7	See Part I.A.7 below for mercury monitoring requirements.					

2. The pH range must be between 6.5 - 9.0 standard units. The Permittee must monitor for pH five (5) times per week on separate days. Sample analysis must be conducted on a grab sample from the effluent.

3. The permittee must 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. Removal Requirements for BOD₅ and TSS: For any month, the monthly average effluent BOD₅ load must not exceed 35 percent of the monthly average influent BOD₅.

Percent removal of BOD₅ and TSS must be reported on the Discharge Monitoring Reports (DMRs). The monthly average percent removal must be calculated from the arithmetic mean of the influent value and the arithmetic mean of the effluent value for that month. Influent and effluent samples must be taken over approximately the same time period.

5. Total Residual Chlorine Requirements.

a. Beginning with effective date of the permit and continuing until two years from the effective date of the permit, the following limitations shall apply for TRC:

EFFLUENT PARAMETER	EFFLUENT LIMITATIONS	
	Monthly Average	Daily Maximum
Total Residual Chlorine, mg/L	0.75	---

(1) Beginning six months from the effective date of the permit, and continuing semiannually until the compliance date, the permittee shall submit a Report of Progress which outlines the progress made toward compliance with the final TRC effluent limitations.

- (2) If ultraviolet disinfection is selected as the method of disinfection, and has been fully implemented at the Fruitland, Payette River Facility, the permittee must notify EPA and IDEQ. Upon notification of EPA and IDEQ, the TRC limitations and monitoring requirements will no longer be applicable.
 6. Fecal coliform requirements. Upon EPA approval of the adoption to the Idaho Water Quality Standards removing the average weekly limit for fecal coliform, and notification of EPA by the permittee, the average weekly requirement for fecal coliform will be deleted. Also at that time, monitoring for fecal coliform will be reduced to once per month during the months of May 1 through September 30.
 7. Mercury requirements. Beginning one year after the effective date of the permit, mercury must be analyzed and the permittee must use methods that can achieve MDLs in the range of 0.01 to 0.005 µg/L. Mercury must be analyzed as total. Sampling must continue quarterly until a total of 10 samples have been collected and analyzed. If the first five samples show non-detects at the range of 0.01 to 0.005 µg/L, upon approval by EPA, mercury monitoring may be reduced or eliminated. The permittee must submit the results and quality assurance measures of the analysis when requesting the reduction of the mercury monitoring.
- B. Quality Assurance Requirements.
1. The permittee must develop a Quality Assurance Plan. The primary purpose of the Quality Assurance Plan must be to assist in planning for the collection and analysis of samples in support of the permit and in explaining data anomalies when they occur.
 2. Throughout all sample collection and analysis activities, the permittee must use the EPA approved quality assurance, quality control, and chain-of-custody procedures described in EPA QA/G-5 *Guidance on Quality Assurance Project Plans*. This document is available as an Adobe Acrobat file at <http://www.epa.gov/r10earth/offices/oea/qaindex.htm>.
 3. The plan must be completed within 180 days of the effective date of this NPDES permit and the permittee must certify completion of the plan to EPA. The permittee must maintain this plan for a period of five years, and must make this plan available to the EPA upon request.
 4. At a minimum the plan must include the following:
 - a. sampling techniques (field blanks, replicates, duplicates, control samples, etc.);
 - b. sampling preservation methods; sampling shipment procedures;
 - c. instrument calibration procedures and preventative maintenance (frequency, standard, spare parts); qualification and training of personnel;

- d. analytical test method that will be used to achieve the method detection limits in Part I.A.1 and I.C.6; and
 - e. analytical methods (including quality control checks, quantification/detection levels).
5. Name(s), address(es) and telephone number(s) of the laboratories, used by or proposed to be used by the Permittee, must be specified in the Quality Assurance Plan.
 6. The permittee may obtain copies of all references cited in this part of the permit from the following address:

Quality and Data Management Program
Office of Environmental Assessment
U.S. EPA, Region 10
1200 6th Avenue, OEA-095
Seattle, Washington 98101

- C. Surface Water Monitoring. The permittee must conduct surface water monitoring. Surface water monitoring for all parameters except for mercury must begin 180 days after the effective date of the permit and continue until a total of 12 quarterly samples per parameter has been collected and analyzed. The program must meet the following requirements:
 1. The upstream monitoring station established in Payette River for the previous permit must be used.
 2. Monitoring must be conducted quarterly during February, May, August, and November. Should the city not be able to complete the surface water monitoring and D.O. measurements at either the Payette or Snake River facilities due to ice or inclement weather during a specific month, the city must provide written notification to EPA with the monthly discharge monitoring report for that month and sample at the next opportunity.
 3. Surface water samples, except flow, must be grab samples from each bank and the middle composited into a single sample. If weather conditions make it impractical to sample from the middle of the river, then the permittee may composite samples from each bank only.
 4. Mercury requirements. Beginning one year after the effective date of the permit, mercury must be analyzed and the permittee must use methods that can achieve MDLs in the range of 0.01 to 0.005 µg/L. Mercury must be analyzed as total. Sampling must continue quarterly until a total of 10 samples have been collected and analyzed. If the first five samples show non-detects at the range of 0.01 to 0.005 µg/L, upon approval by EPA, mercury monitoring may be reduced or eliminated. The permittee must submit the results and quality assurance measures of the analysis when requesting the reduction of the mercury monitoring.

5. The flow rate must be recorded as near as practical to the time that other ambient parameters are sampled and the USGS gauging station between Payette and Fruitland must be used.
6. Samples must be analyzed for the parameters listed in Table 2, and must achieve method detection limits (MDLs) that are equivalent to or less than those listed in Table 2. The permittee may request different MDLs. The request must be in writing and must be approved by EPA.

Table 2: Surface Water Monitoring Parameter, Locations, and Method Detection Limits			
Parameter	Units	Upstream Sampling Frequency	Method Detection Limit (MDL)
Flow	mgd	As specified in Part I.C.2	-----
BOD ₅	mg/L	As specified in Part I.C.2	-----
TSS	mg/L	As specified in Part I.C.2	-----
Fecal Coliform Bacteria	colonies/100 ml	As specified in Part I.C.2	-----
<i>E. coli</i> bacteria	colonies/100 ml	As specified in Part I.C.2	-----
Dissolved Oxygen	mg/L	As specified in Part I.C.2	-----
Total Phosphorus	mg/L	As specified in Part I.C.2	-----
Ortho-phosphorus	mg/L	As specified in Part I.C.2	-----
Total Ammonia as N	mg/L	As specified in Part I.C.2	-----
Total Kjeldahl Nitrogen	mg/L	As specified in Part I.C.2	-----
Nitrate-Nitrite	mg/L	As specified in Part I.C.2	-----
Temperature	°C	As specified in Part I.C.2	-----
pH	standard units	As specified in Part I.C.2	-----
Mercury	µg/L	As specified in Part I.C.	.01 to .005 µg/L

7. Quality assurance/quality control plans for all the monitoring must be documented in the Quality Assurance Plan required under Part I.B., "Quality Assurance Plan".
8. Surface water monitoring results must be submitted to EPA and IDEQ with the next permit application, which is due 180 days prior to the expiration date of the permit. At a minimum, the report must include the following:
 - a. dates of sample collection and analyses;

- b. results of sample analysis; and
 - c. relevant quality assurance/quality control (QA/QC) information.
- D. Facility Planning Requirement. Each month, the permittee must compute an annual average value for the flow, BOD₅ loading, and TSS loading entering the facility based on the previous twelve months data or all data available, whichever is less. If the facility has completed a plant upgrade that affects the facility planning values listed in Table 3, only the data collected after the upgrade should be used in determining the annual average value.

When the annual average values exceed 85% of the facility planning values listed in Table 3 three months in a row, the permittee must develop a facility plan and schedule within one year from the date of the third exceedance. The plan must include the permittee's strategy for continuing to maintain compliance with effluent limits and will be made available to the Director or authorized representative upon request.

Table 3 - Facility Planning		
Criteria	Value	Units
Average Flow	0.35	mgd
Influent BOD ₅ Loading	1800	lbs/day
Influent TSS Loading	1250	lbs/day

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

- A. Representative Sampling (Routine and Non-Routine Discharges). Samples and measurements must be representative of the volume and nature of the monitored discharge.

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 must 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 detected by a routine sample. The permittee must 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 must collect such additional samples as soon as the spill, discharge, or bypassed effluent reaches the outfall. The samples must be analyzed in accordance with paragraph II.C. ("Monitoring Procedures"). The permittee must report all additional monitoring in accordance with paragraph II.D. ("Additional Monitoring by Permittee").

- B. Reporting of Monitoring Results. The permittee must summarize monitoring results each month on the Discharge Monitoring Report (DMR) form (EPA No. 3320-1) or equivalent or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. The permittee must submit reports monthly, postmarked by the 10th day of the following month. The permittee must sign and certify all DMRs, and all other reports, in accordance with the requirements of Part IV.E. of this permit ("Signatory Requirements"). The permittee must 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 Department of Environmental Quality (IDEQ)
Boise Regional Office
1445 N. Orchard
Boise, ID 83706-2239

- C. **Monitoring Procedures.** Monitoring must be conducted according to test procedures approved under 40 CFR 136 or, in the case of sludge use or disposal, approved under 40 CFR 503, 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, in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in 40 CFR 503, or as specified in this permit, the permittee must include the results of this monitoring in the calculation and reporting of the data submitted in the DMR or sludge reporting forms specified by the Director.

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

- E. **Records Contents.** Records of monitoring information must include:
1. the date, exact place, and time of sampling or measurements;
 2. the name(s) 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.** Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which must be retained for a period of at least five years (or longer as required by 40 CFR 503), the permittee must 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, 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. 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 must 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 exceeds any effluent limitation in the permit (See Part III.F., "Bypass of Treatment Facilities");
 - c. any upset that exceeds any effluent limitation in the permit (See Part III.G., "Upset Conditions");
 - d. any violation of a maximum daily or instantaneous maximum discharge limitation for any of the pollutants identified in Table 1 of Part I.A.; or
 - e. any overflow prior to the treatment works, whether or not such overflow endangers health or the environment or exceeds any effluent limitation in the permit.
 2. The permittee must 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 must 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;
 - d. steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance; and
 - e. if the non compliance involves an overflow prior to the treatment works, an estimate of the quantity (in gallons) of untreated overflow.
 3. The Director may 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 must be submitted to the addresses in Part II.B ("Reporting of Monitoring Results").
- H. Other Noncompliance Reporting. The permittee must report all instances of noncompliance, not required to be reported within 24 hours, at the time that monitoring reports for Part II.B ("Reporting of Monitoring Results") are submitted. The reports must contain the information listed in Part II.G.2 of this permit ("Twenty-four Hour Notice of Noncompliance Reporting").

- I. Notice of New Introduction of Pollutants. The permittee must provide notice to the Director and IDEQ of:
1. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to Sections 301 or 306 of the Act if it were directly discharging those pollutants; and
 2. Any substantial change in the volume or character of pollutants being introduced into the POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
 3. For the purposes of this section, adequate notice must include information on:
 - a. The quality and quantity of effluent to be introduced into the POTW, and
 - b. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

III. COMPLIANCE RESPONSIBILITIES

- A. 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.
- B. Penalties for Violations of Permit Conditions.
1. Civil and Administrative Penalties. Pursuant to 40 CFR 19 and the Act, any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, 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 penalty not to exceed the maximum amounts authorized by Section 309(d) 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 for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$137,500).

3. Criminal Penalties:

- a. **Negligent Violations.** The Act provides that any person who negligently violates 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 must be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both.
- b. **Knowing Violations.** Any person who knowingly violates 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 must 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 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, must, upon conviction, be subject to a fine 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 must be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, must, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.
- d. **False Statements.** The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit must, upon conviction, be punished by a fine 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 must, 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.

- C. Need to Halt or Reduce Activity not a Defense. It must 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 must take all reasonable steps to minimize or prevent any discharge or sludge use or disposal 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 must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit.
- 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 must submit prior notice, to the Director and IDEQ if possible at least 10 days before the date of the bypass.
 - b. Unanticipated bypass. The permittee must submit notice of an unanticipated bypass as required under Part II.G ("Twenty-four Hour Notice of Noncompliance Reporting").
 - 3. Prohibition of bypass.
 - a. Bypass is prohibited, and the Director may take enforcement action against the permittee for a bypass, unless:
 - (1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and
 - (3) The permittee submitted notices as required under paragraph 2 of this Part.

- b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a. of this Part.

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 must 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 II.G, "Twenty-four Hour Notice of Noncompliance Reporting;" and
 - d. The permittee complied with any remedial measures required under Part III.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.

H. Toxic Pollutants. The permittee must comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the Act within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

I. Planned Changes. The permittee must 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 not subject to effluent limitations in this permit. Or
3. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the

existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application site.

- J. Anticipated Noncompliance. The permittee must 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.

IV. GENERAL PROVISIONS

- A. Permit Actions. This permit may be modified, revoked and reissued, or terminated for cause as specified in 40 CFR 122.62, 122.64, or 124.5. The filing of a request by the permittee for a permit modification, revocation and reissuance, 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. In accordance with 40 CFR 122.21(d), and unless permission for the application to be submitted at a later date has been granted by the Director, the permittee must submit a new application at least 180 days before the expiration date of this permit.
- C. Duty to Provide Information. The permittee must 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 must also furnish to the Director or IDEQ, upon request, copies of records required to be kept by this permit.
- 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 must promptly submit such facts or information.
- E. Signatory Requirements. All applications, reports or information submitted to the Director and IDEQ must be signed and certified as follows.
 - 1. All permit applications must 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 must 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;

- 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; and
 - c. The written authorization is submitted to the Director and IDEQ.
 3. Changes to authorization. If an authorization under Part IV.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 Part IV.E.2. must be submitted to the Director and IDEQ prior to or together with any reports, information, or applications to be signed by an authorized representative.
 4. Certification. Any person signing a document under this Part must 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. In accordance with 40 CFR 2, information submitted to EPA pursuant to this permit may be claimed as confidential by the permittee. In accordance with the Act, permit applications, permits and effluent data are not considered confidential. Any confidentiality claim must be asserted at the time of submission by stamping the words “confidential business information” on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice to the permittee. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR 2, Subpart B (Public Information) and 41 Fed. Reg. 36902 through 36924 (September 1, 1976), as amended.
- G. Inspection and Entry. The permittee must 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. **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 persons or property or invasion of other private rights, nor any infringement of state or local laws or regulations.
- I. **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. (See 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory).
- J. **State Laws.** Nothing in this permit must 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.
- K. **Reopener.** This permit may be reopened to include any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the Act. The Director may modify or revoke and reissue the permit if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

V. **DEFINITIONS**

- A. “Act” means the Clean Water Act.
- B. “Administrator” means the Administrator of the EPA, or an authorized representative.
- C. “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.
- D. “Bypass” means the intentional diversion of waste streams from any portion of a treatment facility.
- E. “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.
- F. “Director” means the Director of the Office of Water, EPA, or an authorized representative.

- G. “DMR” means discharge monitoring report.
- H. “EPA” means the United States Environmental Protection Agency.
- I. “Geometric mean” of “n” quantities is the “nth” root of the product of the quantities. For example, the geometric mean of 100, 200 and 300 is $(100 \times 200 \times 300)^{1/3} = 181.7$.
- J. “Grab” sample is a sample taken from a wastestream or receiving water on a one-time basis without consideration of the flow rate of the wastestream or receiving water and without consideration of time.
- K. “IDEQ” means the Idaho Department of Environmental Quality.
- L. “Instantaneous maximum” is the maximum allowable concentration of a pollutant determined from the analysis of any discrete or composite sample collected, independent of the flow rate and the duration of the event.
- M. “Maximum daily discharge limitation” means the highest allowable “daily discharge.”
- N. “POTW” means publicly owned treatment works.
- O. “QA/QC” means quality assurance/quality control.
- P. “Regional Administrator” means the Regional Administrator of Region 10 of the EPA, or the authorized representative of the Regional Administrator.
- Q. “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.
- R. “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.