

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

**Authorization to Discharge Under the
 National Pollutant Discharge Elimination System**

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

**Warm Springs Forest Products Industries
 and
 Warm Springs Biomass Project, LLC.
 Warm Springs, Oregon 97761**

is authorized to discharge from the Warm Springs Forest Products and Warm Springs Biomass facility located in Warm Springs, OR, at the following location(s):

Outfall	Receiving Water	Latitude	Longitude
001	Deschutes River	44° 46' 00”	121° 13' 30”
003	Shitike Creek	44° 46' 00”	121° 13' 30”

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

This permit shall become effective December 1st, 2008

This permit and the authorization to discharge shall expire at midnight, November 30, 2013.

The permittee shall reapply for a permit reissuance on or before, 180 days before the expiration of this permit if the permittee intends to continue operations and discharges at the facility beyond the term of this permit.

Signed this 29th day of September, 2008

/s/
 Michael F. Gearheard, Director
 Office of Water and Watersheds

Schedule of Submissions

The following is a summary of some of the items the permittee must complete and/or submit to EPA during the term of this permit:

Item	Due Date
1. Discharge Monitoring Reports (DMR)	DMRs are due monthly and must be postmarked on or before the 10th day of the month following the monitoring month.
2. Quality Assurance Plan (QAP)	The permittee must provide EPA and the Confederated Tribes of Warm Springs Reservation of Oregon Water Control Board (WCB) with written notification that the Plan has been developed and implemented within 180 days after the effective date of the final permit (see II.B). The Plan must be kept on site and made available to EPA and WCB upon request.
3. Operation and Maintenance (O&M) Plan	The permittee must provide EPA and the Confederated Tribes of Warm Springs Reservation of Oregon Water Control Board with written notification that the Plan has been developed and implemented within 180 days after the effective date of the final permit (see II.A). The Plan must be kept on site and made available to EPA and the WCB upon request.
4. NPDES Application Renewal	The application must be submitted at least 180 days before the expiration date of the permit (see V.B).
5. Surface Water Monitoring Report	The Report must be submitted with the next permit application (I.C).
6. Twenty-Four Hour Notice of Noncompliance Reporting	The permittee must report certain occurrences of noncompliance by telephone within 24 hours from the time the permittee becomes aware of the circumstances. (See Table 1, I.B.2, and III.G).

Table of Contents

- Schedule of Submissions..... 2**
- I. Limitations and Monitoring Requirements 5**
 - A. Discharge Authorization 5
 - B. Effluent Limitations and Monitoring 5
 - C. Surface Water Monitoring 7
- II. Special Conditions..... 7**
 - A. Operation and Maintenance Plan 7
 - B. Quality Assurance Plan (QAP) 8
- III. Monitoring, Recording and Reporting Requirements 8**
 - A. Representative Sampling (Routine and Non-Routine Discharges)..... 8
 - B. Reporting of Monitoring Results 9
 - C. Monitoring Procedures..... 9
 - D. Additional Monitoring by Permittee 10
 - E. Records Contents 10
 - F. Retention of Records..... 10
 - G. Twenty-four Hour Notice of Noncompliance Reporting..... 10
 - H. Other Noncompliance Reporting 11
 - I. Changes in Discharge of Toxic Pollutants..... 11
- IV. Compliance Responsibilities 12**
 - A. Duty to Comply..... 12
 - B. Penalties for Violations of Permit Conditions 12
 - C. Need To Halt or Reduce Activity not a Defense 14
 - D. Duty to Mitigate..... 14
 - E. Proper Operation and Maintenance 14
 - F. Bypass of Treatment Facilities..... 14
 - G. Upset Conditions..... 15
 - H. Toxic Pollutants 16
 - I. Planned Changes..... 16
 - J. Anticipated Noncompliance..... 16
- V. General Provisions 16**
 - A. Permit Actions 16
 - B. Duty to Reapply 17
 - C. Duty to Provide Information..... 17
 - D. Other Information 17
 - E. Signatory Requirements..... 17
 - F. Availability of Reports..... 18
 - G. Inspection and Entry 18
 - H. Property Rights 19
 - I. Transfers 19

J. Tribal Laws 19

VI. Definitions..... 19

I. Limitations and Monitoring Requirements

A. Discharge Authorization

During the effective period of this permit, the permittee is authorized to discharge pollutants from the outfalls specified herein to the Deschutes River and Shitike Creek, 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.

B. Effluent Limitations and Monitoring

- The permittee must limit and monitor discharges from outfalls 001 and 003 as specified in Tables 1 and 2, 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.

Parameter	Effluent Limitations		Monitoring Requirements		
	Average Monthly Limit	Maximum Daily Limit	Sample Location	Sample Frequency	Sample Type
Flow, mgd Until 1 year after the effective date of the final permit	Report	17.5	Intake from Stream and Effluent	1/day	measure
Temperature, °C Except May , until 1 year after the effective date of the final permit	Report	32 ¹	Intake from Stream and Effluent	1/day	grab
Temperature, °C May , until 1 year after the effective date of the final permit	Report	23.6 ¹	Intake from Stream and Effluent	1/day	grab
Flow, mgd After 1 year after the effective date of the final permit	Report	17.5	Intake from Stream and Effluent	continuous	recording
Temperature, °C Except May , after 1 year after the effective date of the final permit	Report	32 ¹	Intake from Stream and Effluent	continuous	recording
Temperature, °C May , after 1 year after the effective date of the final permit	Report	23.6 ¹	Intake from Stream and Effluent	continuous	recording
Net Rate, Addition of Heat million BTU/day June 1 – October 31	Report	673 ¹	Effluent	1/day	calculation
pH, s.u.	6.5 – 8.5 at all times		Effluent	1/week	grab

1. Reporting is required within 24 hours of a maximum daily limit violation. See Parts I.B.2 and III.G.

2. The permittee must report within 24 hours any violation of the maximum daily limits for the following pollutants: temperature and net rate of addition of heat. Violations of all other effluent limits are to be reported at the time that discharge monitoring reports are submitted (See III.B and III.H).

Parameter	Effluent Limitations		Monitoring Requirements		
	Average Monthly Limit	Maximum Daily Limit	Sample Location	Sample Frequency	Sample Type
pH, s.u.	6.5 – 8.5 at all times		Effluent	weekly when discharging	grab
Total organic carbon, mg/L	Report	Report	Effluent	1/year	grab
Chemical oxygen demand, mg/L	Report	Report	Effluent	1/year	grab
Zinc, mg/L	Report	Report	Effluent	1/year	grab

3. There must be no discharge of floating, suspended or submerged matter such that it impairs designated beneficial uses.
4. There must be no discharge of oil and grease that could cause discoloration, scum, oily sleek or floating solids, or coating of aquatic life with oil films.
5. There must be no discharge of wastewater from cold deck log sprinkling, air scrubber, filter backwash or steam vat condensate, which are retained in a non-overflowing pond or recycled.
6. There must be no discharge of biocides, domestic sewage, chromium compounds, copper, or zinc.
7. Discharges which will violate water quality standards adopted in the Warm Springs Tribal Code Chapter 432 outside the mixing zones, defined for Outfall 001 as 10 feet upstream to 400 feet downstream and 100 feet from shore and for Outfall 003 from the shore to midstream, downstream 100 feet, and upstream 5 feet, are not authorized by this permit.
8. There must be no discharge of process wastewater from the facility.
9. Approval to drain the fire control pond for cleaning must be obtained in writing from EPA and the Confederated Tribes of the Warm Springs Reservation Tribal Environmental Office (TEO) prior to draining. Material cleaned from the fire control pond will be placed or disposed of in a manner that prevents re-entry to waters of the United States or waters of the Warm Springs Indian Reservation.
10. The permittee must collect effluent samples from the effluent stream after the last treatment unit prior to discharge into the receiving waters.
11. Minimum Levels. For all effluent monitoring, the permittee must use methods that can achieve a minimum level (ML) less than the effluent limitation.

C. Surface Water Monitoring

The permittee must conduct surface water monitoring. Surface water monitoring must start within 60 days after the effective date of the permit and continue for the duration of the permit. The program must meet the following requirements:

1. Monitoring stations must be established in the Deschutes River at the following locations:
 - a) Upstream from the facility's discharge and downstream of Shitike Creek, and
 - b) Approximately 400 feet downstream of the facility's discharge.
2. The permittee must seek approval of the surface water monitoring stations from the Confederated Tribes of the Warm Springs Reservation Tribal Environmental Office (TEO).
3. A failure to obtain TEO approval of surface water monitoring stations does not relieve the permittee of the surface water monitoring requirements of this permit.
4. To the extent practicable, surface water sample collection must occur on the same day as effluent sample collection.
5. All ambient samples must be grab samples.
6. Samples must be analyzed for the parameters listed in Table 3.

Table 3: Surface Water Monitoring Requirements			
Parameter	Units	Upstream Sampling Frequency	Downstream Sampling Frequency
Temperature	°C	1/month	1/month

7. Quality assurance/quality control plans for all the monitoring must be documented in the Quality Assurance Plan required under Part II.B, "Quality Assurance Plan".
8. Surface water monitoring results must be submitted to EPA and WCB with the application for renewal of this permit (see V.B.). At a minimum, the report must include the following:
 - a) Dates of sample collection and analyses.
 - b) Effluent data for temperature and flow rate coincident with the dates of surface water sample collection.
 - c) Results of sample analysis.
 - d) Relevant quality assurance/quality control (QA/QC) information.

II. Special Conditions

A. Operation and Maintenance Plan

In addition to the requirements specified in Section IV.E of this permit (Proper Operation and Maintenance), by 180 days after the effective date of this permit, the

permittee must provide written notice to EPA and WCB that an operations and maintenance plan for the wastewater treatment facility has been developed and implemented within 180 days of the effective date of this permit. The plan must be retained on site and made available on request to EPA and WCB.

B. Quality Assurance Plan (QAP)

The permittee must develop a quality assurance plan (QAP) for all monitoring required by this permit. The permittee must submit written notice to EPA and WCB that the Plan has been developed and implemented within 180 days of the effective date of this permit. Any existing QAPs may be modified for compliance with this section.

1. The QAP must be designed to assist in planning for the collection and analysis of effluent and receiving water 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 QA/QC and chain-of-custody procedures described in *Requirements for Quality Assurance Project Plans (EPA/QA/R-5)* and *Guidance for Quality Assurance Project Plans (EPA/QA/G-5)*. The QAP must be prepared in the format that is specified in these documents.
3. At a minimum, the QAP must include the following:
 - a) Details on the number of samples, type of sample containers, preservation of samples, holding times, analytical methods, analytical detection and quantitation limits for each target compound, type and number of quality assurance field samples, precision and accuracy requirements, sample preparation requirements, sample shipping methods, and laboratory data delivery requirements.
 - b) Map(s) indicating the location of each sampling point.
 - c) Qualification and training of personnel.
 - d) Name(s), address(es) and telephone number(s) of the laboratories used by or proposed to be used by the permittee.
4. The permittee must amend the QAP whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAP.
5. Copies of the QAP must be kept on site and made available to EPA and/or WCB upon request.

III. 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.B 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 III.C (“Monitoring Procedures”). The permittee must report all additional monitoring in accordance with paragraph III.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. 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 V.E of this permit (“Signatory Requirements”). The permittee must submit the legible originals of these documents to the Director, Office of Compliance and Enforcement, with copies to TEO and WCB at the following addresses:

US EPA Region 10
Attn: PCS Data Entry Team
1200 Sixth Avenue
Suite 900 M/S OCE-133
Seattle, Washington 98101

The Confederated Tribes of Warm Springs Reservation of Oregon
Tribal Environmental Office
P.O. Box C
Warm Springs, OR 97204

The Confederated Tribes of Warm Springs Reservation of Oregon
Water Control Board
P.O. Box C
Warm Springs, OR 97204

C. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures have been specified in this permit or approved by EPA as an alternate test procedure under 40 CFR 136.5.

D. Additional Monitoring by Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the permittee must include the results of this monitoring in the calculation and reporting of the data submitted in the DMR.

Upon request by EPA, 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

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 EPA or WCB 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 IV.F, "Bypass of Treatment Facilities");
 - c) any upset that exceeds any effluent limitation in the permit (See Part IV.G, "Upset Conditions"); or
 - d) any violation of a maximum daily discharge limitation for applicable pollutants.

- 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; and
 - d) steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
 - e) if the noncompliance involves an overflow prior to the treatment works, an estimate of the quantity (in gallons) of untreated overflow.
 3. The Director of the Office of Compliance and Enforcement 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 III.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 III.B (“Reporting of Monitoring Results”) are submitted. The reports must contain the information listed in Part III.G.2 of this permit (“Twenty-four Hour Notice of Noncompliance Reporting”).

I. Changes in Discharge of Toxic Pollutants

The permittee must notify the Director of the Office of Water and Watersheds and the TEO as soon as it knows, or has reason to believe:

1. That any activity has occurred or will occur that would result in the discharge, on a **routine or frequent** basis, of any toxic pollutant that is not limited in the permit, if that discharge may reasonably be expected to exceed the highest of the following “notification levels”:
 - a) One hundred micrograms per liter (100 ug/l);
 - b) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

- c) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - d) The level established by EPA in accordance with 40 CFR 122.44(f).
2. That any activity has occurred or will occur that would result in any discharge, on a **non-routine or infrequent** basis, of any toxic pollutant that is not limited in the permit, if that discharge may reasonably be expected to exceed the highest of the following “notification levels”:
 - a) Five hundred micrograms per liter (500 ug/l);
 - b) One milligram per liter (1 mg/l) for antimony;
 - c) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - d) The level established by EPA in accordance with 40 CFR 122.44(f).
 3. The permittee must submit the notification to Office of Water and Watersheds at the following address:
 4. The permittee must submit the notification to the Tribal Environmental Office at the following address:

US EPA Region 10
Attn: NPDES Permits Unit Manager
1200 Sixth Avenue, OWW-130
Seattle, Washington 98101

The Confederated Tribes of Warm Springs Reservation of Oregon
Tribal Environmental Office
P.O. Box C
Warm Springs, OR 97204

IV. 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 Part 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 \$32,500 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 \$32,500). 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 \$157,500).
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 shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both.
 - 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 shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.
 - c) **Knowing Endangerment.** Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to

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

- d) False Statements. The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

C. Need To Halt or Reduce Activity not a Defense

It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this permit.

D. Duty to Mitigate

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

E. Proper Operation and Maintenance

The permittee 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 written notice, 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 III.G (“Twenty-four Hour Notice of Noncompliance Reporting”).
3. Prohibition of bypass.
 - a) Bypass is prohibited, and the Director of the Office of Compliance and Enforcement may take enforcement action against the permittee for a bypass, unless:
 - (i) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment 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
 - (iii) The permittee submitted notices as required under paragraph 2 of this Part.
 - b) The Director of the Office of Compliance and Enforcement 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 III.G, “Twenty-four Hour Notice of Noncompliance Reporting;” and
 - d) The permittee complied with any remedial measures required under Part IV.D, “Duty to Mitigate.”
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

H. Toxic Pollutants

The permittee must 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 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 written notice to the Director of the Office of Water and Watersheds as specified in part III.I.3 and WCB 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.
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 written advance notice to the Director of the Office of Compliance and Enforcement and WCB of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

V. General Provisions

A. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause 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 Regional Administrator, 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 EPA and WCB, within the time specified in the request, any information that EPA or WCB 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 EPA or WCB, 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 EPA or WCB, it must promptly submit the omitted facts or corrected information in writing.

E. Signatory Requirements

All applications, reports or information submitted to EPA, TEO or WCB 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, Indian tribe, 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 EPA, TEO or WCB 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 of the Office of Compliance and Enforcement and WCB.
3. Changes to authorization. If an authorization under Part V.E.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part V.E.2. must be submitted to the Director of the Office of Compliance and Enforcement and WCB 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 of the Office of Compliance and Enforcement, EPA Region 10; TEO; WCB; 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 federal, tribal, state or local laws or regulations.

I. Transfers

This permit is not transferable to any person except after written notice to the Director of the Office of Water and Watersheds as specified in part III.I.3. 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. Tribal Laws

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

VI. Definitions

1. “Act” means the Clean Water Act.
2. “Administrator” means the Administrator of the EPA, or an authorized representative.
3. “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.
4. “Average weekly discharge limitation” means the highest allowable average of “daily discharges” over 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.
5. “Best Management Practices” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include

treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.

6. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
7. "Chronic toxic unit" ("TUc") is a measure of chronic toxicity. TUc is the reciprocal of the effluent concentration that causes no observable effect on the test organisms by the end of the chronic exposure period (i.e., $100/\text{"NOEC"}$).
8. "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.
9. "Director of the Office of Compliance and Enforcement" means the Director of the Office of Compliance and Enforcement, EPA Region 10, or an authorized representative.
10. "Director of the Office of Water and Watersheds" means the Director of the Office of Water and Watersheds, EPA Region 10, or an authorized representative.
11. "DMR" means discharge monitoring report.
12. "EPA" means the United States Environmental Protection Agency.
13. "Geometric Mean" means the n^{th} root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.
14. "Grab" sample is an individual sample collected over a period of time not exceeding 15 minutes.
15. "Interim Minimum Level (IML)" is used when a method-specific "Minimum Level (ML)" has not been published by EPA. The IML is equal to 3.18 times the method-specified "Method Detection Limit (MDL)".
16. "Maximum daily discharge limitation" means the highest allowable "daily discharge."
17. "Method Detection Limit (MDL)" means the minimum concentration of a substance (analyte) that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.
18. "Minimum Level (ML)" means the concentration at which the entire analytical system must give a recognizable signal and an acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming

that all the method-specified sample weights, volumes and processing steps have been followed.

19. "NPDES" means National Pollutant Discharge Elimination System, the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits . . . under sections 307, 402, 318, and 405 of the CWA.
20. "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. The term "process wastewater" specifically excludes non-contact cooling water, material storage yard runoff (either raw material or processed wood storage), boiler blowdown, and wastewater from washout of thermal oxidizers or catalytic oxidizers, wastewater from biofilters, or wastewater from wet electrostatic precipitators used upstream of thermal oxidizers or catalytic oxidizers installed by facilities covered by 40 CFR part 429 subparts B, C, D or M to comply with the national emissions standards for hazardous air pollutants (NESHAP) for plywood and composite wood products (PCWP) facilities (40 CFR part 63, subpart DDDD). For the dry process hardboard, veneer, finishing, particleboard, and sawmills and planing mills subcategories, fire control water is excluded from the definition.
21. "QA/QC" means quality assurance/quality control.
22. "Regional Administrator" means the Regional Administrator of Region 10 of the EPA, or the authorized representative of the Regional Administrator.
23. "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.
24. "TEO" means the Confederated Tribes of the Warm Springs Reservation of Oregon Tribal Environmental Office.
25. "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.
26. "WCB" means the Confederated Tribes of Warm Springs Reservation of Oregon Water Control Board.