

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”,

**Tesoro Alaska Petroleum Company
 Kenai Pipeline Facility**

is authorized to discharge from the ballast water treatment facility located near Port Nikiski in Kenai, Alaska, at the following location(s):

Outfall	Receiving Water	Latitude	Longitude
001	Cook Inlet	60°23'02”	151°23'15”

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

This permit shall become effective November 1, 2006

This permit and the authorization to discharge shall expire at midnight, October 31, 2011

The permittee shall reapply for a permit reissuance on or before May 4, 2011, 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 26th day of September 2006,

 /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 and/or ADEC during the term of this permit:

<u>Item</u>	<u>Due Date</u>
1. Discharge Monitoring Reports (DMR)	DMRs are due monthly and must be postmarked on or before the 15 th day of the following monitoring month (see Part III.B.).
2. Quality Assurance Plan (QAP)	The Plan must be developed and implemented by January 30, 2007. The Plan must be kept on site (see Part II.A.).
3. Operations and Maintenance (O&M) Plan	The Plan must be developed and implemented by January 30, 2007. The Plan must be kept on site (see Part II.B.).
4. NPDES Application Renewal	The application must be submitted no later than May 4, 2011, or at least 180 days before the expiration date of the permit (see V.B.).
5. TAH and TAqH Effluent Limits	Compliance with TAH and TAqH effluent limits must be achieved by November 1, 2010 (see part I.D.).
6. Reports of Progress	The Reports detailing progress towards achieving TAH and TAqH effluent limitations must be submitted by November 1, 2007, 2008 and 2009 (see part I.D.).
7. Expanded Effluent Testing, Whole Effluent Toxicity (WET); and Chemical Oxygen Demand (COD), Total Organic Carbon (TOC), and Chloride Testing	Reports for these analyses must be submitted with the NPDES renewal application no later than May 4, 2011(see Part I.B. and Part I.C.).

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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 Cook Inlet 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

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: Proposed Effluent Limits and Monitoring Requirements

Parameter	Units	Effluent Limits and Monitoring Requirements			
		Maximum Daily Limit	Average Monthly Limit	Monitoring Frequency	Sample Type
BOD ₅ ⁶	mg/L	48	26	2/batch ⁴	Grab
TSS	mg/L	33	21	2/batch ⁴	Grab
Oil & Grease ⁶	mg/L	15	8	2/batch ⁴	Grab
Total Aromatic Hydrocarbons (TAH) ⁶	µg/L	10	---	1/batch ⁴	Grab
Total Aqueous Hydrocarbons (TAQH) ⁶	µg/L	15	---	1/batch ⁴	Grab
pH	s.u.	6.5-8.5 at all times		2/batch ⁴	Grab
Residue ²	---	(See Part I.B.2.)		Daily	Visual
Flow ¹	gpd	---	---	Continuous	Recording
Chemical Oxygen Demand (COD)	mg/L	---	---	1/batch for 5 years ^{4,5}	Grab
Total Organic Carbon (TOC)	mg/L	---	---	1/batch for 5 years ^{4,5}	Grab
Chloride	mg/L	---	---	1/batch for 5 years ^{4,5}	Grab
Whole Effluent Toxicity (WET) ³	TU _U	---	---	5x/5 years	Grab
Expanded Effluent Testing ³	---	---	---	5x/5 years	Grab

Table 1: Proposed Effluent Limits and Monitoring Requirements

Parameter	Units	Effluent Limits and Monitoring Requirements			
		Maximum Daily Limit	Average Monthly Limit	Monitoring Frequency	Sample Type

Footnotes:

1. Flow shall be recorded continuously for each discharge event (batch). Total flow measurements shall be recorded on a daily, per batch, and annual basis. Total flow volume for each discharge must be reported on the DMR form while average daily flows, and batch and annual totals must be reported with the application for permit renewal. Increasing flow for the purposes of dilution is prohibited.
 2. Residue monitoring must occur at Outfall 001 and occur daily during discharge.
 3. To be performed once during the 1st, 2nd, 3rd, 4th and 5th year of the permit. To the extent possible, ballast discharges from different feed stocks shall be sampled (i.e., Cook Inlet, North Slope or Indonesian crude). Expanded effluent and whole effluent toxicity testing must occur on the same day and must correspond with other routine monitoring. Results must be reported with the application for permit renewal.
 4. If a batch discharge spans more than one reporting (calendar) month, test results for the batch shall be reported on the DMR for the later month.
 5. Monitoring for COD, TOC and chloride to occur during the 1st, 2nd, 3rd, 4th and 5th year of the permit. Results must be reported with the application for permit renewal.
 6. Reporting is required within 24 hours of a maximum daily limit violation (see Part III.G.).
2. The permittee must not discharge any floating solids or visible foam in other than trace amounts, or oily wastes that produce a sheen on the surface of the receiving water.
 3. The pH must not be less than 6.5 standard units (s.u.) nor greater than 8.5 standard units (s.u.).
 4. The permittee must collect effluent samples from the effluent stream after the last treatment unit prior to discharge into the receiving waters.
 5. Method Detection Limits. For all effluent monitoring, the permittee must use methods that can achieve a method detection limit (MDL) less than the effluent limitation.
 6. For purposes of reporting on the DMR for a single sample, if a value is less than the MDL, the permittee must report “less than {numeric value of the MDL}” and if a value is less than the ML, the permittee must report “less than {numeric value of the ML}.”
 7. For purposes of calculating monthly averages, zero may be assigned for values less than the MDL, the {numeric value of the MDL} may be assigned for values between the MDL and the ML. If the average value is less than the MDL, the permittee must report “less than {numeric value of the MDL}” and if the average value is less than the ML, the permittee must report “less than {numeric value of the ML}.” If a value is equal to or greater than the ML, the permittee must report and use the actual value. The resulting average value must be compared to the compliance level, the ML, in assessing compliance.

C. Whole Effluent Toxicity (WET) Testing Requirements

The permittee must conduct chronic toxicity tests on effluent samples from outfall 001. Testing must be conducted in accordance with subsections 1 through 8, below.

1. Toxicity testing must be conducted on grab samples of effluent a total of four times over the 5 year permit period. Monitoring events shall be performed in the 2nd, 3rd, 4th and 5th year of the permit. To the extent possible, ballast water discharges from different feed stocks shall be sampled for WET (i.e., Cook Inlet, North Slope or Indonesian crude). WET testing must occur on the same day as expanded effluent testing, and must also correspond with monthly events of routine monitoring.
2. Chronic Test Species and Methods
 - a) The permittee must conduct tests with a bivalve species, *Crassostrea gigas* (larval development test), or *Mytilus galloprovincialis*; and an echinoderm species, purple sea urchin, *Strongylocentrotus purpuratus* or sand dollar, *Dendraster excentricus* (fertilization test), depending upon availability on the echinoderm.
 - b) The presence of chronic toxicity must be determined as specified in *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms*, EPA/600/R-95/136, August 1995.
 - c) Results must be reported in chronic toxicity units (TU_U), where TU_U = 100/NOEC. See Part VI. for a definition of NOEC.
3. Quality Assurance
 - a) The permittee must conduct testing on a series of six dilutions ranging from zero percent effluent (control) to 100 percent effluent. Other appropriate dilutions in the series are 12.5%, 25%, 50% and 66%, but dilutions should be selected to bracket the NOEC.
 - b) All quality assurance criteria and statistical analyses used for chronic toxicity testing and reference toxicant tests must be conducted in accordance with *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms*, EPA/600/R-95/136, August 1995, and individual test protocols.
 - c) If either the reference toxicant tests or the effluent tests do not meet all test acceptability criteria as specific in the test methods manual, the permittee must resample and retest as soon as possible.
 - d) Control and dilution water should be receiving water or lab water, as described in the manual. If dilution water used is different from the culture water, a second control, using culture water shall also be used.
4. Reporting Requirements.

- a) Results and reports associated with chronic WET testing shall be submitted to EPA and ADEC along with the application for permit renewal, no less than 180 days before permit expiration.
- b) At a minimum, WET reporting requirements shall consist of:
 - (i) The toxicity test results.
 - (ii) The dates of the sample collection and the initiation of each toxicity test.
 - (iii) The flow rate at the time of sample collection and a description of the wastewater being discharged.
 - (iv) The results of the analyses for other chemical and physical parameters that are required by the permit such as expanded effluent testing and routine monitoring.
 - (v) All raw data and statistical analyses from the tests, including reference toxicant tests.
- c) WET test results shall be prepared in accordance with the Report preparation chapter in the relevant toxicity testing manual.

D. Schedule of Compliance

1. The permittee must achieve compliance with the TAH and TAqH limitations of Part 1.B. by November 1, 2010. There are no interim effluent limitations for these parameters set in this permit.
2. Until compliance with TAH and TAqH limits are achieved, the permittee must submit an annual Report of Progress which outlines progress made towards reaching the compliance date. A 1-year, 2-year, and 3-year Report of Progress must be submitted to EPA and ADEC by November 1, 2007, 2008 and 2009. At a minimum, the Reports of progress must include:
 - a) An assessment of the previous 1 year of TAH and TAqH data, and a comparison to effluent limitations.
 - b) A discussion of the progress made towards meeting the effluent limitations.
 - c) Further actions and milestones targeted for the upcoming year.

II. Special Conditions

A. Quality Assurance Plan (QAP)

The permittee must develop a quality assurance plan (QAP) for all monitoring required by this permit. The plan must be developed and implemented within 90 days of the effective date of this permit. Any existing QAPs may be modified for use under 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 ADEC upon request.

B. Operations and Maintenance Plan

The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) in accordance with industry accepted engineering practices for those equipment that are installed or used to achieve compliance with the conditions of this permit. The permittee must develop and implement an Operations and Management (O&M) Plan for their ballast water treatment plant within 90 days of the effective date of this permit, and be kept on site and made available to EPA and/or ADEC upon request. Any existing O&M Plan may be modified for use under this section. The O&M Plan shall also incorporate elements of best management practices used to prevent or minimize the generation and the potential for the release of pollutants from the facility to the waters of the United States through normal and ancillary activities

III. General 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 Outfall 001 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 15th 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 ADEC at the following addresses:

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

ADEC, Division of Water
555 Cordova Street
Anchorage, Alaska 99501

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 ADEC 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 BOD₅, oil and grease, TAH and TAqH.
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.

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 ADEC 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:

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

J. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.

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 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 notice to the Director of the Office of Water and Watersheds as specified in part III.I.3. and ADEC as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

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

J. Anticipated Noncompliance

The permittee must give advance notice to the Director of the Office of Compliance and Enforcement and ADEC 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 ADEC, within the time specified in the request, any information that EPA or ADEC 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 ADEC, 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 ADEC, it must promptly submit the omitted facts or corrected information.

E. Signatory Requirements

All applications, reports or information submitted to EPA and ADEC 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 or ADEC 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 ADEC.
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 ADEC 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; ADEC; 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 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. 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.

VI. Definitions

1. "Act" means the Clean Water Act.
2. "ADEC" means Alaska Department of Environmental Conservation.
3. "Administrator" means the Administrator of the EPA, or an authorized representative.
4. "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.
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/"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. "Grab" sample is an individual sample collected over a period of time not exceeding 15 minutes.
14. "Maximum daily discharge limitation" means the highest allowable "daily discharge."
15. "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.
16. "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.
17. "NOEC" means no observed effect concentration. The NOEC is the highest concentration of toxicant (e.g., effluent) to which organisms are exposed in a chronic toxicity test [full life-cycle or partial life-cycle (short term) test], that causes no observable adverse effects on the test organisms (i.e., the highest concentration of effluent in which the values for the observed responses are not statistically significantly different from the controls).
18. "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.
19. "QA/QC" means quality assurance/quality control.
20. "Regional Administrator" means the Regional Administrator of Region 10 of the EPA, or the authorized representative of the Regional Administrator.
21. "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.
22. "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.