

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",

Aurora Energy, LLC

is authorized to discharge from the Aurora Energy Chena Power Plant, commercial electric generating facilities located in Fairbanks, Alaska

to receiving waters named the Chena River,

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

This permit shall become effective October 1, 2003

This permit and the authorization to discharge shall expire at midnight, September 30, 2008

Signed this 26<sup>th</sup> day of August, 2003

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Robert Robichaud, for  
Randall F. Smith  
Director  
Office of Water

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## I. SPECIFIC LIMITATIONS AND MONITORING REQUIREMENTS

### A. Effluent Limitations

During the effective period of this permit, the permittee is authorized to discharge pollutants from the outfalls specified herein to the Chena 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.

1. The permittee must collect all effluent samples from the effluent stream after the last treatment unit prior to discharge into the receiving waters:
  - a. The flow shall not exceed 20 million gallons per day (approximate average flow of 14,000 gallons per minute).
  - b. The pH shall not be less than 6.5 standard units nor greater than 8.5 standard units.
  - c. There shall be no discharge of floating solids, visible foam, other than in trace amounts, or oily wastes which produce a sheen on the surface of the receiving water.
  - d. The following thermal effluent limits shall apply at all times:

Temperature Effluent Limitations		
	Maximum Daily	Average Monthly
Winter, Oct. - May	25.6 °C (78.1 °F)	22.6 °C (72.7 °F)
Summer, June - Sept.	30.7 °C (87.3 °F)	26.6 °C (79.9 °F)

### 2. Monitoring Requirements

Monitoring shall occur at Outfall 001 according to the following schedule and shall be reported on the monthly Discharge Monitoring Report (DMR):

Monitoring Requirements		
Parameter	Sample Frequency	Sample Type

Flow, mgd	Continuous	Recorder
Temperature, °C	Continuous	Recorder
pH, standard units	1/week	grab

B. Ambient Monitoring

1. The permittee shall monitor the temperature of the ambient water at the intake structure on a continuous basis and report the daily average, maximum and minimum temperatures.
2. The permittee shall monitor an ambient station for temperature (°C) and dissolved oxygen (DO) once per month. The station shall be at a point 800 feet downstream of outfall 001.

After two years of monthly monitoring the permittee may request of EPA and ADEC that the ambient monitoring frequency be reduced to quarterly monitoring except for the months of December, January and February, which, would continue monthly monitoring. This alternative monitoring schedule is contingent upon EPA and ADEC approval.

3. If, during the months of June, July and August, the facility is discharging greater than 13.3 MGD (9200 gpm) of cooling water and the temperature of the ambient water at the intake structure is greater than 14 °C (57.2 °F), the permittee shall conduct weekly monitoring (temperature and DO) as listed under part 2 of this section. The weekly monitoring shall be conducted concurrently or as soon as practicable when the above listed conditions occur.
4. All monitoring results shall be reported on the monthly Discharge Monitoring Report (DMR). If a monitoring station is ice covered, the permittee shall record, on the monthly DMR, that the station was ice covered.
5. The permittee shall prepare and submit an annual report summarizing the results of the effluent and ambient monitoring conducted during the calendar year and submit copies to EPA and ADEC. The annual report shall be submitted by March 1<sup>st</sup> of each year.

C. Monitoring Program Plan including Quality Assurance Requirements

1. Within **120 days of the effective date of this permit**, the permittee shall complete and implement a Monitoring Program Plan that includes a Quality Assurance/Quality Control (QA/QC) program.

This plan shall address the details of:

- a. all monitoring procedures (e.g., methods to insure adequate preservation of composite samples, methods of station location and relocation, identification of sampling equipment),
  - b. monitoring objectives,
  - c. specific QA/QC procedures including the method detection limits and precision requirements that will insure that program objectives are met,
  - d. how data will be used to evaluate the monitoring objectives,
  - e. name(s), address(es), and telephone number(s) of the laboratories, used by or proposed to be used by the permittee, and
  - f. other activities designed to achieve data quality goals for the monitoring programs.
2. The document, *Guidance for Preparation of Quality Assurance Project Plans*, EPA, Region 10, Quality and Data Management Program, QA/G-5, may be used as a reference guide in preparing the QA/QC program. This document is available at
- [www.epa.gov/r10earth/offices/oea/qaindex.htm](http://www.epa.gov/r10earth/offices/oea/qaindex.htm).
3. The permittee shall amend the Monitoring Program Plan whenever there is a modification in the sample collection, sample analysis, or other conditions or requirements of the plan. Notification of any modification shall be submitted to EPA and ADEC.
4. Copies of the Monitoring Program Plan shall be kept on site and shall be made available to EPA and ADEC upon request.

D. Best Management Practices (BMP)

Within **180 days** of the effective date of the permit, the permittee shall review, update if necessary, and implement its BMP Plan. The permittee shall amend the BMP Plan whenever necessary. Notification of any modification shall be submitted to EPA and ADEC. The BMP Plan shall incorporate practices to achieve the objectives and specific requirements listed below. The permittee shall fully comply with the BMP Plan along with any amendments. The conditions of the BMP Plan are an enforceable part of this permit.

1. Objectives. The BMP Plan shall be consistent with the following objectives for the control of pollutants:
  - a. The number and quantity of pollutants and the toxicity of effluent generated or discharged at the facility shall be minimized by the permittee to the extent feasible by managing each influent waste stream in the most appropriate manner.
  - b. Under the BMP Plan, and any Standard Operating Procedures (SOPs) included in the BMP Plan, the permittee shall ensure proper operation and maintenance of the treatment facility.
  - c. The permittee shall establish specific objectives for the control of pollutants by conducting the following evaluations:
    - i. Each facility component or system shall be examined for its waste minimization opportunities and its potential for causing a release of significant amounts of pollutants to waters of the United States due to equipment failure, improper operation, natural phenomena such as storm water or snow melt runoff, etc. The examination shall include all normal operations and ancillary activities including truck transport system, material storage areas, in-plant transfer, process and material handling areas, loading or unloading operations, other site runoffs, spillage or leaks, sludge and waste disposal, or drainage from raw material storage.
    - ii. Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of pollutants which could be discharged from the facility as a result of each condition or circumstance.
2. Requirements. The BMP Plan shall be consistent with the general guidance contained in the publications entitled "Best Management Practices Guidance Document" (U.S. EPA, 1993), and "Storm Water Management for Industrial Activities" (U.S. EPA, 2000, effective April 16, 2001 in Alaska) or any subsequent revisions to the above guidance documents. The BMP Plan shall comply with the following conditions:



- a. The BMP Plan shall be documented in narrative form, and shall include any necessary plot plans, drawings or maps.
  - b. The BMP Plan shall be developed in accordance with good engineering practices.
  - c. The BMP Plan shall be organized and written with the following structure:
    - i. Name and location of the facility.
    - ii. Statement of BMP policy.
    - iii. Structure, functions, and procedures of the Best Management Practices Committee.
    - iv. Specific management practices and standard operating procedures to achieve the BMP objectives, including, but not limited to, the following:
      - (a) modification of equipment, facilities, technology, processes, and procedures,
      - (b) reformulation or redesign of products,
      - (c) substitution of materials,
      - (d) improvement in management, inventory control, materials handling or general operational phases of the facility,
      - (e) risk identification and assessment,
      - (f) materials compatibility,
      - (g) good housekeeping,
      - (h) preventative maintenance,
      - (i) inspections and records,
      - (j) security,
      - (k) employee training.
3. The BMP Plan shall include the following provisions concerning BMP Plan review:
- a. Be reviewed by plant engineering staff and the plant manager in January and June of each year.
  - b. Include a statement that the above reviews have been completed and that the BMP Plan fulfills the requirements set forth in this

permit. The statement shall be certified by the dated signatures of the plant engineering staff and the plant manager.

4. Establish specific BMPs to meet the objectives identified in the Objective Section above, address each component or system capable of generating or causing a release of significant amounts of pollutants, and identify specific preventative or remedial measures to be implemented.
5. Establish specific BMPs or other measures which ensure that the following specific requirements are met:
  - a. Ensure that berms, including any pond walls, ditches, dikes, dams and similar water retention structures shall be constructed in a manner such that they reject the passage of unwanted water.
  - b. Ensure that measures are taken such that pollutant materials removed from the process water and wastewater streams will be retained and not discharged to waters of the United States.
  - c. Ensure that all water control devices, including but not limited to structures and berms, and all solids retention structures such as berms, dikes, and pond structures and dams, shall be maintained to continue their effectiveness and to protect from unexpected and catastrophic failure.
  - d. Ensure proper management of solid and hazardous waste in accordance with regulations promulgated under the Resource Conservation and Recovery Act (RCRA) and the Alaska Solid Waste Management Regulations (18 AAC 60). Management practices required under RCRA regulations shall be referenced in the BMP Plan.
  - e. Reflect requirements for Spill Prevention, Control, and Countermeasure (SPCC) plans under Section 311 of the Clean Water Act and 40 CFR Part 112, and may incorporate any part of such plans into the BMP Plan by reference.
  - f. Ensure that all storm water/snow melt runoff on the facility site is diverted and/or collected such that it does not discharge to the Chena River.

- g. The plan shall describe measures that prevent or minimize spills and/or contamination of storm water runoff from delivery vehicles arriving on the plant site. At a minimum the facility shall:
  - i. Develop procedures for the inspection of delivery vehicles arriving on the plant site, and ensure overall integrity of the body or container.
  - ii. Develop procedures to deal with leakage or spillage from vehicles or containers, and ensure that proper protective measures are available for personnel and environment.
- h. The plan shall describe measures that prevent or minimize spills and/or the contamination of storm water runoff from loading and unloading areas. The facility may consider covering the loading area, minimizing storm water runoff to the loading area by grading, berming, or curbing the area around the loading area to direct storm water away from the area, or locate the loading/unloading equipment and vehicles so that leaks can be contained in existing containment and flow diversion systems.
- i. The plan shall describe measures to reduce the potential for an oil spill, or a chemical spill. At a minimum the structural integrity of all above ground tanks, pipelines, pumps and other related equipment shall be visually inspected on a weekly basis.
- j. The plan shall describe measures that prevent or minimize contamination of storm water from material storage areas (including areas used for temporary storage of miscellaneous products, and construction materials stored in lay down areas). The facility may consider flat yard grades, runoff collection in graded swales or ditches, erosion protection measures (e.g. concrete chutes, riprap, stilling basins) at steep outfall sites, or covering lay down areas, storing the materials indoors, covering the material with a temporary covering made of polyethylene, polyurethane, polypropylene, or Hypalon, or minimizing storm water runoff by enclosing the area or building a berm around the area.
- k. The plan shall describe measures that prevent or minimize coal and/or coal dust from falling from the conveyor and entering the water or ice of the Chena River.

6. The permittee shall maintain a copy of the BMP Plan on site and shall make it available to EPA and ADEC upon request.
7. The permittee shall amend the BMP Plan whenever there is a change in the facility design, construction, operations, or maintenance which materially affect the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the United States.
8. If the BMP Plan proves to be ineffective as determined by the permittee, EPA, or ADEC, in achieving the general objective of preventing the release of significant amounts of pollutants to waters of the United States and the specific objectives and requirements listed under this section, the permit and/or the BMP Plan shall be subjected to modification to incorporate the revised BMP requirements.

E. Reapplication Requirements

In order to reapply for the permit near the end of its 5 year cycle, an application must be filed with EPA at least 180 days prior to the expiration date. Along with the application forms, the permittee will submit copies of any studies conducted downstream of the Cushman Street bridge on the Chena River. The permittee will also submit any documents compiled by the Alaska Department of Fish and Game, or other state agency, concerning aquatic species in this part of the Chena River.

## **II. MONITORING, RECORDING AND REPORTING REQUIREMENTS**

A. Representative Sampling (Routine and Non-Routine Discharges)

1. Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.
2. In order to ensure that the effluent limitations 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 Permit Part I.A. ("Effluent Limitations") of this permit that are likely to be affected by the discharge.

3. 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 Part II.C ("Monitoring Procedures"). The permittee must report all additional monitoring in accordance with Part II.D ("Additional Monitoring by Permittee").
- B. Reporting and Monitoring Results. The permittee must summarize monitoring results each month on the 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 ("Signatory Requirements") of this permit. The permittee must submit the legible originals of these documents to the Director, Office of Water, with copies to Alaska Department of Environmental Conservation (ADEC) at the following addresses:

United States Environmental Protection Agency, Region 10  
1200 Sixth Avenue, OW-130  
Seattle, Washington 98101

Alaska Department of Environmental Conservation  
610 University Avenue  
Fairbanks, Alaska 99709

- C. **Monitoring Procedures.** Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures have been specified in this permit.
- D. **Additional Monitoring by Permittee.** If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or, 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 form 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.** The permittee must retain records of all other 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 this 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 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 III.F, "Bypass of Treatment Facilities");
  - c. any upset that exceeds any effluent limitation in the permit (See Permit Part III.G., "Upset Conditions");
  - d. any violation of a maximum daily discharge limitation for any of the pollutants in Permit Part I.A. requiring 24-hour reporting.
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 Permit Part III.G.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.
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 (“Twenty-four Hour Notice of Noncompliance Reporting”) of this permit.
- I. Changes in Discharge of Toxic Substances. The permittee must notify the Director 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 will exceed the highest of the following “notification levels”:
    - a. One hundred micrograms per liter (100 µg/l);
    - b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
    - c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
    - d. The level established by the Director in accordance with 40 CF 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 µg/l);
    - b. One milligram per liter (1 mg/l) for antimony;
    - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
    - d. The level established by the Director in accordance with 40 CFR 122.44(f).

- J. Compliance Schedule Reporting. 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.

### 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; for denial of a permit renewal application.
- B. Penalties for Violations of Permit Conditions
  - 1. Civil Penalties. Pursuant to 40 CFR 19 and the Act, any person who violates section 301, 302, 306, 307, 308, 318 or 405 or 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 or the Act, or any condition or limitation implementing any of such section 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 \$100,000,000 and can be fined up to \$2,000,000 for a 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 Part, 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 noncompliance 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 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 Parts IV.F.2 and IV.F.3.
  - 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 ADEC, if possible at least 10 days before the date of 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 or ADEC 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 IV.F.3.a(2).
  - b. The Director and ADEC may approve an anticipated bypass, after considering its adverse effects, if the Director and ADEC determine that it will meet the three conditions listed above in Part IV.F.3.a.

#### 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 Part IV.G.2. 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 causes(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 within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- I. Planned Changes. The permittee must give notice to the Director 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 not subject to effluent limitations in this permit.
- J. Anticipated Noncompliance. The permittee must give advance notice to the Director and the Alaska Department of Environmental Conservation (ADEC)

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 ADEC, within any reasonable time specified in the request, any information that the Director 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 the Director 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 in any report to the Director or ADEC, it must promptly submit such facts or information.
- E. **Signatory Requirements.** All application, reports or information submitted to the Director 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, 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 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 and ADEC.

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 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, 1975), as amended.

- G. **Inspection and Entry.** The permittee must allow the Director, 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 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 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.
- K. Reopener. This permit may be reopened to adjust any effluent limitation or require water quality or aquatic species studies if an evaluation of the data collected pursuant to this permit shows the need for different requirements.

## **V. DEFINITIONS AND ACRONYMS**

- A. "Average Monthly Limit" 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.
- B. "Bypass" means the intentional diversion of waste streams from any portions of a treatment facility.
- C. "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.
- D. A "grab" sample is a single sample or measurement taken at a specific time or over as short a period of time as is feasible.
- E. "Maximum Daily Limit" means the highest allowable "daily discharge."
- F. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which caused 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.

- G. "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, maintenance, or careless or improper operation.