

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES)
DISCHARGE PERMIT**

**GENERAL CONDITIONS
(PART II)**

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1. GENERAL PROVISIONS

- a. This permit, or a true copy, shall be kept readily available for reference at the wastewater treatment facility.
- b. A determination has been made on the basis of a submitted application, plans, or other available information, that compliance with the specified permit provisions will reasonably protect classified water use and assure compliance with applicable water quality standards. Satisfaction of permit provisions notwithstanding, if operation pursuant to the permit causes or contributes to a condition in contravention of State water quality standards, or if the Department determines, on the basis of notice provided by the permittee and any related investigation, inspection or sampling, that a modification of the permit is necessary to prevent impairment of the best use of the waters or to assure maintenance of water quality standards or compliance with other provisions of ECL Article 17, or the Act, the Department may require such a modification and may require abatement action to be taken by the permittee and may also prohibit the noticed act until the permit has been modified.
- c. All discharges authorized by this permit shall be consistent with the terms and conditions of this permit. Facility expansion or other modifications, production increases, product changes, product process modifications, and wastewater collection, treatment and disposal system changes which will result in new or increased discharges of pollutants into the waters of the state must be reported by submission of a new SPDES application, in which case the permit may be modified accordingly. The discharge of any pollutant, not identified and authorized, or the discharge of any pollutant more frequently than, or at a level in excess of, that identified and authorized by this permit shall constitute a violation of the terms and conditions of this permit. Facility modifications, process modifications, or production decreases which result in decreased discharges of pollutants must be reported by submission of written notice to the permit-issuing authority, in which case the permit-issuing authority may require the permittee to submit a new SPDES application.
- d. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
- e. If the discharge(s) permitted herein originate within the jurisdiction of an interstate water pollution control agency, then the permitted discharge(s) must also comply with any applicable effluent standards or water quality standards promulgated by that interstate agency.
- f. The permittee must comply with all terms and conditions of this permit. Any permit noncompliance constitutes a violation of the Environmental Conservation Law and the Clean Water Act and is grounds for: enforcement action; for permit suspension, revocation and modification; and for denial of a permit renewal application.
- g. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, the permittee shall promptly submit such facts or information.
- h. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- i. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- j. The Clean Water Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$25,000 per day of such violations. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than three years, or both.
- k. The filing of a request by the permittee for a permit modification, revocation, transfer, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- l. The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, suspending, or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit.

- m. Nothing in this permit relieves the permittee from a requirement to obtain other permits required by law, including, but not limited to:
 - (1) an air contamination source permit/certification under 6NYCRR Part 201;
 - (2) a waste transporter permit under 6NYCRR Part 364; or
 - (3) a radioactive waste discharge permit under 6NYCRR Part 380.

2. SPECIAL REPORTING REQUIREMENTS FOR EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURAL DISCHARGERS

All existing manufacturing, commercial, mining and silvicultural dischargers must notify the Department as soon as they know or have reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not specifically controlled in the permit, pursuant to General Provision 1 © herein. For the purposes of this section, recurrent accidental or unintentional spills or releases shall be considered to be a discharge on a frequent basis.
- b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (1) 500 micrograms/liter;
 - (2) 1.0 milligram/liter for antimony;
 - (3) five times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR §122.21(g)(7); or
 - (4) the level established by the Department in accordance with 40 CFR §122.44(f).
- c. That they have begun or expect to begin to use, or manufacture as an intermediate or final product or by-product, any toxic pollutant which was not reported in the permit application under 40 CFR §122.21(g)(9) and which is being or may be discharged to waters of the state.

3. EXCLUSIONS

- a. The issuance of this permit by the Department and the receipt thereof by the Applicant does not supersede, revoke or rescind an order or modification thereof on consent or determination by the Commissioner issued heretofore by the Department or any of the terms, conditions or requirements contained in such order or modification thereof unless specifically intended by said order.
- b. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations; nor does it obviate the necessity of obtaining the assent of any other jurisdiction as required by law for the discharge authorized.
- c. This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.
- d. Oil and hazardous substance liability: The imposition of responsibilities upon, or the institution of any legal action against the permittee under Section 311 of the Clean Water Act shall be in conformance with regulations promulgated pursuant to Section 311 governing the applicability of Section 311 of the Clean Water Act to discharges from facilities with NPDES permits.

4. MODIFICATION, SUSPENSION, REVOCATION

- a. If the permittee fails or refuses to comply with any requirement in this permit, such noncompliance shall constitute a violation of the permit for which the Commissioner may modify, suspend, or revoke the permit after notice and opportunity for hearing and take direct enforcement action pursuant to law. When, at any time during or prior to a period for compliance, the permittee announces or otherwise lets it be known, or the Commissioner on reasonable cause determines, that the permittee will not make the requisite efforts to achieve compliance with an interim or final requirement, the Commissioner may modify, suspend or revoke the permit and take direct enforcement action pursuant to law, without waiting for expiration of the period for compliance with such requirements.

- b. After notice and opportunity for a hearing, the Department may modify, suspend or revoke this permit in whole or in part during its term for cause including, but not limited to, the following:
- (1) violation of any provision of this permit; or
 - (2) obtaining this permit by misrepresentation or failure to disclose fully all relevant facts at any time; or materially false or inaccurate statements or information in the application or the permit; or
 - (3) a change in any physical circumstances, requirements or criteria applicable to discharges, including, but not limited to:
 - (I) standards for construction or operation of the discharging facility;
 - (ii) the characteristics of the waters into which such discharge is made;
 - (iii) the water quality criteria applicable to such is made;
 - (iv) the classification of such waters; or
 - (v) effluent limitations or other requirements applicable pursuant to the Act or State Law.
 - (4) a determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification, a suspension, or revocation.
 - (5) violation of any order of the Commissioner or provision of ECL or regulation promulgated thereunder, which is related to the permitted activity.
 - (6) Newly discovered material information or material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of this permit.
- c. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of the Clean Water Act for a toxic pollutant and that a standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Department shall institute proceedings to modify the permit in order to achieve conformance with the toxic effluent standard or prohibition and in conformance with ECL 17-0809.

5. REPORTING NONCOMPLIANCE

- a. Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- b. Twenty-four hour reporting. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written noncompliance report shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written noncompliance report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent the noncompliance and its reoccurrence.
- (1) The following shall be included as information which must be reported within 24 hours under paragraph (b) above:
 - (I) any unanticipated bypass which violates any effluent limitation in the permit;
 - (ii) any upset which violates any effluent limitation in the permit;
 - (iii) violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.
 - (iv) any unusual situation, caused by a deviation from normal operation or experience (e.g. upsets, bypasses, inoperative treatment process units, spills or illegal chemical discharges or releases to the collection system) which create a potentially hazardous condition.
 - (v) any dry weather overflow(s).
 - (2) The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(3) Reports required by this section shall be filed with the Department's regional office having jurisdiction over the permitted facility. During weekends, oral noncompliance reports, required by this paragraph, may be made at (518) 457-7362.

- c. Other noncompliance. The permittee shall report all instances of noncompliance not otherwise required to be reported under this section or other sections of this permit, with each submitted copy of its Discharge Monitoring Reports until such noncompliance ceases. Such noncompliance reports shall contain the information listed in paragraph (b) of this section.
- d. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

6. INSPECTION AND ENTRY

The permittee shall allow the Commissioner of the Department, the EPA Regional Administrator, the County Health Department, or their authorized representatives, upon the presentation of credentials and other documents as may be required by law, to:

- a. enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit, including records maintained for purposes of operation and maintenance;
- c. inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit;
- d. sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act or Environmental Conservation Law, any substances or parameters at any location; and
- e. enter upon the property of any contributor of wastewater to the system under authority of the permittee's Sewer Use Ordinance (municipalities) or Regulations.

7. TRANSFER OF PERMIT

- a. A permit is transferable only with prior written approval of the Department.
- b. To transfer a permit to a new owner or operator, written application must be made to the Department. Application for Permit Transfer forms can be obtained from, and must be submitted to, the appropriate regional office of the Department's Division of Regulatory Affairs.
- c. In order for operation of the facility to continue without interruption, application must be made at least 30 days in advance of the transfer.
- d. If, when the ownership or operation is transferred, the volume or composition of the facility discharge will be altered, a new application for permit may be required.

8. PERMIT RENEWAL

- a. Any permittee who wishes to continue to discharge after the expiration date of a permit shall apply for renewal of its permit no later than 180 days prior to the permit's expiration date (unless permission for a later date has been granted by the Department) by submitting any forms, fees, or supplemental information which may be required by the Department. Upon request, the Department shall provide the permittee with specific information concerning the forms, fees, and supplemental information required.
- b. When a permittee has made timely and sufficient application for the renewal of a permit or a new permit with reference to any activity of a continuing nature, the existing permit does not expire until the application has been finally determined by the Department, and, in case the application is denied or the terms of the new permit limited, until the last day for seeking review of the Department order or a later date fixed by order of the reviewing court, provided that this subdivision shall not affect any valid Department action then in effect summarily suspending such permit.
- c. A municipality applying for a permit (renewal) shall submit evidence that it is enforcing an up-to-date enacted Sewer Use Ordinance which was approved by the Department.

- d. A municipality applying for a permit (renewal) shall have an approved method of residuals disposal in compliance with Part 6-NYCRR 360 and 364.
- e. A municipality receiving industrial waste shall submit evidence that it is operating (or implementing) its industrial pretreatment program in accordance with Part 6 NYCRR 651.53(f).

9. SPECIAL PROVISIONS - NEW OR MODIFIED DISPOSAL SYSTEMS OR SERVICE AREAS

- a. Prior to construction of any new or modified waste disposal system or modification of a facility or service area generating wastewater which could alter the design volume of, or the method or effect of treatment or disposing of the sewage, industrial waste or other wastes, from an existing waste disposal system, the Permittee shall submit to the Department or its designated field office for review, an approvable engineering report, plans, and specifications which have been prepared by a person or firm licensed to practice Professional Engineering in the State of New York.
- b. The construction of the above new or modified disposal system shall not start until the Permittee receives written approval of the system from the Department or its designated field office.
- c. The construction of the above new or modified disposal system shall be under the general supervision of a person or firm licensed to practice Professional Engineering in New York State. Upon completion of construction, that person or firm shall certify to the Department or its designated field office that the system has been fully completed in accordance with the approved engineering report, plans and specifications, permit and letter of approval; and the permittee shall receive written acceptance of such certificate from the Department or designated field agency prior to commencing discharge.
- d. The Department and its designated field offices review wastewater disposal system reports, plans, and specifications for treatment process capability only, and approval by either office does not constitute approval of the system's structural integrity.

10. MONITORING, RECORDING, AND REPORTING

10.1 GENERAL

- a. The permittee shall comply with all recording, reporting, monitoring and sampling requirements specified in this permit and such other additional terms, provisions, requirements or conditions that the Department may deem to be reasonably necessary to achieve the purposes of the Environmental Conservation Law, Article 17, the Act, or rules and regulations adopted pursuant thereto.
- b. Samples and measurements taken to meet the monitoring requirements specified in this permit shall be representative of the quantity and character of the monitored discharges. Composite samples shall be composed of a minimum of 8 grab samples, collected over the specified collection period, either at a constant sample volume for a constant flow interval or at a flow-proportioned sample volume for a constant time interval, unless otherwise specified in Part I of this permit. For GC/MS Volatile Organic Analysis (VOA), aliquots must be combined in the laboratory immediately before analysis. At least 4 (rather than 8) aliquots or grab samples should be collected over the specified collection period. Grab sample means a single sample, taken over a period not exceeding 15 minutes.
- c. Accessible sampling locations must be provided and maintained. New sampling locations shall be provided if existing locations are deemed unsuitable by the Department or its designated field agency.
- d. Actual measured values of all positive analytical results obtained above the Practical Quantitation Limit (PQL)¹ for all monitored parameters shall be recorded and reported, as required by this permit; except, where parameters are limited in this permit to values below the PQL, actual measured values for all positive analytical results above the Method Detection Limit (MDL)² shall be reported.

¹ Practical Quantitation Limit (PQL) is the lowest level that can be measured within specified limits of precision and accuracy during routine laboratory operations on most effluent matrices.

² Method Detection Limit (MDL) is the level at which the analytical procedure referenced is capable of determining with a 99% probability that the substance is present. This value is determined in distilled water with no interfering substances present. The precision at this level is +/- 100%.

- e. The permittee shall periodically calibrate and perform manufacturer's recommended maintenance procedures on all monitoring and analytical instrumentation to insure accuracy of measurements. Verification of maintenance shall be logged into the daily record book(s) of the facility. The permittee shall notify the Department's regional office immediately if any required instrumentation becomes inoperable. In addition, the permittee shall verify the accuracy of their measuring equipment to the Department's Regional Office annually.
- f. The Clean Water 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 per violation or by both. If a conviction of such person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or by both.

10.2 SIGNATORIES AND CERTIFICATION

- a. All reports required by this permit shall be signed as follows:
 - (1) for a corporation: by a responsible corporate officer. For the purposes of this section, a responsible corporate officer means:
 - (i) a president, secretary, treasurer, or a vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making function for the corporation, or
 - (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (2) for a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 - (3) for a municipality, state, federal, or other public agency: by either a principal or executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency; or
 - (4) a duly authorized representative of the person described in items (1), (2), or (3). A person is a duly authorized representative only if:
 - (i) the authorization is made in writing by a person described in paragraph (a)(1), (2), or (3) of this section;
 - (ii) 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 well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
 - (iii) the written authorization is submitted to the Department.
- b. Changes to authorization: If an authorization under subparagraph (a)(4) of this section 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 subparagraph (a)(4) of this section must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.
- c. Certification: Any person signing a report shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, in accordance with a system, designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the permit 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."

- d. The Clean Water Act provides that any person who knowingly makes any material false statement, representation, or certification in any application, record, report, plan, or other document filed 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, or by imprisonment for not more than 2 years, or by both. If a conviction of such person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or by both.

10.3 RECORDING OF MONITORING ACTIVITIES AND RESULTS

- a. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.
- b. Records of monitoring information shall include:
 - (1) the date, exact place, and time of sampling or measurements;
 - (2) the individual(s) who performed the sampling or measurements;
 - (3) the date(s) analyses were performed;
 - (4) the individual(s) who performed the analyses;
 - (5) the analytical techniques or methods used; and
 - (6) the results of such analyses.

10.4 TEST AND ANALYTICAL PROCEDURES

- a. Monitoring and analysis must be conducted using test procedures promulgated, pursuant to 40 CFR Part 136, except:
 - (1) should the Department require the use of a particular test procedure, such test procedure will be specified in Part I of this permit.
 - (2) should the permittee desire to use a test method not approved herein, prior Department approval is required, pursuant to paragraph (b) of this section.
- b. Application for approval of test procedures shall be made to the Department's Regional Permit Administrator (see Part 1, page 1 for address), and shall contain:
 - (1) the name and address of the applicant or the responsible person making the discharge, the DEC permit number and applicable SPDES identification number of the existing or pending permit, name of the permit issuing agency, name and telephone number of applicant's contact person;
 - (2) the names of the pollutants or parameters for which an alternate testing procedure is being requested, and the monitoring location(s) at which each testing procedure will be utilized;
 - (3) justification for using test procedures, other than those approved in paragraph (a) of this section; and
 - (4) a detailed description of the alternate procedure, together with:
 - (i) references to published studies, if any, of the applicability of the alternate test procedure to the effluent in question;
 - (ii) information on known interferences, if any; and

(5) a comparability study, using both approved and the proposed methods. The study shall consist of 8 replicates of 3 samples from a well mixed waste stream for each Outfall if less than 5 outfalls are involved, or from 5 outfalls if 5 or more outfalls are involved. Four (4) replicates from each of the samples must be analyzed using a method approved in paragraph (a) of this section, and four of the replicates of each sample must be analyzed using the proposed method. This results in 24 analyses per Outfall up to a maximum of 120 analyses per permit. A statistical analysis of the data must be submitted that shall include, as a minimum:

- (i) calculated statistical mean and standard deviation;
- (ii) a test for outliers at the mean ± 3 standard deviations level. Where an outlier is detected, an additional sample must be collected and 8 replicates of the sample must be analyzed as specified above;
- (iii) a plot distribution with frequency counts and histogram;
- (iv) a test for equality among with-in sample standard deviation;
- (v) a check for equality of pooled with-in sample variance with an F-Test;
- (vi) a t-Test to determine equality of method means; and

copies of all data generated in the study.

Additional information can be obtained by contacting the Bureau of Watershed Assessment & Research (NYSDEC, 50 Wolf Road, Albany, New York 12233 - 3502).

11. DISPOSAL SYSTEM OPERATION AND QUALITY CONTROL

11.1 GENERAL

- a. The disposal system shall not receive or be committed to receive wastes beyond its design capacity as to volume and character of wastes treated, nor shall the system be materially altered as to: type, degree, or capacity of treatment provided; disposal of treated effluent; or treatment and disposal of separated scum, liquids, solids or combination thereof resulting from the treatment process without written approval of the Department of Environmental Conservation or its designated field office.
- b. The permittee shall, at all times, properly operate and maintain all facilities and systems of treatment and control (or 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 as a minimum, the following: 1) A preventive/corrective maintenance program. 2) A site specific action orientated operation and maintenance manual for routine use, training new operators, adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.
- c. When required under Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6NYCRR 650), sufficient personnel meeting qualifications for operators of sewage treatment works as required therein and additional maintenance personnel shall be employed to satisfactorily operate and maintain the treatment works.
- d. The permittee shall not discharge floating solids or visible foam.

11.2 BYPASS

a. Definitions:

- (1) "Bypass" means the intentional or unintentional diversion of waste stream(s) around any portion of a treatment facility for the purpose or having the effect of reducing the degree of treatment intended for the bypassed portion of the treatment facility.
- (2) "Severe property damage" means substantial damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which would not reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations:

The permittee may allow any bypass to occur which does not cause effluent limitations to be violated, but only if it also is for essential maintenance, repair or replacement to assure efficient and proper operation. These bypasses are not subject to the provisions of paragraph © and (d) of this section, provided that written notice is submitted prior to bypass (if anticipated) or as soon as possible after bypass (if unanticipated), and no public health hazard is created by the bypass.

c. Notice:

- (1) Anticipated bypass - If the permittee knows in advance of the need for a bypass, it shall submit prior written notice, at least forty five (45) days before the date of the bypass.
- (2) Unanticipated bypass - The permittee shall submit notice of an unanticipated bypass as required in Section 5, paragraph b. of this Part (24 hour notice).

d. Prohibition of bypass:

- (1) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:
 - (i) bypass was unavoidable to prevent loss of life, personal injury, public health hazard, 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 period of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance or if designed and installed backup equipment which could have prevented or mitigated the impact of the bypass is not operating during the bypass; and
 - (iii) the permittee submitted notices as required under paragraph © of this section and, excepting emergency conditions, the proposed bypass was accepted by the Department.

11.3 UPSET

a. Definition:

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with 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.

b. Effect of an upset:

An upset constitutes an affirmative defense to an action brought for noncompliance with such permit effluent limitations if the requirements of paragraph © of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. Conditions necessary for a demonstration of upset:

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

- (1) an upset occurred and that the permittee can identify the cause(s) of the upset;
- (2) the permitted facility was at the time being properly operated; and
- (3) the permittee submitted notice of the upset as required in Section 5, paragraph b of this part (24 hour notice).

(4) the permittee complied with any remedial measures required under Section 5, paragraph d of this part.

d. Burden of proof:

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

11.4 SPECIAL CONDITION - DISPOSAL SYSTEMS WITH SEPTIC TANKS

If a septic tank is installed as part of the disposal system, it shall be inspected by the permittee or his agent for scum and sludge accumulation at intervals not to exceed one year's duration, and such accumulation will be removed before the depth of either exceeds one-fourth (1/4) of the liquid depth so that no settleable solids or scum will leave in the septic tank effluent. Such accumulation shall be disposed of in an approved manner.

11.5 SLUDGE DISPOSAL

The storage or disposal of collected screenings, sludges, other solids, or precipitates separated from the permitted discharges and/or intake or supply water by the permittee shall be done in such a manner as to prevent creation of nuisance conditions or entry of such materials into classified waters or their tributaries, and in a manner approved by the Department. Any live fish, shellfish, or other animals collected or trapped as a result of intake water screening or treatment should be returned to their water body habitat. The permittee shall maintain records of disposal on all effluent screenings, sludges and other solids associated with the discharge(s) herein described. The following data shall be compiled and reported to the Department or its designated field office upon request:

- a. the sources of the materials to be disposed of;
- b. the approximate volumes, weights, water content and (if other than sewage sludge) chemical composition;
- c. the method by which they were removed and transported, including the name and permit number of the waste transporter; and
- d. their final disposal locations.

12. CONDITIONS APPLICABLE TO A PUBLICLY OWNED TREATMENT WORKS (POTW)

12.1 GENERAL

- a. All POTWs must provide adequate notice to the Department of the following:
 - (1) any new introduction of pollutants into the POTW from an indirect discharger which would be subject to sections 301 or 306 of the Clean Water Act if it were directly discharging those pollutants; and
 - (2) any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
 - (3) For purposes of this paragraph, adequate notice shall include information on:
 - (i) the quality and quantity of effluent introduced into the POTW; and
 - (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.
- b. Dry weather overflows are prohibited. The occurrence of any dry weather overflow constitutes a bypass exceeding limitations as defined in Section 11.2 of this Part and shall be promptly abated and reported to the Department in accord with Section 5 of this Part. The permittee shall inspect all overflow facilities at least twice per year (once each spring and fall) during periods of dry weather flow to ensure they are functioning properly. Records of all inspections shall be maintained for inspection by the Department or its designated representative

- c. The permittee shall identify all inflow to the tributary system and remove excessive infiltration/inflow to an extent which is economically feasible.
- d. The permittee shall enact, maintain and enforce an up-to-date and effective Sewer Use Ordinance which has been approved by the Department.
- e. New connections to a publicly owned sewer system or a privatized municipal sewer system are prohibited when the permittee is notified by the Department:
 - (1) that the discharge(s) regulated by this permit create(s) or is likely to create a public health or potential public health hazard, a contravention of water quality standards or the impairment of the best use of waters, as determined by the Commissioner; or
 - (2) that the discharge(s) regulated by this permit exceeded the permit limit for a specific parameter, including flow, in four of any six consecutive month periods or exceeded a permit limit by 1.4 (1.2 for toxics) times the permit limit in two of any six consecutive month periods; or
 - (3) that the permittee has failed or is likely to fail to carry out, meet or comply with any requirement of this permit, compliance schedule, order of the Department, judicial order, or consent decree.
- f. The provisions provided for in e. above shall remain in effect until the Permittee can demonstrate to the Department's satisfaction and approval that adequate available capacity exists in the plant and that the facility is in full compliance with all of the effluent limitations required by this permit.

12.2 NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES

- a. General prohibitions:

Pollutants introduced into POTW's by a non-domestic source shall not pass through the POTW or Interfere with the operation or performance of the works or disposal of sludge. These general prohibitions and the specific prohibitions in paragraph (b) of this section apply to all non-domestic sources introducing pollutants into a POTW whether or not the source is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.

- b. Specific prohibition:

In addition, the following pollutants shall not be introduced into a POTW:

- (1) pollutants which create a fire or explosion hazard in the POTW;
- (2) pollutants which will cause corrosive structural damage to the POTW, but in no case discharge with pH lower than 5.0 unless the works is specifically designed to accommodate such discharges;
- (3) solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in Interference;
- (4) any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW.
- (5) heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceeds 40^o C (104^o F) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits.

- c. When Specific Limits Must be Developed by a POTW:

- (1) POTW's developing POTW Pretreatment Programs pursuant to §403.8 shall develop and enforce specific limits to implement the prohibitions listed in §403.5(a) and (b).
- (2) All other POTW's shall, in cases where pollutants contributed by User(s) result in Interference or Pass-Through, and such violation is likely to recur, develop and enforce specific effluent limits for Industrial User(s), and all other users, as appropriate, which, together with appropriate changes in the POTW Treatment Plant's Facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's SPDES permit or sludge use or disposal practices.

(3) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

d. Local Limits:

Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with paragraph © above, such limits shall be deemed Pretreatment Standards for the purposes of §307(d) of the Act.

e. EPA and State Enforcement Actions:

If, within 30 days after notice of an Interference or Pass Through violation has been sent by EPA or DEC to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, EPA and DEC may take appropriate enforcement action.