

**BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

IN THE MATTER OF THE APPEAL AND REVIEW OF)
THE DECISION REGARDING THE PROPOSED)
WYOMING POLLUTANT DISCHARGE ELIMINATION)
SYSTEM (WYPDES) PERMIT WY0052761)
(YATES - NEMESIS POD), DATED DECEMBER 17, 2005)

**PETITION FOR REVIEW, NOTICE OF APPEAL
AND REQUEST FOR CONTESTED CASE HEARING**

THIS PETITION is a petition for review and notice of appeal to that certain decision made by John V. Corra, Director of the Wyoming Department of Environmental Quality, dated December 17, 2005, issuing WYPDES Permit WY0052761. A copy of the permit is attached hereto as **Appendix "A"**. This notice of appeal is timely filed pursuant to Chapter I, Section 16 of the Rules of Practice and Procedure of the Department of Environmental Quality.

Parties

The party to this appeal is:

Tear Drop Cattle Company LLC
10030 Bridger Canyon Road
Bozeman, Montana 59715

Said property owner is aggrieved by the action of DEQ in issuing WYPDES Permit WY0052761.

Appearances

The above property owner is represented in this matter by Dennis M. Kirven of Kirven and Kirven, P.C., 104 Fort Street, P.O. Box 640, Buffalo, Wyoming, 82834; Phone: (307) 684-2248; Fax: (307) 684-2242.

Reasons for Appeal

The reasons for this appeal are stated as follows:

1. THE YATES PROPOSAL FALSELY STATES THAT THE LANDOWNER HAD REQUESTED STOCK WATERING LOCATIONS AT OVER FORTY (40) OUTFALLS AND THAT STOCK RESERVOIRS HAD BEEN CITED "IN COORDINATION WITH THE LANDOWNER" (PAGE 1, LETTER TO CBM ASSOCIATES, INC. TO JASON THOMAS

OF THE DEQ, DATED DECEMBER 20, 2004.)

These statements are a complete misrepresentation of the agreement, or lack of agreement, between Yates and Tear Drop. Tear Drop has never requested stock watering from Yates and has not coordinated the siting of reservoirs with Yates. In fact, in a recent Surface Use Agreement, the parties stated that there would be no discharge of water upon Tear Drop lands without the prior written consent of Tear Drop.

This was followed up by a letter signed by both Tear Drop and Yates that the issue of discharge of produced water would be left "open" until a later date. Attached hereto are the following documents which verify this position:

1. Copy of the Surface Use Agreement ("SUA"), dated May 3, 2005 (Appendix "A");
2. Letter agreement indicating that Tear Drop Cattle Company would continue to negotiate concerning the discharge of water, but that no agreement had been reached (Appendix "B").

The section of the SUA regarding water discharge provides as follows:

- 6.1 Discharge of Produced Water. Excluding all provision in this Surface Use Agreement covering "Special Water Containment Pits", Owner and Operator agree that there shall be no surface discharge of produced water without the prior written consent of Owner, which consent shall not be unreasonably withheld. (Emphasis supplied.)

The Special Water Containment Pits were only those pits on the three (3) deep injection wells planned by Yates. There are no special water containment pits which are allowed on individual coalbed methane well sites.

Contemporaneous with the signing of the Surface Use Agreement, Yates requested, and Tear Drop agreed to sign, a letter that the parties would continue in good faith to negotiate an agreement on the discharge of produced water. The signed Letter Agreement, dated April 11, 2005, provided:

Yates Petroleum Corporation and Tear Drop Cattle Company LLC (the "parties"), acknowledge that issues concerning surface discharge of produced water remain open, and the parties intend to continue discussions and negotiations toward the goal of reaching mutual agreement on these issues, as well. (Emphasis supplied.)

Since that date, April 11, 2005, and/or May 3, 2005, there has not been any

agreement entered into between Tear Drop and Yates to resolve the open issues of discharge of produced water upon Tear Drop lands. The permit application of Yates is not only contrary to the written documents which the parties signed, but misrepresents the documents to your agency in attempt to have the NPDES permits approved. We are of the opinion that such representation lacks good faith on the part of Yates.

2. THE VOLUME OF WATER TO BE PRODUCED WILL CAUSE ACCELERATED CHANNEL EROSION ON THE LANDOWNER'S PROPERTY.

In a recent analysis on the same watershed has shown that smaller quantities of water being discharged on the channel has created accelerated erosion consisting of mass wasting, incision and widening. See Regional Model for Assessing Erosion Potential Due to Increased Discharge, by Gregory V. Wilkerson, Jeffrey C. Baxter, Joshua C. Johnson and Sarah K. Konrad, University of Wyoming Engineering Department (2005).

This study examined the discharges from Devon on a project identified as the Devon Energy Company LP under NPDES Permit No. WY 0048020 and states that the cumulative affects of the water discharge have not been properly presented to the DEQ.

Quality Standards for Wyoming Surface Water, Chapter I, §20, states:
All Wyoming surface waters which have the natural water quality potential for use as an agricultural water supply shall be maintained at a quality which allows continued use of such water for agricultural purposes.

Degradation of such waters shall not be of such an extent to cause a measurable decrease in crop or livestock production.

Unless otherwise demonstrated, all Wyoming surface waters have the natural water quality potential for use as an agricultural water supply.
(Emphasis supplied.)

The applications for permits submitted by Yates fail to show that there will not be a measurable decrease in forage and livestock production caused by the discharge of water onto the property described or that the discharge will not cause significant erosion. These permits should therefore be denied by DEQ/WQD.

3. THE YATES PROPOSAL DOES NOT ADDRESS THE IMPACT OF COALBED METHANE DISCHARGE WATER ON LIVESTOCK PRODUCTION.

The Application submitted by Yates does not provide any evidence or documentation that the discharge water or stored water will be used for agricultural purposes during periods of discharge or storage. It provides no support nor are there any qualifications for the statement of beneficial use which was attached as Appendix A that

there will not be a decrease in livestock production resulting from discharge of the coalbed methane (CBM) water. 40 CFR, Part 435, Subpart E, specifically requires that each applicant for a NPDES permit document the agricultural and wildlife use of the water. Included in the documentation must be the following:

. . . a formal statement, with supporting documentation from a natural resources or environmental professional accompanied by the credentials of the natural resources or environmental personnel.

The burden is on Yates to provide assurances to DEQ that there will not be a measurable decrease in livestock production. No analysis of existing livestock production is even attempted in the application process nor a description of current water sources. The Environmental Quality Act requires the DEQ director to issue permits only "upon proof by the applicant that the procedures of this act and the rules and regulations promulgated hereunder have been complied with." W.S. §35-11-801(a). The burden is on Yates to show that it has complied with the procedures and rules. Applicable rules require the permit to be issued only if (1) all existing water uses are fully maintained and protected (Chapter I, §8, Water Quality Rules); and (2) water is not degraded to such an extent to cause a measurable decrease in crop or livestock production (Chapter I, §20, Water Quality Rules).

The applicant cannot meet its burden without submitting proof that there will not be a measurable decrease in livestock production. It is not a substitute to the requirements of State law set forth in Chapter I, §20 of the Water Quality Rules to submit materials regarding the theoretical impact on livestock production. Yates's failure to make that showing is evident in the language of the Statement of Beneficial Use and its contents. It is conclusory only and has no supporting documentation or evidence of agricultural use.

Although Dry Creek is a ephemeral drainage, it provides a significant forage plant complex with grasses similar to those on higher grounds. The productivity which will be submerged by these reservoirs proposed by Yates to hold discharge water will negatively impact those lands by destruction of acres of grazing lands. Even after the reservoirs are emptied of CBM discharge water, it will be years before native grasses return, if they do at all.

There is no analysis of how the destruction of prime grazing land will increase production of livestock on the lands. Any discharge of produced water may over time establish wetland plants along the course of various discharge routes, including hydrophytic plants such as saltmarsh bulrush, baltic bulrush, hardstem bulrush, three-square bulrush, broadleaf cattail, Nebraska sedge inland salt grass, foxtail barley and nutell's alkaligrass.

Bulrushes have been identified as plants that cattle will not graze because its

palatability is low. Wetlands will not provide increased forage for livestock production and will detract from places of calving traditionally used by livestock along dry drainage bottoms.

The permit should have been denied.

4. WATER INFILTRATING FROM THE CONTAINMENT POND THROUGH AN UNSATURATED ZONE WILL RESULT IN VIOLATION OF GROUND WATER STANDARDS.

The application did not contain an analysis as to the long term effects of infiltrated water from the containment ponds in downgrading aquifers. A recent experience in the area involving "Skewed" reservoirs demonstrated the risk to underlying aquifers. No monitoring wells are included in the application to monitor any possible contaminant to aquifers. Tear Drop Ranch maintains stock water wells to service its stock watering system. Contamination or degradation of those wells would seriously impact the agricultural production in the area.

Yates's application failed to provide documentation concerning the presence or absence of ground water beneath the reservoir sites. No soil borings were provided and no proposals for monitoring ground water protection were made in the application. The application lacked any showing that the ground water standards contained in Chapter 8, Section 4(c) of the Wyoming Water Quality Rules are adhered to.

Without such demonstration, a permit should not have been issued until the DEQ is satisfied that this project will not result in contamination of ground water sources.

5. CUMULATIVE EFFECTS.

The entire Dry Creek drainage needs to be studied for the cumulative effect of all CBM projects planned for development. At least four other companies, Lance Oil & Gas Company, Kennedy Oil, Bill Barrett Company and Devon Energy, have projects which will impact the Dry Creek drainage and the total impact must be analyzed.

6. LACK OF ACCESS.

Any discharge from the reservoirs of Yates will travel across lands owned by Tear Drop Ranch. No easement exists for conveyance of this water across the property. Artificially produced water by coalbed methane is not entitled to use a natural drainage area and would constitute a trespass across the lands of Tear Drop Ranch. Furthermore, any use of the property for water which would be considered hazardous waste would be a trespass and violation of the Tear Drop Ranch's civil rights.


The granting of the discharge permit without a legal easement to cross the discharge waters across the surface of owner's lands is a taking of Tear Drop lands for the purpose of conferring a private benefit on a particular private party. This is a violation of the Fifth Amendment to the United States Constitution and Article 1, Sections 32 and 33 of the Wyoming Constitution.

Request for Hearing

The above parties hereby petition and request a contested case hearing before the Environmental Quality Council on the decision of John V. Corra, Director of the Wyoming Department of Environmental Quality, dated December 17, 2005.

DATED this 26th day of January, 2006.

KIRVEN and KIRVEN, P.C.:

By 
DENNIS M. KIRVEN, Attorney for
Petitioner
P.O. Box 640
Buffalo, Wyoming 82834
Phone: (307) 684-2248

CERTIFICATE OF SERVICE

I, **DENNIS M. KIRVEN**, of Kirven and Kirven, P.C., attorneys for Petitioners, certify that I served a true and correct copy of the foregoing "Petition for Review and Notice of Appeal" as follows:

Terri A. Lorenzon
Environmental Quality Council
Herschler Building, Room 1714
Cheyenne, Wyoming 82002

CERTIFIED 7160 3901 9848 6946 8052
RETURN RECEIPT REQUESTED

- U.S. Mail
- Facsimile
- Federal Express
- Hand Delivery

Mr. John V. Corra
Department of Environmental Quality
122 West 25th Street, Herschler Building
4th Floor West
Cheyenne, Wyoming 82002

- U.S. Mail
- Facsimile
- Federal Express
- Hand Delivery

Yates Petroleum
P.O. Box 2560
Gillette, Wyoming 82717-2560

- U.S. Mail
- Facsimile
- Federal Express
- Hand Delivery

on the 26th day of January, 2006.



DENNIS M. KIRVEN

Certified Article Number

7160 3901 9848 6946 8052

SENDERS RECORD

APPENDIX “A”

Wyoming Department of Environmental Quality
Water Quality Division
WYPDES Program

Statement of Basis

New

APPLICANT NAME: Yates Petroleum Company

MAILING ADDRESS: 105 South 4th Street
Artesia, NM 88210

FACILITY LOCATION: Nemesis POD – Dry Creek, which is located in the SESW, Section 5, the SENW, NESW, and SESE, Section 7, the NENE, NWNE, NENW, , NWNW, SWNE, and NESE, Section 8, the SENW, SWNW and SWSW, Section 9, the NENW, NWNW, SWSE, and SWSW, Section 17, the NENE, SENW, SWSE, and SWNW, Section 18, the SENE, Section 19, the SESE, SESW, NWNE, and NWNW, Section 20, the SESW, NWNW, and NWSE, Section 21, and the NENE, Section 29, Township 49 North, Range 78 West, Johnson County. The produced water will be discharged to various on-channel reservoirs (3B), which are located on various unnamed, ephemeral tributaries (3B) of Dry Creek (3B). Dry Creek (3B) is tributary to the Powder River (2ABWW) is tributary to the Powder River (2ABWW). The permit establishes 5 irrigation compliance points, located as described in Table 1, Part I.B.12 of the following permit. The permit establishes a maximum daily facility flow limit of 3.95 million gallons per day (MGD), and requires that the produced water discharged from this facility originate in the Big George coal seam.

NUMBER: WY0052761

This permit was revised following its public notice period (WYPDES Public Notice June, 2005). Based on updated technical input provided to WDEQ subsequent to drafting the permit, the specific conductance effluent limit at the irrigation compliance point has been revised from 5000 micromhos/cm to 2600 micromhos/cm. The effluent limit for sodium adsorption ratio at the irrigation compliance point has been revised from 26 to 13. A more detailed explanation of this revision is included in the statement of basis below.

General Description

This facility is a typical coal bed methane production facility in which groundwater is pumped from a coal bearing formation resulting in the release of methane from the coal bed. The permit authorizes the discharge to the surface of groundwater produced in this way provided the effluent quality is in compliance with effluent limits that are established by this permit. In developing effluent limits, all

federal and state regulations and standards have been considered and the most stringent requirements incorporated into the permit. The *EPA Effluent Guidelines and Standards for Oil and Gas Extraction Point Source Category (Part 435, Subpart E)* predate the development of coal bed methane extraction technology; however the technology is similar enough to conventional gas extraction that, in the professional judgement of the WDEQ, this effluent limit guideline is appropriately applied to coal bed methane gas production. The guideline limits oil and grease effluent concentrations to less than 35 mg/l and requires that discharges of produced water be used for agricultural production and/or wildlife propagation. This permit does not cover activities associated with discharges of drilling fluids, acids, stimulation waters or other fluids derived from the drilling or completion of the wells.

The permittee has chosen option 2 of the coal bed methane permitting options. Under this permitting option, the produced water is immediately discharged to a class 2, 3 or 4 receiving stream which is eventually tributary to a class 2AB perennial water of the state. The permit establishes effluent limits for the end of pipe, which are protective of all the designated uses defined in *Chapter 1 of Wyoming Water Quality Rules and Regulations*. This may include drinking water, game and non-game fish, fish consumption, aquatic life other than fish, recreation, agriculture, wildlife, industry and scenic value. Based on a review of this permit application and previous applications in this area, it has been determined that active irrigation uses of surface water occur downstream from the facility on Dry Creek.

Facility Description

This permit anticipates discharge of up to 3.95 million gallons per day (MGD) of CBM effluent from outfalls 001-040. The outfalls discharge to on-channel reservoirs located on unnamed, ephemeral tributaries of the Dry Creek drainage, which flows into the Powder River, and are located between 7.6 and 10.6 stream miles from the Powder River confluence. The permittee has demonstrated that sufficient reservoir capacity exists in the proposed reservoirs to contain all CBM effluent in addition to stormwater runoff from a 100 year, 24 hour storm in all but 5 of the 40 reservoirs proposed to contain CBM produced water at this facility. This permit also establishes 5 irrigation compliance points. In the event that discharge from this facility reaches the irrigation compliance points, this permit establishes limits protective of the irrigation use on Dry Creek. Effluent limits associated with the irrigation compliance point (SAR=13, EC=2,600 micromhos/cm) were determined from a combination of one or more of the following: technical information submitted by the applicant, published scientific literature, credible water quality data that has been through formally adopted quality control/quality assurance review, and best professional judgement. These limits satisfy provisions under Chapter 1, Section 20 (protection of agricultural water supply) of the Wyoming Water Quality Rules and Regulations. The permit also establishes water quality monitoring stations located on Dry Creek near the Powder River confluence, and on the Powder River proper, upstream and downstream of the Powder River - Dry Creek confluence. These stations will function to monitor any effluent flows to the Powder River, and are located as described in Table 1, Part I.B.12 of the following permit. The reservoirs may only discharge in response to storm events or upstream reservoir overflow that causes the reservoirs to fill and overtop. Reservoir discharges during "dry" weather conditions will be considered to be a violation of this permit. Should an instance of reservoir discharge occur, it will be the permittee's responsibility to adequately demonstrate the circumstances under which reservoir discharges occurred if requested by the WDEQ.

Whole Effluent Toxicity (WET) Testing

WDEQ has determined that discharges from this facility have a reasonable potential to exert a toxic effect on aquatic life in the mainstem (the Powder River). Therefore, in accordance with *40 CFR 122.44(d)(1)*, the permit contains a requirement to conduct annual static replacement toxicity tests on a grab sample of

the discharge from the end of pipe. Each year during the life of this permit, a minimum of 20% of the discharging outfalls are to be sampled and tested for toxicity as described in Part I of the permit below. Since the discharge from this facility is not expected to reach a perennial water body (Powder River) on a frequent and/or continual basis, WDEQ has determined that acute toxicity testing only is appropriate at these outfalls to characterize the impact that this discharge may have on aquatic life in the receiving waters

Acute WET Testing:

The permittee will conduct acute 48-hour static tests using *Daphnia magna* (water flea) and acute 96-hour static tests using *Pimephales promelas* (fathead minnow) at all outfalls permitted for discharge. The acute whole effluent toxicity tests will be conducted in accordance with the latest procedures set forth in 40 CFR 136.3 and the "Region VIII EPA NPDES Acute Test Conditions – Static Renewal Whole Effluent Toxicity Tests". In the case of conflicts in method, 40 CFR 136.3 will prevail. If the results of two consecutive annual reports indicate no acute toxicity (as defined in part I of the permit below), the permittee may reduce the monitoring to annual acute toxicity testing on only one species on an alternating basis. The test procedures for alternating species shall be the same as specified above.

Effluent Limits

Permit effluent limits are based on federal and state regulations and are effective as of the date of issuance. The daily maximum effluent flow limit for this facility is 3.95 MGD. The pH must remain within 6.5 and 9.0 standard units. Effluent limits for total dissolved solids (5,000 mg/l), specific conductance (7,500 micromhos/cm) and sulfates (3,000 mg/l) are included to protect for stock and wildlife watering. These limits are based upon *Wyoming Water Quality Rules and Regulations, Chapter 2* and apply to discharge from any permitted outfall.

The permit also establishes a dissolved manganese limit of 650 µg/l, and a chlorides limit of 46 mg/l. These limits are based on chronic aquatic life standards for class 2AB waters as established in *the Wyoming Water Quality Rules and Regulations, Chapter 1*. The permit also establishes a total barium limit of 1800 µg/l and a total arsenic limit of 7 µg/l, these limits are based on Water Quality Criteria as established in *the Wyoming Water Quality Rules and Regulations, Chapter 1*, for Human Health values. The limits established in this permit for metals and chlorides reflect the application of the antidegradation provisions required under *the Wyoming Water Quality Rules and Regulations, Chapter 1*. Establishment of limits protective of the class 2 mainstem are considered appropriate in this instance due to the potential for discharges from this facility to impact the class 2 mainstem.

The permit also establishes an effluent limit for total radium ²²⁶ of 5 pCi/l at the end of pipe for outfalls less than 10 stream miles but more than 2 stream miles from a class 2 water, which reflects the application of "tier two" anti-degradation protection for the class 2 immediate receiving water. For those outfalls located more than 10 stream miles from a class 2 water, the representative water quality sample submitted in the permit application demonstrates that these outfalls have no potential to exceed 60 pCi/l. (the established limit for such discharges), therefore no limit is being established in this permit for outfalls located 10 stream miles or more from a class 2 water.

In addition, the permit establishes a dissolved iron limit of 1000 µg/l, which is based upon chronic aquatic life standards for class 3B waters greater than one mile from the confluence of a class 2 water, and reflects the application of standards and antidegradation policies as required under *Chapter 1 of the Wyoming Water Quality Rules and Regulations*. All limits described in this section are intended to

protect for the above listed designated uses, on both the immediate receiving water and the perennial mainstem, and apply at the end of pipe.

A limit for total recoverable aluminum – 750 µg/l – is also being established in this permit. This limit is based upon the acute aquatic life standard established in *Chapter 1 of the Wyoming Water Quality Rules and Regulations*. In the case of total recoverable aluminum, the chronic aquatic life value does not apply, based upon the hardness and pH of the receiving stream. This limit applies at the end of pipe.

Irrigation Protection

In order to monitor and regulate coal bed methane discharge for compliance with Chapter 1, Section 20 (protection of agricultural water supply), effluent limits for sodium adsorption ratio (SAR) and specific conductance (EC) are included in this permit. The Wyoming DEQ has determined that an SAR of 13 and specific conductance of 2,600 micromhos/cm is intended to be protective of agriculture use in the Dry Creek drainage. The specific conductance limit of 2,600 micromhos/cm is based on the threshold value for Western Wheatgrass which is considered to be the most salt sensitive plant irrigated in the Dry Creek drainage downstream from this facility (USDA George E. Brown National Salinity Laboratory and "Salt Tolerance of Various Temperate Zone Ornamental Plants" Colorado State University Cooperative Extension). Soil salinity threshold values published in the above references for Western Wheatgrass vary from 3,000 micromhos/cm to 5,000 micromhos/cm. Using a soil salinity threshold value of 4,000 micromhos/cm for Western Wheatgrass yields an allowable EC effluent limit of 2600 micromhos/cm in the produced water, based on USDA recommendations ("Agricultural Salinity and Drainage", Hanson et al., 1999 revision). Data to characterize the salt tolerance of Western Wheatgrass specific to the Dry Creek drainage is currently unavailable. The SAR limit of 13 is intended to not reduce the rate of infiltration of irrigated soils in the Dry Creek drainage, given the specific conductance threshold referenced above as ascertained from Figure 3 (page 44) of *Agricultural Salinity and Drainage*, Hanson et al., 1999 revision.

The application for WYPDES permit WY0050504, which was referenced as a source of information for this WYPDES permit, describes the downstream irrigation use on Dry Creek as a passive system which automatically diverts water from Dry Creek on to the irrigated fields when ever the flow in Dry Creek exceeds 5.9 cfs at the point of diversion. As the reservoirs being proposed for containment under this WYPDES permit can contain, except during periods of significant precipitation, all of the CBM discharges produced at this facility, discharges from this facility should not reach the downstream irrigation diversion on a frequent or persistent basis. During sufficient precipitation events, the effluent may be conveyed on to the fields via run-off in Dry Creek, and should be sufficiently diluted with stormwater runoff such that the SAR and EC limitations described above can be met.

The effluent limits at the ICP are intended to demonstrate compliance with *Chapter 2, Section 20 (protection of agricultural water supply) of the Wyoming Water Quality Rules and Regulations*. If produced water from this facility reaches the ICP and results in a violation of the ICP effluent limits, this action will constitute a violation of this permit, regardless of the cause of the violation (i.e., natural conditions of the stream channel or other operators in the drainage.) If this facility's effluent does not reach an irrigation compliance point, then monitoring and compliance with the ICP effluent limits are not required.

Violation of the ICP effluent limits may result in enforcement action from the Water Quality Division, termination of the discharge until an acceptable plan to mitigate the violation has been developed and/or other appropriate enforcement action.

Monitoring and Reporting

Outfall Monitoring and Reporting

Results are to be reported twice-yearly and if no discharge occurs at a given outfall for an entire sampling period, then "no discharge" is to be reported for that outfall during that period. The permit also requires that an initial monitoring of the effluent be conducted within the first 60 days of discharge following issuance of this renewal, and the results submitted to WDEQ and the U.S. Environmental Protection Agency within 120 days of the commencement of discharge.

Irrigation Compliance Point Monitoring and Reporting

The Wyoming DEQ has determined through review of the permit application and available scientific information that effluent discharged from this facility is unlikely to reach the Powder River or the downstream irrigated lands along Dry Creek. The downstream irrigation diversion below this facility is located approximately 7 miles downstream of the outfalls on Dry Creek. This irrigation diversion structure is a passive system and water is only applied to the irrigated fields when flow in the channel exceeds 5.9 cfs. Therefore, CBM effluent from this facility is only expected to reach the irrigated fields when it is conveyed by a sufficient precipitation event to achieve a total flow in Dry Creek at the irrigation diversion of 5.9 cfs or greater. Should flow at the irrigation diversion point (IDP) exceed 5.9 cfs, and flows containing effluent from this facility are present at any one of the irrigation compliance points, the permittee is required to collect samples at the irrigation compliance points.

Sampling will be required at the established irrigation compliance points for flow volume, calcium, magnesium, sodium, bicarbonate, sodium adsorption ratio and specific conductance if effluent from this facility is present at the irrigation compliance point within 24 hours of any irrigation event occurring at the downstream diversion on Dry Creek (any period of time in which flow exceeds 5.9 cfs at the irrigation diversion point). For the purposes of ICP sampling associated with this permit, an "irrigation event" is intended to mean any surface application of water from Dry Creek on to the irrigated lands described in the NPDES application. This permit does not require sampling of discharge at the ICP if flow at the ICP is not hydrologically connected to the outfalls or reservoirs at this CBM facility. This permit also does not require sampling at the ICP if the total flow in Dry Creek at the irrigation diversion point (IDP) is less than 5.9 cfs. When an irrigation event does occur on Dry Creek (flows at the IDP exceeding 5.9 cfs), this permit requires the permittee to sample for the above listed parameters if a hydrologic connection was occurring between an ICP and the outfalls or reservoirs of the CBM facility at any time within 24 hours of the irrigation event.

The permit requires daily monitoring on Dry Creek to determine whether effluent discharged from the outfalls is reaching the irrigation compliance point and whether an irrigation event has occurred on Dry Creek. Daily monitoring is necessary because the permit establishes different sampling and analysis requirements based on whether the effluent from this facility is reaching an ICP within 24 hours of an irrigation event. Once a sample is taken at the irrigation compliance point as required above, then weekly monitoring of flow is required for the remainder of that month at that ICP. At the beginning of each calendar month, the monitoring frequency will revert to daily until such time as a sample is collected to represent effluent quality for irrigation compliance point constituents for that month. Results are to be reported twice-yearly and if no effluent from this facility reaches an irrigation compliance point within 24 hours of an irrigation event on Dry Creek for an entire sampling month, then "no discharge" is to be reported for that ICP for that sampling month.

Water Quality Station Monitoring and Reporting

The permit also requires sampling at designated water quality monitoring stations located on the receiving stream (Dry Creek) and on the mainstem (Powder River, class 2ABWW water) to which Dry Creek, is tributary. Water quality monitoring stations are to be located as described in Table 1, Part I.B.12 of the following permit. Established water quality monitoring stations on the mainstem are to be located outside the mixing zone with the tributary and the mainstem. Monthly water quality samples are to be collected at all three water quality monitoring stations when effluent from this CBM facility reaches the TRIB1 station on Dry Creek. If flow occurs at the TRIB1 station during a given monthly monitoring period, but this CBM facility did not contribute to that flow, the permittee will report "did not contribute" in the discharge monitoring reports for that monthly monitoring period. Under such circumstances, sampling is not required at the three water quality monitoring stations, and it will be the responsibility of the permittee to demonstrate that the effluent from this facility did not contribute to the flow occurring at the TRIB1 station. If no flow at all occurs at the TRIB1 station for an entire monthly monitoring period, then "no flow" is to be reported and samples need not be collected at the three water quality monitoring stations for that monthly monitoring period.

Information gathered from the water quality monitoring stations may result in modification of the permit to protect existing uses on the tributary and mainstem.

General Permit Limitations and Requirements

There shall be no discharge of floating solids or visible foam in other than trace amounts, nor shall the discharge cause formation of visible deposits of iron, hydrocarbons or any other constituent on the bottom or shoreline of the receiving water. In addition, erosion control measures will be implemented to prevent significant damage to or erosion of the receiving water channel at the point of discharge.

The discharge of wastewater and the effluent limits that are established in this permit have been reviewed to ensure that the levels of water quality necessary to protect the designated uses of the receiving waters are maintained and protected. An antidegradation review has been conducted and verifies that the permit conditions, including the effluent limitations established, provide a level of protection to the receiving water consistent with the antidegradation provisions of Wyoming surface water quality standards.

Self monitoring of effluent quality and quantity is required on a regular basis with reporting of results semiannually. The permit is scheduled to expire on December 31, 2007. This expiration date was determined through review of the watershed permitting schedule which the WDEQ is implementing in order to synchronize the permitting and expiration of facilities within the same watershed. This holistic approach will provide for more efficient permitting of point-source discharges.

Kathy Shreve
Environmental Senior Analyst
Water Quality Division
Department of Environmental Quality
Drafted: May 27, 2005
Revised December 9, 2005

AUTHORIZATION TO DISCHARGE UNDER THE
WYOMING POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Federal Water Pollution Control Act, (hereinafter referred to as "the Act"), and the Wyoming Environmental Quality Act,

Yates Petroleum Company,

is authorized to discharge from the wastewater treatment facilities serving the

Nemesis POD - Dry Creek,

located in the

SESW, Section 5, the SENW, NESW, and SESE, Section 7, the NENE, NWNE, NENW, , NWNW, SWNE, and NESE, Section 8, the SENW, SWNW and SWSW, Section 9, the NENW, NWNW, SWSE, and SWSW, Section 17, the NENE, SENW, SWSE, and SWNW, Section 18, the SENE, Section 19, the SESE, SESW, NWNE, and NWNW, Section 20, the SESW, NWNW, and NWSE, Section 21, and the NENE, Section 29, Township 49 North, Range 78 West, Johnson County,

to receiving waters named

various on-channel reservoirs (3B), which are located on various unnamed, ephemeral tributaries (3B) of Dry Creek (3B). Dry Creek (3B) is tributary to the Powder River (2ABWW) is tributary to the Powder River (2ABWW).

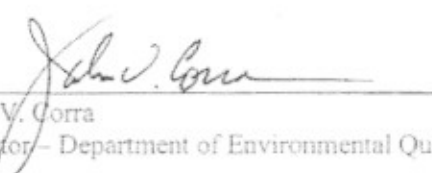
in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I, II and III hereof.

This permit shall become effective on the date of signature by the Director of the Department of Environmental Quality.

This permit and the authorization to discharge shall expire at midnight, December 31, 2007.


John F. Wagner
Administrator - Water Quality Division

12/13/05
Date


John V. Corra
Director - Department of Environmental Quality

12/17/05
Date

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Effective immediately and lasting through December 31, 2007, the quality of effluent discharged by the permittee shall, at a minimum, meet the limitations set forth below. The permittee is authorized to discharge from outfalls serial numbers 001-040.

1.a. Discharges from all outfalls are limited as specified below:

Effluent Limits

<u>Effluent Characteristic</u>	<u>Daily Maximum, Outfall</u>	<u>Daily Maximum, Irrigation Compliance Points</u>
Chlorides, mg/l	46	
Dissolved Iron, µg/l	1000	
Dissolved Manganese, µg/l	650	
pH, standard units	6.5 – 9.0	
Specific Conductance, micromhos/cm	7500	2600
Sulfates, mg/l	3000	
Total Arsenic, µg/l	7	
Total Barium, µg/l	1800	
Total Dissolved Solids, mg/l	5000	
Total Flow, MGD*	3.95	
Total Recoverable Aluminum, µg/l	750	
Sodium Adsorption Ratio		13

*Total flow volume will be calculated as the sum of all discharge from all permitted outfalls. The produced water discharged at this facility must originate in the Big George coal seam.

Note: 1) 'Dissolved' value for metals refers to the amount that will pass through a 0.45 µm membrane filter prior to acidification to 1.5-2.0 with Nitric Acid.

2) 'Total' value for metals refers to the total recoverable amount of that metal in the water column.

b. Distance-based effluent limits by outfall:

In addition to the limits established in Part I.A.1.a of the permit, the following effluent limits apply to outfalls as specified in the table below:

Distance-Based Effluent Limits by Outfall

<u>Outfall</u>	<u>Distance to Nearest Class 2 Stream</u>	<u>Total Radium 226, pCi/l</u>
001	8.81	3
002	9.93	3

<u>Outfall</u>	<u>Distance to Nearest Class 2 Stream</u>	<u>Total Radium 226, pCi/l</u>
004	9.46	5
005	8.44	5
006	8.11	5
007	8.78	5
008	9.35	5
009	9.43	5
010	9.41	5
011	9.06	5
012	8.09	5
013	8.57	5
014	7.69	5
015	7.74	5
016	7.87	5
017	8.93	5
018	9.23	5
019	9.0	5
020	9.38	5
021	9.50	5
022	9.49	5
023	9.94	5
035	9.57	5
036	9.83	5
037	9.89	5
038	9.19	5
039	9.65	5

Outfalls not listed in the table above have no effluent limitations for total radium 226, and are located 10 or more stream miles from a class 2 water.

c. **Narrative Requirements Applicable at all Outfalls:**

The pH shall not be less than 6.5 standard units nor greater than 9.0 standard units in any single grab sample.

The permittee may, if so desired, discharge produced water originating in any well authorized for discharge at this facility at any permitted outfall, as long as all permit limits and requirements can be met. This facility, as originally permitted, consists of 40 outfalls and 48 wells.

All waters shall be discharged in a manner to prevent erosion, scouring, or damage to stream banks, stream beds, ditches, or other waters of the state at the point of discharge. Discharge from the reservoirs is only expected to occur in response to major precipitation events or upstream reservoir overflow. Intentional discharges from the reservoirs will not be allowed under this permit. Discharges from the reservoirs may occur in response to storm events that cause the reservoirs to fill and overtop, or in response to upstream reservoir overflow only. Under such circumstances, discharge from the reservoirs is limited to natural overtopping only. It is the permittee's responsibility to adequately demonstrate the circumstances under which reservoir discharges occurred, should the WDEQ request such information.

There shall be no discharge of floating solids or visible foam in other than trace amounts, nor shall the discharge cause formation of a visible sheen or visible hydrocarbon deposits on the bottom or shoreline of the receiving water.

There shall be no deposition of substances in quantities which could result in significant aesthetic degradation, or degradation of habitat for aquatic life, plant life or wildlife; or which could adversely affect public water supplies or those intended for agricultural or industrial use.

Information gathered from the water quality monitoring stations may result in modification of the permit to protect existing uses on the tributary and the mainstem.

2. **Effluent Limitations (Toxic Pollutants)**

Effective immediately upon issuance of this permit modification, there shall be no acute toxicity occurring in the effluent from outfalls serial numbers 001-040.

3. **Whole Effluent Testing (Acute)**

Upon issuance of this permit, the permittee shall, at least once annually, conduct acute static replacement toxicity tests on a grab sample of the discharge. If initial monitoring of the effluent is required for this permit (within 60 days of commencement of discharge), then the first annual acute toxicity test is to be conducted at that time. At a minimum, 20 percent of all discharging outfalls that immediately flow to Class 3 waters and 20 percent of all discharging outfalls that immediately flow to Class 2 waters are to be sampled and tested annually for acute whole effluent toxicity (WET). Each year, a different 20 percent minimum portion of the discharging outfalls is to be sampled and tested for acute whole effluent toxicity. Consecutive yearly samples may not be collected from an identical outfall unless the outfall is the only discharging outfall that complies with the criteria listed above. The permittee may select the outfall(s) that will be sampled each year unless the permit issuing authority specifically identifies which outfalls must be sampled. The permittee must also provide written notification to the permit issuing authority at least two weeks prior to WET-related sampling. The written notification will specify which outfall(s) are discharging and which outfalls will be selected and sampled for the WET test.

The replacement static toxicity tests shall be conducted in accordance with the procedures set forth in 40 CFR 136.3 and the "Region VIII EPA NPDES Acute Test Conditions - Static Renewal Whole Effluent Toxicity Tests". In the case of conflicts in method, 40 CFR 136.3 will prevail. The permittee shall conduct an acute 48-hour static toxicity test using *Daphnia magna* and an acute 96 hour static toxicity test using *Pimephales promelas*. All tests will be conducted utilizing a multi-dilution series consisting of at least five (5) concentrations and a control as defined below:

- 100% effluent
- 85% effluent
- 67% effluent
- 50% effluent
- 25% effluent
- control (or 0% effluent)

All tests will be conducted utilizing a minimum of 5 replicates for each test. In the event of inconclusive test results, the WDEQ reserves the right to require the permittee to perform additional tests at alternate dilutions and/or replicates. The WDEQ also reserves the right to require the submission of all information regarding all initiated tests, regardless of whether the tests were carried to completion or not.

Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration at any outfall. If acute toxicity occurs at any outfall during a sampling period, then WDEQ will assume that all outfalls, which have not yet been sampled, exhibit similar acute toxicity characteristics as well.

If more than 10 percent control mortality occurs, the test is not valid. The test shall be repeated until satisfactory control survival is achieved.

If acute toxicity occurs, an additional test on the failing outfall(s) shall be initiated within two (2) weeks of the date of when the permittee learned of the test failure. If only one species fails, retesting may be limited to this species. Should acute toxicity occur in the second test, the Toxicity Identification Evaluation (TIE) and Toxicity Reduction Evaluation (TRE) process described below shall be implemented on a schedule established by the DEQ.

Annual test results shall be reported on a Discharge Monitoring Report (DMR) that must be submitted by February 15th of each year. The format for the report shall be consistent with the latest revision of the "Region VIII Guidance for Acute Whole Effluent Reporting", and shall include all chemical and physical data as specified.

If the results of two consecutive annual reports indicate no acute toxicity for all sampled outfalls, the permittee may reduce the monitoring to annual acute toxicity testing on only one species on an alternating basis. The test procedures for alternating species shall be the same as specified above.

4. **Toxicity Identification Evaluation (TIE) and Toxicity Reduction Evaluation (TRE)**

Should toxicity be detected in the permittee's discharge, a TIE-TRE shall be undertaken by the permittee to establish the cause of the toxicity, locate the source(s) of the toxicity, and develop control of, or treatment for the toxicity. Failure to initiate, or conduct an adequate TIE-TRE, or delays in the conduct of such test, shall not be considered a justification for noncompliance with the whole effluent toxicity limits contained in this permit. A TRE plan needs to be submitted to the permitting authority within 45 days after confirmation of the continuance of effluent toxicity.

If acceptable to the permit issuing authority, and if in conformance with current regulations, this permit may be reopened and modified to incorporate TRE conclusions relating to additional numerical limitations, a modified compliance schedule, and/or modified whole effluent protocol.

5. **Discharges shall be monitored by the permittee as specified below:**

a. **Monitoring of the initial discharge**

Within 60 days of commencement of discharge following issuance of this permit renewal, a sample shall be collected from each outfall and analyzed for the 24 constituents specified below, at the required detection limits. Within 120 days of commencement of discharge following issuance of this permit, a summary report on the produced water, including copies of the laboratory analysis reports, must be submitted to the Wyoming Department of Environmental Quality and the U.S. EPA Region 8 at the addresses listed below. This summary report must include the results and detection limits for each of the 24 constituents. In addition, the report must include written notification of the established location of the discharge point (refer to Part I.B.11). This notification must include a confirmation that the location of

the established discharge point(s) is within 1,510 feet of the location of the identified discharge point(s), is within the same drainage, and discharges to the same landowner's property as identified on the original application form. The legal description and location in decimal degrees of the established discharge point(s) must also be provided. After receiving the monitoring results for the initial discharge, the routine monitoring requirements described in Part I.A.6.b. may be modified to require more stringent monitoring.

<u>Parameter</u>	<u>Required Detection Limit</u>	<u>Sample Type</u>
Total Recoverable Aluminum, µg/l	50 µg/l	Grab
Dissolved Cadmium, µg/l	0.1 µg/l	Grab
Dissolved Calcium, mg/l	as mg/l	Grab
Dissolved Calcium, me/l	as me/l	Grab
Chlorides, mg/l	5 mg/l	Grab
Dissolved Copper, µg/l	1 µg/l	Grab
Dissolved Iron, µg/l	30 µg/l	Grab
Dissolved Manganese, µg/l	10 µg/l	Grab
Total Hardness, mg/l	10 mg/l as CaCO ₃	Grab
Dissolved Lead, µg/l	2 µg/l	Grab
Dissolved Magnesium, mg/l	as mg/l	Grab
Dissolved Magnesium, me/l	as me/l	Grab
Dissolved Mercury, µg/l	0.06 µg/l	Grab
pH, standard units	to 0.1 pH unit	Grab
Total Radium 226, pCi/l	0.2 pCi/l	Grab
Total Selenium, µg/l	5 µg/l	Grab
Dissolved Sodium, mg/l	as mg/l	Grab
Dissolved Sodium, me/l	as me/l	Grab
Sodium Adsorption Ratio, calculated as unadjusted ratio	not applicable	Calculated
Specific Conductance, icromhos/cm	5 micromhos/cm	Grab
Sulfates, mg/l	10 mg/l	Grab
Total Alkalinity, mg/l	1 mg/l as CaCO ₃	Grab
Total Arsenic, µg/l	1 µg/l	Grab
Total Barium, µg/l	100 µg/l	Grab
Dissolved Zinc, µg/l	10 µg/l	Grab
Bicarbonate, mg/l	1 mg/l	Grab
Total Dissolved Solids, mg/l	5 mg/l	Grab

Initial monitoring reports are to be sent to the following addresses:

Planning and Targeting Program, 8ENF-PT
 Office of Enforcement, Compliance, and Environmental Justice
 U.S. EPA Region 8
 999 18th St., Suite 300

Denver, CO 80202-2466

and

Wyoming Department of Environmental Quality
 Water Quality Division
 Herschler Building, 4 West
 122 West 25th Street
 Cheyenne, WY 82002

b. Routine monitoring End of Pipe (001-040)

For the duration of the permit, at a minimum, samples for the constituents described below shall be collected at the indicated frequencies. The first routine monitoring for the time frame during which the monitoring of initial discharge occurs will, at a minimum, consist of flow measurements for the duration of the six-month monitoring time frame. Monitoring will be based on semi-annual time frames, from January through June, and from July through December.

<u>Parameter</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Bicarbonate (mg/l)	Once Every Three Months	Grab
Dissolved Calcium (mg/l)	Once Every Three Months	Grab
Dissolved Calcium (me/l)	Once Every Three Months	Grab
Chloride (mg/l)	Annually	Grab
Dissolved Iron (µg/l)	Annually	Grab
Dissolved Manganese (µg/l)	Annually	Grab
Dissolved Magnesium (mg/l)	Once Every Three Months	Grab
Dissolved Magnesium (me/l)	Once Every Three Months	Grab
pH (standard units)	Once Every Three Months	Grab
Dissolved Sodium (mg/l)	Once Every Three Months	Grab
Dissolved Sodium (me/l)	Once Every Three Months	Grab
Sodium Adsorption Ratio (unadjusted)	Once Every Three Months	Calculated
Specific Conductance (micromohs/cm)	Once Every Three Months	Grab
Sulfate (mg/l)	Annually	Grab
Total Alkalinity (mg/l)	Once Every Three Months	Grab

<u>Parameter</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Total Recoverable Aluminum (µg/l)	Annually	Grab
Total Arsenic (µg/l)	Annually	Grab
Total Barium (µg/l)	Annually	Grab
Total Flow – (MGD)	Monthly	Continuous
Total Radium 226 (pCi/l)*	Annually	Grab

*Monitoring for total radium 226 is **only** required at the following outfalls: 001, 002, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, 023, 035, 036, 037, 038, and 039.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): At the outfall of the final treatment unit which is located out of the natural drainage and prior to admixture with diluent waters.

c. Irrigation Compliance Point (ICPI – ICP5)

For the duration of the permit, at a minimum, samples for the constituents described below shall be collected at the indicated frequencies when effluent discharged from the outfalls reaches an irrigation compliance point at any time within 24 hours of an irrigation event on Dry Creek. An "irrigation event" is defined (for this permit) as any flow at the irrigation diversion point (IDP1) measuring 5.9 cfs or greater. Sampling will be based on monthly time frames and reported semi-annually.

<u>Parameter</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Bicarbonate (mg/l)	Monthly	Grab
Dissolved Calcium (mg/l)	Monthly	Grab
Dissolved Calcium (me/l)	Monthly	Grab
Dissolved Magnesium (mg/l)	Monthly	Grab
Dissolved Magnesium (me/l)	Monthly	Grab
Dissolved Sodium (mg/l)	Monthly	Grab
Dissolved Sodium (mg/l)	Monthly	Grab
Sodium Adsorption Ratio (calculate as unadjusted ratio)	Monthly	Calculated
Specific Conductance (micromohs/cm)	Monthly	Grab
Total Flow – (MGD)*	Monthly	Instantaneous

*See Part I.B.5.d of the permit for additional requirements regarding ICP and flow monitoring and reporting.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location: at the irrigation compliance points, located as described in Table 1, Part I.B.12 of the permit.

The permit requires daily monitoring on Dry Creek to determine whether effluent discharged from the outfalls is reaching an irrigation compliance point and whether an irrigation event has occurred on Dry Creek. Daily monitoring is necessary because the permit establishes different sampling and analysis requirements based on whether the effluent from this facility is reaching an ICP within 24 hours of an irrigation event. Once a sample is taken at an irrigation compliance point as required above, then weekly monitoring of flow is required for the remainder of that month at that ICP. At the beginning of each calendar month, the monitoring frequency will revert to daily until such time as a sample is collected to represent effluent quality for irrigation compliance point constituents for that month. Results are to be reported twice-yearly and if no effluent from this facility reaches an irrigation compliance point within 24 hours of an irrigation event on Dry Creek for an entire sampling month, then "no discharge" is to be reported for that ICP for that sampling month.

The effluent limits at the ICPs are intended to demonstrate compliance with *Chapter 2, Section 20 (protection of agricultural water supply) of the Wyoming Water Quality Rules and Regulations*. If produced water from this facility reaches an ICP and results in a violation of the ICP effluent limits, this action will constitute a violation of this permit, regardless of the cause of the violation (i.e., natural conditions of the stream channel or other operators in the drainage.) If this facility's effluent does not reach an irrigation compliance point, then monitoring and compliance with the ICP effluent limits are not required.

Violation of the ICP effluent limits may result in enforcement action from the Water Quality Division, termination of the discharge until an acceptable plan to mitigate the violation has been developed and/or other appropriate enforcement action.

d. Irrigation Diversion Point (IDPI)

For the duration of the permit, flow shall be monitored at the irrigation diversion point (IDP) on a daily basis during those periods of time in which discharges from any of the outfalls being authorized for discharge under this permit are hydrologically connected to flows reported at the irrigation compliance points.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location: at the irrigation diversion points, located as described in Table 1, Part I.B.12 of the permit.

The permittee is required to record any flows occurring at the irrigation diversion point on the form entitled "*Irrigation Diversion Streamflow Reporting - Dry Creek*", and to submit copies of this form in conjunction with their discharge monitoring reports. Completion and submission of this form is necessary, because the permit establishes different requirements and effluent limits based upon whether or not an irrigation event has occurred on Dry Creek, and whether or not this facility's discharge contributed to stream flow during an irrigation event.

The permit requires daily monitoring on Dry Creek to determine whether channel flow at the irrigation diversion point reaches 5.9 cfs during periods of time in which discharges from any of the outfalls are hydrologically connected to flows at an irrigation compliance point, thus activating the passive irrigation system and causing streamflows containing effluent from this facility to be applied to the fields undergoing irrigation. Daily monitoring is necessary because the permit establishes different sampling and analysis requirements based on whether or not an irrigation event has occurred, and whether or not discharges from this facility contributed to flows at an irrigation compliance point. Once flow at the irrigation diversion point reaches 5.9 cfs or greater, then weekly monitoring of flow is required for the remainder of that month at the irrigation compliance points (see Part I.A.2.c. of the permit above). At the beginning of each calendar month, the monitoring frequency will revert to daily until a stream flow of 5.9 cfs or greater is reported at the irrigation diversion point. Results are to be reported twice-yearly and if no stream flows of 5.9 cfs or greater occur at the irrigation diversion point for an entire sampling month, then "no discharge" is to be reported for the IDP for that sampling month.

e. Water Quality Monitoring Stations (TRIB1, UPR, and DPR)

For the duration of the permit, at a minimum, samples for the constituents described below shall be collected at the indicated frequencies. Monitoring will be based on monthly time frames, and reported semiannually.

<u>Parameter</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Dissolved Calcium (mg/l)	Monthly	Grab
Dissolved Calcium (me/l)	Monthly	Grab
Dissolved Magnesium (mg/l)	Monthly	Grab
Dissolved Magnesium (me/l)	Monthly	Grab
Dissolved Sodium (mg/l)	Monthly	Grab
Dissolved Sodium (me/l)	Monthly	Grab
Sodium Adsorption Ratio (calculated)	Monthly	Calculated
Specific Conductance (micromhos/cm)	Monthly	Grab
Flow (MGD)*	Monthly	Instantaneous

*Flow measurement is not required for the two monitoring stations located on the Powder River (UPR, DPR). The permittee is only required to monitor and report flow at the tributary monitoring station located on Dry Creek (TRIB1)

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following locations: designated water quality monitoring stations identified as TRIB1, UPR, and DPR in Table 1, Part I.B.12 of the permit below. Established water quality monitoring stations on the mainstem are to be located outside the mixing zone with the tributary and the mainstem. Monthly water quality samples are to be collected at all three water quality monitoring stations when effluent from this CBM facility reaches the TRIB1 station on Dry Creek. If flow occurs at the TRIB1 station during a given monthly monitoring period, but this CBM facility did not contribute to that flow, the permittee will report

"did not contribute" in the discharge monitoring reports for that monthly monitoring period. Under such circumstances, sampling is not required at the three water quality monitoring stations, and it will be the responsibility of the permittee to demonstrate that the effluent from this facility did not contribute to the flow occurring at the TRIB1 station. If no flow at all occurs at the TRIB1 station for an entire monthly monitoring period, then "no flow" is to be reported and samples need not be collected at the three water quality monitoring stations for that monthly monitoring period.

B. MONITORING AND REPORTING

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other waste stream, body of water, or substance. Monitoring points shall not be changed without notification to and approval by, the permit issuing authority.

2. Reporting

Results of initial monitoring, including the date the discharge began, shall be summarized and submitted with a copy of the laboratory analysis report for each outfall, clearly marked with permit and outfall numbers, to the state water pollution control agency at the address below postmarked no later than 120 days after the commencement of discharge.

Results of routine end of pipe and water quality station monitoring during the previous six (6) months shall be summarized and reported semiannually on a Discharge Monitoring Report Form (DMR). If the discharge is intermittent, the date the discharge began and ended must be included. The information submitted on the first semiannual DMR shall contain a summary of flow measurements and any additional monitoring conducted subsequent to the submittal of the initial monitoring report. If required, whole effluent toxicity testing (biomonitoring) results must be reported on the most recent version of *EPA Region VIII's Guidance for Whole Effluent Reporting*. Monitoring reports must be submitted to the state water pollution control agency at the following address postmarked no later than the 15th day of the second month following the completed reporting period. The first report following issuance of this permit will be due on February 15th, 2006.

Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with the Signatory Requirements contained in Part II.A.11.

Wyoming Department of Environmental Quality
Water Quality Division
Herschler Building, 4 West
122 West 25th Street
Cheyenne, WY 82002
Telephone: (307) 777-7781

If no discharge occurs during the reporting period, "no discharge" shall be reported. If discharge is intermittent during the reporting period, sampling shall be done while the facility is discharging.

3. **Definitions**

- a. The "monthly average" shall be determined by calculating the arithmetic mean (geometric mean in the case of fecal coliform) of all composite and/or grab samples collected during a calendar month.
- b. The "weekly average" shall be determined by calculating the arithmetic mean (geometric mean in the case of fecal coliform) of all composite and/or grab samples collected during any week.
- c. The "daily maximum" shall be determined by the analysis of a single grab or composite sample.
- d. "MGD", for monitoring requirements, is defined as million gallons per day.
- e. "Net" value, if noted under Effluent Characteristics, is calculated on the basis of the net increase of the individual parameter over the quantity of that same parameter present in the intake water measured prior to any contamination or use in the process of this facility. Any contaminants contained in any intake water obtained from underground wells shall not be adjusted for as described above and, therefore, shall be considered as process input to the final effluent. Limitations in which "net" is not noted are calculated on the basis of gross measurements of each parameter in the discharge, irrespective of the quantity of those parameters in the intake waters.
- f. A "composite" sample, for monitoring requirements, is defined as a minimum of four grab samples collected at equally spaced two hour intervals and proportioned according to flow.
- g. An "instantaneous" measurement for monitoring requirements is defined as a single reading, measurement, or observation.
- h. A "pollutant" is any substance or substances which, if allowed to enter surface waters of the state, causes or threatens to cause pollution as defined in the Wyoming Environmental Quality Act, Section 35-11-103.
- i. "Total Flow" is the total volume of water discharged, measured on a continuous basis and reported as a total volume for each month during a reporting period. The accuracy of flow measurement must comply with Part III.A.1.

4. **Test Procedures**

Test procedures for the analysis of pollutants, collection of samples, sample containers, sample preservation, and holding times, shall conform to regulations published pursuant to 40 CFR, Part 136, unless other test procedures have been specified in this permit.

5. **Recording of Results**

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

- a. The exact place, date and time of sampling;
- b. The dates and times the analyses were performed;
- c. The person(s) who performed the analyses and collected the samples;
- d. The analytical techniques or methods used; and
- e. The results of all required analyses including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine the results.

6. **Additional Monitoring by Permittee**

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the Discharge Monitoring Report Form. Such increased frequency shall also be indicated.

7. **Records Retention**

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 three years from the date of the sample, measurement, report or application. This period may be extended by request of the administrator at any time. Data collected on site, copies of Discharge Monitoring Reports and a copy of this NPDES permit must be maintained on site during the duration of activity at the permitted location.

8. **Penalties for Tampering**

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 per violation, or by imprisonment for not more than two years per violation, or both.

9. **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 shall be submitted no later than 14 days following each schedule date.

10. **Facility Identification**

All facilities discharging produced water shall be clearly identified with an all-weather sign posted at each outfall and flow monitoring locations (points of compliance). This sign shall, as a minimum, convey the following information:

- a. The name of the company, corporation, person(s) who holds the discharge permit, and the NPDES permit number;
- b. The contact name and phone number of the person responsible for the records associated with the permit;
- c. The name of the facility (lease, well number, etc.) and the outfall number as identified by the discharge permit.

11. Identification and Establishment of Discharge Points

According to 40 CFR 122.21(k)(1), the permittee shall identify the expected location of each discharge point on the appropriate NPDES permit application form. The location of the discharge point must be identified to within an accuracy of 15 seconds. This equates to a distance of 1,510 feet.

In order for the permit not to be subjected to additional public notice, the location of the established discharge point must be within 1,510 feet of the location of the discharge point originally identified on the permit application. In addition, the discharge must be within the same drainage and must discharge to the same landowner's property as identified on the original application form. If the three previously stated requirements are not satisfied, modification of the discharge point location(s) constitutes a major modification of the permit. The permittee shall provide written notification of the establishment of each discharge point in accordance with Part I.A.6.a above.

12. Location of Discharge Points, Irrigation Compliance Points, Irrigation Diversion Points, and Water Quality Monitoring Stations

As of the date of permit issuance, authorized points of discharge and water quality monitoring stations were as follows:

SEE TABLE 1 FOR A LIST OF OUTFALLS

The outfalls listed in the table below may be moved from the established location without submittal of a permit modification application provided all of the following conditions are satisfied:

1. The new outfall location is within 2640 feet of the established outfall location.
2. The new outfall location is within the same drainage or immediate permitted receiving waterbody.
3. There is no change in the affected landowners.
4. Notification of the change in outfall location must be provided to the NPDES Permits Section on a form provided by the WQD Administrator within 10 days of the outfall location change. The form must be provided in duplicate and legible maps showing the previous and new outfall location must be attached to the form.

Moving an outfall location without satisfying the four above listed conditions will be considered a violation of this permit and subject to full enforcement authority of the WDQ.

An outfall relocation as described above will not be allowed if the new outfall location is less than one mile from the confluence of a Class 2 waterbody and the dissolved iron limits established in the permit for the outfall are based upon Class 3 standards.

Requests for modification of the above list will be processed as follows. If the requested modification satisfies the definition of a minor permit modification as defined in 40 CFR 122.63 modifications will not be required to be advertised in a public notice. A minor modification constitutes a correction of a typographical error, increase in monitoring and/or reporting, revision to an interim compliance schedule date, change in ownership, revision of a construction schedule for a new source discharger, deletion of permitted outfalls, and/or the incorporation of an approved local pretreatment program.

A request for a minor modification must be initiated by the permittee by completing the form titled National Pollutant Discharge Elimination System Permit Modification Application For Coal Bed Methane. Incomplete application forms will be returned to the applicant.

TABLE 1: OUTFALL, IRRIGATION COMPLIANCE POINT, IRRIGATION DIVERSION POINT, AND WATER QUALITY MONITORING STATION LOCATION INFORMATION: NEMESIS POD - DRY CREEK - WY0052761

Discharge Point # (Outfall)	Immediate Receiving Stream	Distance from outfall to mainstem (stream miles)	Quarter / Quarter	Section	Township	Range	Latitude	Longitude	Reservoir Name	Groundwater approval required before discharge?
001	Unnamed, ephemeral tributary, Dry Creek	8.81	SESW	5	49	78	44.241213	-106.268971	RIPPER	YES
002	Unnamed, ephemeral tributary, Dry Creek	9.93	SESW	7	49	78	44.236129	-106.290718	BABS	YES
003	Unnamed, ephemeral tributary, Dry Creek	10.00	NESW	7	49	78	44.233315	-106.291150	STRANAHAN	YES
004	Unnamed, ephemeral tributary, Dry Creek	9.46	SESE	7	49	78	44.227872	-106.278931	TIP TOP	YES
005	Unnamed, ephemeral tributary, Dry Creek	8.44	NENE	8	49	78	44.238916	-106.259315	HARVEST MOON	YES
006	Unnamed, ephemeral tributary, Dry Creek	8.11	NWNE	8	49	78	44.237635	-106.263764	GREEN GOBLIN	YES
007	Unnamed, ephemeral tributary, Dry Creek	8.78	NWNE	8	49	78	44.239243	-106.267038	JET GUN	YES
008	Unnamed, ephemeral tributary, Dry Creek	9.35	NENW	8	49	78	44.238531	-106.269217	DR. NO	YES
009	Unnamed, ephemeral tributary, Dry Creek	9.43	NWNW	8	49	78	44.239357	-106.274094	BORIS	YES
010	Unnamed, ephemeral tributary, Dry Creek	9.41	NWNW	8	49	78	44.238951	-106.274659	GYPSUM	YES
011	Unnamed, ephemeral tributary, Dry Creek	9.06	SWNE	8	49	78	44.235292	-106.265024	MR. ANDERSON	YES
012	Unnamed, ephemeral tributary, Dry Creek	8.09	NESE	8	49	78	44.232798	-106.260042	SENTINALS	YES
013	Unnamed, ephemeral tributary, Dry Creek	8.57	NWSE	8	49	78	44.232630	-106.264050	SPECTRE	YES
014	Unnamed, ephemeral tributary, Dry Creek	7.60	SESW	9	49	78	44.236629	-106.259629	STEEP	YES
015	Unnamed, ephemeral tributary, Dry Creek	7.74	SWNW	9	49	78	44.237020	-106.253958	RIPPLES	YES

Discharge Point # (Outfall)	Immediate Receiving Stream	Distance from outfall to mainstem (stream miles)	Quarter / Quarter	Section	Township	Range	Latitude	Longitude	Reservoir Name	Groundwater approval required before discharge?
016	Unnamed, ephemeral tributary, Dry Creek	7.87	SWSW	9	49	78	44.227702	-106.257950	JOKER	YES
017	Unnamed, ephemeral tributary, Dry Creek	8.93	NENW	17	49	78	44.226411	-106.271889	BUCKEYE	YES
018	Unnamed, ephemeral tributary, Dry Creek	9.23	NWNW	17	49	78	44.223319	-106.276493	CONCORDE	YES
019	Unnamed, ephemeral tributary, Dry Creek	9.00	SWSE	17	49	78	44.214262	-106.263915	MARY KAY	YES
020	Unnamed, ephemeral tributary, Dry Creek	9.38	SWSW	17	49	78	44.214788	-106.275657	MIKEY MOUSE	YES
021	Unnamed, ephemeral tributary, Dry Creek	9.50	SWSW	17	49	78	44.212915	-106.275093	SUNSHINE	YES
022	Unnamed, ephemeral tributary, Dry Creek	9.49	NENE	18	49	78	44.225130	-106.279407	DENDRITIC	YES
023	Unnamed, ephemeral tributary, Dry Creek	9.94	NWNE	18	49	78	44.224024	-106.287237	NATASHA	YES
024	Unnamed, ephemeral tributary, Dry Creek	10.21	NENW	18	49	78	44.224041	-106.291106	BOBBY BILL	YES
025	Unnamed, ephemeral tributary, Dry Creek	10.11	SESW	18	49	78	44.220100	-106.291638	AFTERNOON	YES
026	Unnamed, ephemeral tributary, Dry Creek	10.28	SWSE	18	49	78	44.212124	-106.287595	NOSE BLEED	YES
027	Unnamed, ephemeral tributary, Dry Creek	10.19	SWSE	18	49	78	44.212807	-106.285951	BOX TOP	YES
028	Unnamed, ephemeral tributary, Dry Creek	10.02	SWSE	18	49	78	44.212007	-106.286118	LEX LUTHER	YES
029	Unnamed, ephemeral tributary, Dry Creek	10.13	SWSE	18	49	78	44.213839	-106.285986	ARCH ENEMY	YES
030	Unnamed, ephemeral tributary, Dry Creek	10.34	SWNW	18	49	78	44.220973	-106.294900	SAGE BLOOM	YES
031	Unnamed, ephemeral tributary, Dry Creek	10.22	SENE	19	49	78	44.205096	-106.281341	RIDDLEP	YES

Discharge Point # (Outfall)	Immediate Receiving Stream	Distance from outfall to mainstem (stream miles)	Quarter / Quarter	Section	Township	Range	Latitude	Longitude	Reservoir Name	Groundwater approval required before discharge?
032	Unnamed, ephemeral tributary, Dry Creek	10.39	SENE	19	49	78	44.206118	-106.280064	WALKER	YES
033	Unnamed, ephemeral tributary, Dry Creek	10.44	SESE	20	49	78	44.201120	-106.261389	PAT	YES
034	Unnamed, ephemeral tributary, Dry Creek	10.37	SESW	20	49	78	44.199047	-106.268357	CAT WOMAN	YES
035	Unnamed, ephemeral tributary, Dry Creek	9.57	NWNE	20	49	78	44.210002	-106.264761	KELLY	YES
036	Unnamed, ephemeral tributary, Dry Creek	9.83	NWNW	20	49	78	44.211380	-106.277571	SLUMP	YES
037	Unnamed, ephemeral tributary, Dry Creek	9.89	SESW	21	49	78	44.199205	-106.252590	I-90	YES
038	Unnamed, ephemeral tributary, Dry Creek	9.10	NWNW	21	49	78	44.210857	-106.253809	UPPER DECK	YES
039	Unnamed, ephemeral tributary, Dry Creek	9.65	NWSE	21	49	78	44.201723	-106.244116	RULON	YES
040	Unnamed, ephemeral tributary, Dry Creek	10.63	NENE	29	49	78	44.196504	-106.260751	TOTAL STATION	YES

IRRIGATION COMPLIANCE POINT, IRRIGATION DIVERSION POINT, AND WATER QUALITY MONITORING STATION LOCATION INFORMATION

ICP1	Unnamed, ephemeral tributary, Dry Creek	-----	NWSE	21	50	77	44.203970	-106.246648	-----	-----
ICP2	Unnamed, ephemeral tributary, Dry Creek	-----	NWNW	16	50	77	44.225180	-106.255897	-----	-----
ICP3	Unnamed, ephemeral tributary, Dry Creek	-----	SESW	9	50	77	44.227076	-106.253772	-----	-----
ICP4	Unnamed, ephemeral tributary, Dry Creek	-----	NWSE	9	50	77	44.230798	-106.247678	-----	-----
ICP5	Unnamed, ephemeral tributary, Dry Creek	-----	NESE	9	50	77	44.232718	-106.239191	-----	-----
IDP1	Dry Creek		SWSW	32	50	77				
LPR	-----	-----	SWSE	32	50	77	44.256924	-106.147216	-----	-----
DPR	-----	-----	SESW	28	50	77	44.274050	-106.135420	-----	-----
TRIB1	-----	-----	SESW	32	50	77	44.258023	-106.130807	-----	-----

C. RESERVOIR / IMPOUNDMENT REQUIREMENTS

1. **Groundwater Monitoring Beneath Impoundments**

Table 1 of the permit above identifies which outfalls (if any) are designed to discharge into impoundments that are subject to groundwater monitoring requirements established in the latest version of the Water Quality Division guideline "*Compliance Monitoring for Groundwater Protection Beneath Unlined Coalbed Methane Produced Water Impoundments.*" These specified outfalls are not authorized to discharge until a written groundwater compliance approval has been granted by the Groundwater Pollution Control Program of the Water Quality Division. A groundwater compliance approval will consist of either a final approved groundwater compliance monitoring plan, or written authorization for an exemption thereof. Once an impoundment has been granted a written groundwater compliance approval, the contributing outfall(s) to that reservoir may commence discharge.

Any discharge into an impoundment which has not been granted the required groundwater compliance approval will constitute a violation of this permit, and may result in enforcement action from the Water Quality Division to include a notice of violation, revocation of the discharge permit, or other appropriate enforcement action.

PART II

A. MANAGEMENT REQUIREMENTS

1. Changes

The permittee shall give notice to the administrator of the Water Quality Division as soon as possible of any physical alterations or additions to the permitted facility. Notice is required when:

- a. 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
- b. The alteration or addition could change the nature or increase the quantity of pollutants discharged.

2. Noncompliance Notification

- a. The permittee shall give advance notice of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- b. The permittee shall report any noncompliance which may endanger health or the environment as soon as possible, but no later than 24 hours from the time the permittee first became aware of the circumstances. The report shall be made to the Water Quality Division, Wyoming Department of Environmental Quality at (307) 777-7781.
- c. For any incidence of noncompliance, including noncompliance related to non-toxic pollutants or non-hazardous substances, a written submission shall be provided within five (5) days of the time that the permittee becomes aware of the noncompliance circumstance.

The written submission shall contain:

- (1) A description of the noncompliance and its cause;
 - (2) The period of noncompliance, including exact dates and times;
 - (3) The estimated time noncompliance is expected to continue if it has not been corrected; and
 - (4) Steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance.
- d. The following occurrences of unanticipated noncompliance shall be reported by telephone to the Water Quality Division, Watershed Management Section, NPDES

Program (307) 777-7781 as soon as possible, but no later than 24 hours from the time the permittee first became aware of the circumstances.

- (1) Any unanticipated bypass which exceeds any effluent limitation in the permit;
 - (2) Any upset which exceeds any effluent limitation in the permit; or
 - (3) Violation of a maximum daily discharge limitation for any toxic pollutants or hazardous substances, or any pollutants specifically identified as the method to control a toxic pollutant or hazardous substance listed in the permit.
- e. The administrator of the Water Quality Division may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Quality Division, Watershed Management Section, NPDES Program (307) 777-7781.
- f. Reports shall be submitted to the Wyoming Department of Environmental Quality at the address in Part I under Reporting and to the Planning and Targeting Program, 8ENF-PT, Office of Enforcement, Compliance, and Environmental Justice, U.S. EPA Region 8, 999 18th St., Suite 300, Denver, CO 80202-2466.
- g. The permittee shall report all instances of noncompliance that have not been specifically addressed in any part of this permit at the time the monitoring reports are due.

3. Facilities Operation

The permittee shall, 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. However, the permittee shall operate, as a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

4. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact to waters of the state resulting from noncompliance with any effluent limitations specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

5. Bypass of Treatment Facilities

- a. Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- b. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs c. and d. of this section.

Return of removed substances to the discharge stream shall not be considered a bypass under the provisions of this paragraph.

c. Notice:

- (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice at least 60 days before the date of the bypass.
- (2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.A.2.

d. Prohibition of bypass.

- (1) Bypass is prohibited and the administrator of the Water Quality Division may take enforcement action against a permittee for a bypass, unless:
 - (a) The bypass was unavoidable to prevent loss of life, personal injury or severe property damage;
 - (b) 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 to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (c) The permittee submitted notices as required under paragraph c. of this section.

e. The administrator of the Water Quality Division may approve an anticipated bypass, after considering its adverse effects, if the administrator determines that it will meet the three conditions listed above in paragraph d. (1) of this section.

6. Upset Conditions

- a. 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, improper designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- b. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of paragraph c. of this section are met.
- c. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating 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;
 - (3) The permittee submitted notice of the upset as required under Part II.A.2; and
 - (4) The permittee complied with any remedial measures required under Part II.A.4.
- d. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

7. Removed Substances

Solids, sludges, filter backwash or other pollutants removed in the course of treatment or control of wastewaters or intake waters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering waters of the state.

8. Power Failures

In order to maintain compliance with the effluent limitations and prohibitions of this permit, the permittee shall either:

- a. In accordance with a schedule of compliance contained in Part I, provide an alternative power source sufficient to operate the wastewater control facilities; or
- b. If such alternative power source as described in paragraph a. above is not in existence and no date for its implementation appears in Part I, take such precautions as are necessary to maintain and operate the facility under its control in a manner that will minimize upsets and insure stable operation until power is restored.

9. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the federal act and the Wyoming Environmental Quality Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give the administrator of the Water Quality Division advance notice of any planned changes at the permitted facility or of any activity which may result in permit noncompliance.

10. 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.

11. Signatory Requirements

All applications, reports or information submitted to the administrator of the Water Quality Division shall be signed and certified.

- a. All permit applications shall be signed as follows:

- (1) For a corporation: by a responsible corporate officer;
 - (2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
 - (3) For a municipality, state, federal or other public agency: by either a principal executive officer or ranking elected official.
- b. All reports required by the permit and other information requested by the administrator of the Water Quality Division shall 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:
- (1) The authorization is made in writing by a person described above and submitted to the administrator of the Water Quality Division; and
 - (2) The authorization specified 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. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
- c. If an authorization under paragraph II.A.11.b. 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 paragraph II.A.11.b must be submitted to the administrator of the Water Quality Division prior to or together with any reports, information or applications to be signed by an authorized representative.
- d. Any person signing a document under this section 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 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."

B. RESPONSIBILITIES

1. Inspection and Entry

If requested, the permittee shall provide written certification from the surface landowner(s), if different than the permittee, that the administrator or the administrator's authorized agent has access to all physical locations associated with this permit including well heads, discharge points, reservoirs, monitoring locations, and any waters of the state.

The permittee shall allow the administrator of the Water Quality Division or an authorized representative, 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;
- c. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and
- d. Sample or monitor, at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the federal act, any substances or parameters at any location.

2. Transfer of Ownership or Control

In the event of any change in control or ownership of facilities from which the authorized discharges emanate, the permittee shall notify the succeeding owner or controller of the existence of this permit by letter, a copy of which shall be forwarded to the regional administrator of the Environmental Protection Agency and the administrator of the Water Quality Division. The administrator of the Water Quality Division shall then provide written notification to the new owner or controller of the date in which they assume legal responsibility of the permit. The permit may be modified or revoked and reissued to change the name of the permittee and incorporate such other requirements as described in the federal act.

3. Availability of Reports

Except for data determined to be confidential under Section 308 of the federal act, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Wyoming Department of Environmental Quality and the regional administrator of the Environmental Protection Agency. As required by the federal act, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the federal act.

4. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under Section 307 (a) of the federal 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.

5. Changes in Discharge of Toxic Substances

Notification shall be provided to the administrator of the Water Quality Division as soon as the permittee knows of, or has 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 limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (1) One hundred micrograms per liter (100 µg/l);
 - (2) 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;
 - (3) 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
 - (4) The level established by the director of the Environmental Protection Agency in accordance with 40 CFR 122.44 (f).
- 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) Five hundred micrograms per liter (500 µg/l);
 - (2) One milligram per liter (1 mg/l) for antimony;
 - (3) 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
 - (4) The level established by the director of the Environmental Protection Agency in accordance with 40 CFR 122.44 (f).

6. Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. As long as the conditions related to the provisions of "Bypass of Treatment Facilities" (Part II.A.5), "Upset Conditions" (Part II.A.6), and "Power Failures" (Part II.A.8) are satisfied then they shall not be considered as noncompliance.

7. Need to Halt or Reduce Activity not a Defense

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.

8. Oil and Hazardous Substance Liability

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 to which the permittee is or may be subject under Section 311 of the federal act.

9. 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 or federal law or regulation. In addition, issuance of this permit does not substitute for any other permits required under the Clean Water Act or any other federal, state, or local law.

10. Property Rights

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.

11. Duty to Reapply

If the permittee wishes 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. The application should be submitted at least 180 days before the expiration date of this permit.

12. Duty to Provide Information

The permittee shall furnish to the administrator of the Water Quality Division, within a reasonable time, any information which the administrator 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 shall also furnish to the administrator, upon request, copies of records required by this permit to be kept.

13. Other Information

When 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 any report to the administrator of the Water Quality Division, it shall promptly submit such facts or information.

14. Permit Action

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

PART III

A. OTHER REQUIREMENTS

1. Flow Measurement

At the request of the administrator of the Water Quality Division, the permittee must be able to show proof of the accuracy of any flow measuring device used in obtaining data submitted in the monitoring report. The flow measuring device must indicate values of within plus or minus ten (10) percent of the actual flow being measured.

2. 208(b) Plans

This permit may be modified, suspended or revoked to comply with the provisions of any 208(b) plan certified by the Governor of the State of Wyoming.

3. Reopener Provision

This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations (and compliance schedule, if necessary) or other appropriate requirements if one or more of the following events occurs:

a. The state water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit;

b. A total maximum daily load (TMDL) and/or watershed management plan is developed and approved by the state and/or the Environmental Protection Agency which specifies a wasteload allocation for incorporation in this permit;

c. A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit;

d. Downstream impairment is observed and the permitted facility is contributing to the impairment;

e. The limits established by the permit no longer attain and/or maintain applicable water quality standards;

f. The permit does not control or limit a pollutant that has the potential to cause or contribute to a violation of a state water quality standard.

g. If new applicable effluent guidelines and/or standards have been promulgated and the standards are more stringent than the effluent limits established by the permit.

h. In order to protect water quality standards in neighboring states, effluent limits may be incorporated into this permit or existing limits may be

modified to ensure that the appropriate criteria, water quality standards and assimilative capacity are attained.

4. Permit Modification

After notice and opportunity for a hearing, this permit may be modified, suspended or revoked in whole or in part during its term for cause including, but not limited to, the following:

- a. Violation of any terms or conditions of this permit;
- b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge; or
- d. If necessary to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b) (2) (C) and (D), 304 (b) (2) and 307 (a) (2) of the federal act, if the effluent standard or limitation so issued or approved:
 - (1) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
 - (2) Controls any pollutant not limited in the permit.

5. Toxicity Limitation - Reopener Provision

This permit may be reopened and modified (following proper administrative procedures) to include a new compliance date, additional or modified numerical limitations, a new or different compliance schedule, a change in the whole effluent protocol or any other conditions related to the control of toxicants if one or more of the following events occur:

- a. Toxicity was detected late in the life of the permit near or past the deadline for compliance;
- b. The TRE results indicate that compliance with the toxic limits will require an implementation schedule past the date for compliance and the permit issuing authority agrees with the conclusion;
- c. The TRE results indicate that the toxicant(s) represent pollutant(s) that may be controlled with specific numerical limits and the permit issuing authority agrees that numerical controls are the most appropriate course of action;
- d. Following the implementation of numerical controls on toxicants, the permit issuing authority agrees that a modified whole effluent protocol is necessary to compensate for those toxicants that are controlled numerically;
- e. The TRE reveals other unique conditions or characteristics which, in the opinion of the permit issuing authority, justify the incorporation of unanticipated special conditions in the permit.

6. Severability

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.

7. Penalties for Falsification of Reports

The federal act 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 two years per violation or both.