

## **ATTACHMENT B**

### **WATER QUALITY ORDER NO. 2005-XXX-DWQ (NPDES) PERMIT, NO. CA0103209**

#### **STANDARDS PROVISIONS**

#### **CALIFORNIA DEPARTMENT OF FISH AND GAME SILVER KING CREEK ROTENONE PROJECT ALPINE COUNTY**

1. The permittee must comply with all of the terms, requirements, and conditions of this NPDES Permit. Any violation of this Permit constitutes violation of the Clean Water Act (CWA), its regulations and the California Water Code, and is grounds for enforcement action, permit termination, permit revocation, and reissuance, denial of an application for permit reissuance; or a combination thereof.
2. The permittee shall comply with effluent standards or prohibitions established under 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this Permit has not yet been modified to incorporate the requirement. [40 CFR 122.41(a)(1)]

The California Water Code provides that any person who violates a Waste Discharge Requirement (same as permit condition), or a provision of the California Water Code, is subject to civil penalties of up to \$1,000 per day or \$10,000 per day of violation, or when the violation involves the discharge of pollutants, is subject to civil penalties of up to \$10 per gallon per day or \$20 per gallon per day of violation; or some combination thereof, depending on the violation, or upon the combination of violations.\*

Violations of any of the provisions of the NPDES program, or of any of the provisions of this Permit, may subject the violator to any of the penalties described herein, or any combination thereof, at the discretion of the prosecuting authority; except that only one kind of penalty may be applied for each kind of violation.\*

3. The CWA provides that any person who violates a Permit condition implementing Sections 301, 302, 306, 307, or 308 of the CWA is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates Permit conditions implementing these Sections of the CWA is subject to a fine of not less than \$2,500, nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or both. [40 CFR 122.41(a)(2)]
4. 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. [40 CFR 122.41(b)]
5. 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. [40 CFR 122.41(c)]
6. The permittee shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting health or the environment. [40 CFR 122.41(d)]
7. The permittee shall, at all times, properly operate and maintain all the facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with this Permit.

Proper operation and maintenance includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities, or similar systems that are installed by a permittee only when necessary to achieve compliance with the conditions of this Permit. [40 CFR 122.41(e)]

8. 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. [40 CFR 122.41(g)]
9. This Permit does not convey any property rights of any sort, or any exclusive privilege. [40 CFR 122.41(f)]
10. The permittee shall furnish, within a reasonable time, any information the Regional Board or EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Permit. The permittee shall also furnish to the Regional Board, upon request, copies of records required to be kept by this Permit. [40 CFR 122.41(h)]
11. The Regional Board, EPA, and other authorized representatives shall be allowed:
  - (a) Entry upon premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Permit;
  - (b) Access to copy any records that are kept under the conditions of this Permit;
  - (c) To inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Permit; and
  - (d) To photograph, sample, and monitor for the purpose of assuring compliance with this Permit, or as otherwise authorized by the CWA. [40 CFR 122.41(I)]
12. Monitoring and records.
  - (a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

The permittee shall retain records of all monitoring information, including all calibration and maintenance 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 Regional Board or EPA at any time.

Records of monitoring information shall include:

- (i) The date, exact place, and time of sampling or measurements;
- (ii) The individual(s) who performed the sampling or measurements;
- (iii) The date(s) analyses were performed;
- (iv) The individual(s) who performed the analyses;
- (v) The analytical techniques or methods used; and
- (vi) The results of such analyses.

Monitoring must be conducted according to test procedures under 40 CFR Part 136, unless other test procedures have been specified in this Permit.

The CWA 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 six months per violation, or by both.

[40 CFR 122.41(j)]

13. All applications, reports, or information submitted to the Regional Board shall be signed and certified in accordance with 40 CFR 122.22 [40 CFR 122.41(k)(1)]
14. The CWA 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 six months per violation, or by both. [40 CFR 122.41(k)(2)]
15. Reporting requirements:
  - (a) The permittee shall give advance notice to the Regional Board, as soon as possible of, any planned physical alterations, or additions to the permitted facility.
  - (b) The permittee shall give advance notice to the Regional Board of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.
  - (c) This Permit is not transferable to any person, except after notice to the Regional Board. The Regional Board may require modification, or revocation and reissuance of the Permit to change the name of the permittee, and incorporate such other requirements as may be necessary under the CWA.
  - (d) Monitoring results shall be reported at the intervals specified elsewhere in this Permit.
    - (i) Monitoring results must be reported in a Discharge Monitoring Report (DMR).
    - (ii) If the permittee monitors any pollutant more frequently than required by this Permit using test procedures approved under 40 CFR Part 136 or as specified in this Permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.
    - (iii) Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this Permit.
  - (e) Report 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.
  - (f) Twenty-four hour reporting.
    - (i) The permittee shall report any noncompliance that may endanger health or the environment to the Regional Board. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A

written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and time and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The following shall be included as information that must be report within 24 hours under this paragraph;

- (A) Any unanticipated bypass that exceeds any effluent limitation in the Permit.
- (B) Any upset that exceeds any effluent limitation in the Permit.
- (C) Violation of a maximum daily discharge limitation for any of the pollutants listed in this Permit to be reported within 24 hours.

The Regional Board may waive the above-required written report on a case-by-case basis.

- (g) The permittee shall report all instances of noncompliance, not otherwise reported under the above paragraphs, at the time monitoring reports are submitted. The reports shall contain all information listed in paragraph 15(f) above. [40 CFR 122.41(1)]

16. Bypass (the intentional diversion of waste streams from any portion of facility) is prohibited. The Board may take enforcement action against the permittee for bypass unless:

- (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. (Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.);
- (b) There were no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that could occur during normal periods of equipment downtime or preventive maintenance; and
- (c) The permittee submitted a notice, at least ten days in advance, of the need for a bypass to the appropriate Board.

The permittee may allow a bypass to occur that does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to assure efficient operation. In such a case, the above bypass conditions are not applicable.

The permittee shall submit notice of an unanticipated bypass as required in paragraph 15(f) above. [40 CFR 122.41(m)]

17. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly

designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper action. A permittee that wishes to establish the affirmative defense of an upset in an action brought for noncompliance shall demonstrate, through signed, contemporaneous operating logs, or other relevant evidence that:

- (a) an upset occurred and that the permittee can identify the cause(s) of the upset;
- (b) the permitted facility was being properly operated at the time of the upset;
- (c) the permittee submitted notice of the upset as required in paragraph 15(f) above; and
- (d) the permittee complied with any remedial measures required under paragraph 7.

No determination made before an action for noncompliance, such as during administrative review of claims that noncompliance was caused by an upset; is final administrative action subject to judicial review.

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof. [40 CFR 122.41(n)]

18. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Regional Board as soon as they know or have reason to believe:
- (a) that any activity has occurred or will occur that would result in the discharge of any toxic pollutant that is not limited in this Permit, if that discharge will exceed the highest of the following "notification levels:"
    - (i) One hundred micrograms per liter (100 µg/L);
    - (ii) Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2-4dinitrophenol and 2-methyl-4-b-dinitrophenol; and one milligram per liter (1 mg/L) for antimony; Five (5) times the maximum concentration value reported for that pollutant in the Permit application; or  
The level established by the Regional Board in accordance with 40 CFR 122.44(f).
  - (b) that they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant that was not reported in the Permit application.  
[40 CFR 122.42(a)]
- \* This paragraph was added or modified by the State Water Quality Control Board to the California Water Code.