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California Regional Water Quality Control Board Central Coast Region



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February 4, 2005 Public Comment Draft ORDER NO. R3-2005-0044 NPDES NO. CA0005274

The following Discharger is authorized to discharge in accordance with the conditions set forth in this Order:

Discharger	Granite Rock Company, Inc.
Name of Facility	Arthur R. Wilson Quarry
Facility Address	End of Quarry Road
	Aromas, California 95004
	San Benito County

The Discharger is authorized to discharge from the following discharge point as set forth below:

Discharge Point	Effluent Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
001	Treated wastewater and storm water	36 °, 55 ', 48 " N	121 °, 36 ', 58 " W	Pajaro River

This Order was adopted by the Regional Board on:	<Adoption Date>
This Order shall become effective on:	<Effective Date>
This Order shall expire on:	<Expiration Date>
The U.S. Environmental Protection Agency (U.S. EPA) and the Regional Board have classified this discharge as a minor discharge.	
The Discharger shall file a Report of Waste Discharge in accordance with Title 23, California Code of Regulations, <u>not later than 180 days in advance of the Order expiration date</u> as application for issuance of new waste discharge requirements.	

IT IS HEREBY ORDERED, that Order No. 00-007 is rescinded upon the effective date of this Order except for purposes of taking enforcement action for violations that occurred prior to such effective date, and, in order to meet the provisions contained in Division 7 of the California Water Code (CWC) and regulations adopted thereunder, and the provisions of the federal Clean Water Act (CWA), and regulations and guidelines adopted thereunder, the Discharger shall comply with the requirements in this Order.

I, Roger W. Briggs, Executive Officer, do hereby certify the following is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Coast Region, on **May 13, 2005**.

Roger W. Briggs, Executive Officer

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
REGION 3, CENTRAL COAST REGION**

**ORDER NO. R3-2005-0044
NPDES NO. CA0005274**

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I. FACILITY INFORMATION

The following Discharger is authorized to discharge in accordance with the conditions set forth in this Order.

Discharger	Granite Rock Company, Inc.
Name of Facility	Arthur R. Wilson Quarry
Facility Address	End of Quarry Road
	Aromas, California 95004
	San Benito County
Facility Contact, Title, and Phone	Aaron Johnston-Karas, Mgr Environmental Services, 831-768-2094
Mailing Address	P.O. Box 50001, Watsonville, CA 95077
Type of Facility	Granite Quarry and Processing, Asphalt and Concrete Manufacture
Facility Design Flow	Discharges are intermittent. Projected occurrence is one discharge event per year lasting 3 – 4 days and discharging up to 9.0 million gallons per day (mgd).

II. FINDINGS

The California Regional Water Quality Control Board, Central Coast Region (hereinafter the Regional Board), finds:

- A. **Background.** The Granite Rock Company, Inc. (hereinafter the Discharger) is currently discharging under Order No. 00-007 and National Pollutant Discharge Elimination System (NPDES) Permit No. CA0005274. The Discharger submitted a Report of Waste Discharge, dated November 24, 2004, and applied for a NPDES permit renewal to discharge treated wastewater from the Arthur R. Wilson Quarry. Order No. 00-007 does not contain discharge flow limitations.
- B. **Facility Description.** The Discharger owns and operates a granite quarry and processing facility. The facility's process water system uses well water as makeup and discharges infrequently due to significant storage within the process water circuit (Quarry Storage Reservoir and Soda Lake), solids removal/settling capability at the Fines Treatment Plant, and the historic rainfall conditions. Wastewater is discharged from Discharge Point 001 to the Pajaro River, a water of the United States within the Pajaro River Hydrologic Unit. Discharge is the result of intense and/or closely spaced rainfall events. Attachment B provides a topographic map of the area around the facility. Attachment C provides a wastewater flow schematic of the facility.
- C. **Legal Authorities.** This Order is issued pursuant to CWA Section 402 and implementing regulations adopted by the U.S. Environmental Protection Agency (U.S. EPA) and CWC Chapter 5.5, Division 7. It shall serve as an NPDES permit for point source discharges from this facility to surface waters. This Order also serves as Waste Discharge Requirements pursuant to CWC Article 4, Chapter 4 for discharges that are not subject to regulation under CWA Section 402.
- D. **Background and Rationale for Requirements.** Regional Board staff and Tetra Tech, Inc. developed the requirements in this Order based on information submitted as part of the application, through monitoring and reporting programs, and through special studies. Attachments A through F contain background information and detailed rationale for Order requirements and are hereby incorporated into this Order and therefore, constitute part of the findings for this Order.
- E. **California Environmental Quality Act (CEQA).** This action to adopt an NPDES permit is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21100, et seq.) in accordance with CWC Section 13389.

- F. **Technology-Based Effluent Limitations.** NPDES regulations at 40 CFR 122.44 (a) require that permits include applicable technology-based limitations and standards. This Order includes technology-based effluent limitations for total suspended solids (TSS) and turbidity based on Best Professional Judgment (BPJ) in accordance with 40 CFR 125.3. A detailed discussion of development of the technology-based effluent limitations is included in the Fact Sheet (Attachment F).
- G. **Water Quality-Based Effluent Limitations.** 40 CFR 122.44 (d) requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. Where numeric water quality objectives have not been established, 40 CFR 122.44 (d) specifies that WQBELs may be established using U.S. EPA criteria guidance under CWA Section 304 (a), proposed State criteria or a State policy interpreting narrative criteria supplemented with other relevant information, or an indicator parameter. This Order establishes water quality based effluent limitations for pH, mercury, and acute toxicity.
- H. **CWA 303 (d) List of Impaired Waters.** On June 5 and July 25, 2003, the U.S. EPA approved the list of impaired water bodies, prepared by the State Water Resources Control Board (the State Board) pursuant to Section 303 (d) of the CWA – water bodies which are not expected to meet applicable water quality standards after implementation of technology-based effluent limitations for point sources. This 303 (d) list includes the Pajaro River as impaired for fecal coliform, nutrients, and sedimentation/siltation.
- I. **Water Quality Control Plans.** The Regional Board adopted a *Water Quality Control Plan for the Central Coastal Region* (hereinafter, the Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the Plan. Beneficial uses applicable to Pajaro River are as follows.

Discharge Point	Receiving Water Name	Beneficial Use(s)
001	Pajaro River	MUN - Municipal and domestic supply AG - Agricultural supply PROC - Industrial process supply GWR - Groundwater recharge REC-1 - Water contact recreation REC-2 - Non-contact water recreation WILD - Wildlife habitat COLD - Cold fresh water habitat WARM - Warm fresh water habitat MIGR - Migration of aquatic organisms SPWN - Spawning, reproduction, and/or early development FRSH - Freshwater replenishment COMM - Commercial and sport fishing

Groundwater throughout the Central Coastal Basin, except for groundwater in the Soda Lake Sub-basin, is suitable for agricultural water supply, municipal and domestic supply, and industrial use. Table 3-8 of the Basin Plan describes groundwater of the Soda Lake sub-basin as currently exceeding usable mineral quality.

The State Board adopted a *Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Water and Enclosed Bays and Estuaries of California* (Thermal Plan) on May 18, 1972, and amended this plan on September 18, 1975. This plan contains applicable temperature objectives for inland surface waters.

Requirements of this Order specifically implement the applicable Water Quality Control Plans described above.

- J. **National Toxics Rule (NTR) and California Toxics Rule (CTR).** On December 22, 1992 and May 18, 2000, U.S. EPA adopted the NTR and the CTR, respectively. These rules include water quality criteria for priority, toxic pollutants, which are applicable to this discharge.
- K. **State Implementation Policy.** On March 2, 2000, the State Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (State Implementation Policy or SIP). The SIP establishes procedures to implement water quality criteria of the NTR and CTR as well as water quality objectives contained in the Basin Plan. The SIP requires dischargers to submit sufficient data to determine the need for WQBELs, and it establishes procedures for determining that need and for calculating WQBELs, when necessary. With respect to the priority pollutant criteria promulgated for California by the U.S. EPA through the NTR, the SIP became effective on April 28, 2000; and with respect to the priority pollutant criteria promulgated for California by the U.S. EPA through the CTR, the SIP became effective on May 18, 2000.
- L. **Compliance Schedules and Interim Requirements.** This Order does not include compliance schedules and interim effluent limitations.
- M. **Anti-Degradation Policy.** Section 131.12 of 40 CFR requires that State water quality standards include an anti-degradation policy consistent with the federal policy. The State Board established California's anti-degradation policy in State Board Resolution 68-16, which incorporates the requirements of the federal anti-degradation policy. Resolution 68-16 requires that existing quality of waters be maintained unless degradation can be justified based on specific findings. As discussed in detail in the Fact Sheet, Attachment F, the permitted discharge is consistent with the anti-degradation provision of 40 CFR 131.12 and State Board Resolution 68-16.
- N. **Anti-Backsliding Requirements.** CWA Sections 402 (o) (2) and 303 (d) (4) and NPDES regulations at 40 CFR 122.44 (l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations may be relaxed. The limitations and conditions of this Order comply with all applicable anti-backsliding provisions of the CWA and NPDES regulations.
- O. **Monitoring and Reporting.** 40 CFR 122.48 requires all NPDES permits to specify requirements for recording and reporting monitoring results. CWC Sections 13267 and 13383 authorize the Regional Boards to require technical and monitoring reports. The Monitoring and Reporting Program is necessary to determine compliance with such requirements and with this Order and to determine the impact, if any, of the discharge on receiving waters. The Monitoring and Reporting Program, Attachment E, establishes monitoring and reporting requirements to implement federal and State requirements.
- P. **Standard and Special Provisions.** Standard Provisions, which, in accordance with 40 CFR 122.41 and 122.42, apply to all NPDES discharges and must be included in every NPDES permit, are provided in Attachment D. The Regional Board has also included in this Order special provisions applicable to the Discharger. A detailed rationale for the special provisions contained in this Order is provided in the attached Fact Sheet (Attachment F).
- Q. **Notification of Interested Parties.** The Regional Board has notified the discharger and interested agencies and persons of its intent to prescribe Waste Discharge Requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. Details of notification are provided in the Fact Sheet (Attachment F) of this Order.
- R. **Consideration of Public Comment.** The Regional Board, in a public meeting, heard and considered all comments pertaining to the discharge. Details of the Public Hearing are provided in the Fact Sheet (Attachment F) of this Order.

III. DISCHARGE PROHIBITIONS

- A. The discharge of any waste not specifically regulated by this Permit to a storm drain system or to waters of the United States, excluding storm water regulated by General Permit No. CAS000001 (Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities), is prohibited.
- B. Discharge of treated wastewater at a location other than Discharge Point 001 (36 °, 55 ', 48 " N Latitude and 121 °, 36 ', 58 " W Longitude), as described by this Order, is prohibited, unless the discharge is regulated by General Permit No. CAS000001 or another discharge permit.
- C. The bypass of settling facilities meant for solids removal and the subsequent discharge of untreated wastewater is prohibited.
- D. Creation of a condition of pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code, is prohibited.
- E. The discharge shall not cause or contribute to adverse impacts to beneficial uses of water or to threatened or endangered species and their habitat.
- F. The discharge shall not cause or contribute to downstream flooding within the Pajaro River.
- G. The flow rate of the discharge of facility process water from the Quarry Storage Reservoir to the Pajaro River shall not exceed 9.0 MGD.
- H. The discharge of facility process water from the Quarry Storage Reservoir to the Pajaro River shall only occur when Pajaro River flows are below 6,004 MGD (corresponding to a California Department of Water Resources flood monitor stage of 25 feet) as measured at the Chittenden gauging station.

IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

A. Effluent Limitations – Discharge Point 001

1. Final Effluent Limitations

- a. The discharge of treated wastewater shall maintain compliance with the following limitations at Discharge Point 001.

Constituent	Units	Effluent Limitation	
		Average Monthly	Daily Maximum
pH	pH units	7.0 – 8.3	
TSS	mg/L	50	
Turbidity	NTUs		50
Mercury (Total)	µg/L	0.050	0.10
Acute Toxicity	TU		1 ^{1,2}

¹Or the background toxicity of the receiving water as determined by concurrent toxicity testing using upstream receiving water samples; the greater of the two shall apply.

²Survival of test organisms exposed to 100 percent effluent shall not be significantly reduced when compared to the survival of control organisms using a t-test.

V. RECEIVING WATER LIMITATIONS

A. Surface Water Limitations

Receiving water limitations are based upon water quality objectives contained in the Basin Plan. As such, they are a required part of this Order. The discharge shall not cause or result in the following within the Pajaro River:

1. coloration that causes nuisance or adversely affects beneficial uses. Coloration attributable to materials of waste origin shall not be greater than 15 units or 10 percent above natural background color, whichever is greater.
2. taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin, that cause nuisance, or that adversely affect beneficial uses.
3. floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.
4. suspended material in concentrations that causes nuisance or adversely affects beneficial uses.
5. settleable material in concentrations that result in deposition of material that causes nuisance or adversely affects beneficial uses.
6. oils, greases, waxes, or other similar materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.
7. biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.
8. an increase in the suspended sediment load. The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

9. changes in turbidity that cause nuisance or adversely affect beneficial uses. Increase in turbidity attributable to controllable water quality factors shall not exceed the following limits:
 - a. Where natural turbidity is between 0 and 50 Jackson Turbidity Units (JTU), increases shall not exceed 20 percent.
 - b. Where natural turbidity is between 50 and 100 JTU, increases shall not exceed 10 JTU.
 - c. Where natural turbidity is greater than 100 JTU, increases shall not exceed 10 percent.
10. the pH value to be depressed below 7.0 nor raised above 8.3, nor shall changes in ambient pH levels exceed 0.5 pH units.
11. dissolved oxygen concentrations in the Pajaro River to be reduced below 7 mg/L at any time. Median values should not fall below 85 percent saturation as a result of controllable water quality conditions.
12. To protect the *cold freshwater habitat* beneficial use the discharge to the Pajaro River shall not increase the temperature of the Pajaro River by more than 5°F. At no time shall discharge cause Pajaro River temperature to exceed 68°F in October or November and 57°F in December through April. If the background Pajaro River temperature exceeds 68°F in October or November and 57°F in December through April, then the discharge shall not cause any observable increase in background temperature.
13. toxic substances in concentrations which are toxic to, or which produce detrimental physiological responses in, human, plant, animal, or aquatic life. Survival of aquatic life in surface waters subjected to a waste discharge or other controllable water quality conditions, shall not be less than that for the same water body in areas unaffected by the waste discharge.
14. concentrations of unionized ammonia (NH₃) to exceed 0.025 mg/L (as N) in the Pajaro River.
15. individual pesticide or combination of pesticides to reach concentrations that adversely affect the beneficial uses of the receiving water. There shall be no increase in pesticide concentrations found in bottom sediments or aquatic life. For waters where existing concentrations are presently nondetectable or where beneficial uses would be impaired by concentrations in excess of nondetectable levels, total identifiable chlorinated hydrocarbon pesticides shall not be present at concentrations detectable within the accuracy of analytical methods as prescribed in Standard Methods for the Examination of Water and Wastewater, latest edition, or other equivalent methods approved by the Executive Officer.
16. organic substances in concentrations greater than the following:

Constituent	Limit
Methylene Blue Activated Substances	0.2 mg/L
Phenols	0.1 mg/L
PCBs	0.3 µg/L
Phthalate Esters	0.002 µg/L
17. Radionuclides to be present in concentrations that are deleterious to human, plant, animal, or aquatic life; or result in the accumulation of radionuclides in the food web to an extent which presents a hazard to human, plant, animal, or aquatic life. In no circumstance shall receiving waters contain concentrations of radionuclides in excess of the maximum contaminant levels (MCLs) for radioactivity presented in Table 4 of Title 22 California Code of Regulations, Division 4, Chapter 15, Article 5.
18. concentrations of chemical constituents in excess of the primary maximum contaminant levels (MCLs) specified for drinking water in Table 64431-A (Primary MCLs for Inorganic Chemicals) and Table 64444-A (Primary MCLs for Organic Chemicals) of Title 22 California Code of Regulations, Division 4, Chapter 15.
19. concentrations of chemical constituents in amounts that adversely affect the agricultural beneficial use. (Interpretation of adverse effect shall be derived from guidelines of the University of California Agricultural Extension Service presented in Section III, Table 3-3 of the Basin Plan.

20. concentrations of chemical constituents in excess of those levels specified for irrigation and livestock watering in Section III, Table 3-4 of the Basin Plan.
21. concentrations of chemical constituents known to be deleterious to fish or wildlife in excess of the levels presented in Section III, Table 3-5 of the Basin Plan.
22. cadmium to exceed 0.003 mg/L, when hardness in the Pajaro River is greater than 100 mg/L as CaCO₃, nor shall cadmium exceed 0.0004 mg/L when hardness in the Pajaro River is equal to or less than 100 mg/L as CaCO₃.
23. to exceed the following water quality objectives.

TDS	Chloride	Sulfate	Boron	Sodium
1,000 mg/L	250 mg/L Cl	250 mg/L SO ₄	1.0 mg/L B	200 mg/L Na

VI. PROVISIONS

A. Standard Provisions

The Discharger shall comply with all Standard Provisions included in Attachment D of this Order.

B. Monitoring and Reporting Program Requirements

The discharger shall comply with the Monitoring and Reporting Program, and future revisions and/or amendments thereto, in Attachment E of this Order. All monitoring shall be conducted according to NPDES regulations at 40 CFR Part 136, *Guidelines Establishing Test Procedures for Analysis of Pollutants*.

C. Special Provisions

1. Reopener Provision. This permit may be reopened and modified in accordance with NPDES regulations at 40 CFR 122 and 124, as necessary, to include additional conditions or limitations based on newly available information or to implement any U.S. EPA approved, new, State water quality objective. In particular, due to the intermittent nature of the discharge and the resulting difficulty in collecting representative samples of the discharge, as new and additional data becomes available to assess the reasonable potential of the discharge to cause or contribute to exceedances of applicable receiving water quality criteria and objectives, the permit will be reopened and modified, as necessary, to include additional conditions and limitations.
2. Toxicity Reduction Evaluation Workplan. The Discharger shall maintain a Toxicity Reduction Evaluation (TRE) Workplan, which describes steps that the Discharger intends to follow in the event that acute toxicity is detected in the discharge to the Pajaro River. The workplan shall include, at a minimum:
 - a. Actions that will be taken to investigate and identify the causes and sources of toxicity,
 - b. Actions that will be evaluated to mitigate the impact of the discharge, to correct the non-compliance, and to prevent the recurrence of acute toxicity (this list of action steps may be expanded, if a TRE is undertaken), and
 - c. A schedule under which these actions will be implemented.

When monitoring measures acute toxicity in the effluent above the limitation established by this Order, the Discharger shall resample immediately, if the discharge is continuing, and retest for acute toxicity. Results of an initial failed test and results of subsequent monitoring shall be reported to the Executive Officer (EO) as soon as possible following receipt of monitoring results. The EO will determine whether to initiate enforcement action, whether to require the Discharger to implement a Toxicity Reduction Evaluation, or to implement other measures. The Discharger shall conduct a TRE giving due consideration to guidance provided by the U.S. EPA's Toxicity Reduction Evaluation Procedures, Phases 1, 2, and 3 (EPA document nos. EPA 600/3-88/034, 600/3-88/035, and 600/3-88/036, respectively). A TRE, if necessary, shall be conducted in accordance with the following schedule.

Action Step	When Required
Take all reasonable measures necessary to immediately reduce toxicity, where the source is known.	Within 24 hours of identification of noncompliance.
Initiate the TRE in accordance to the Workplan.	Within 7 days of notification by the EO
Conduct the TRE following the procedures in the Workplan.	One year period or as specified in the plan
Submit the results of the TRE, including summary of findings, required corrective action, and all results and data.	Within 60 days of completion of the TRE
Implement corrective actions to meet Permit limits and conditions.	To be determined by the EO

3. Discharges of Storm Water. The Discharger shall seek and maintain coverage under General Permit No. CAS000001 (Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities) and General Permit No. CAS000002 (Waste Discharge Requirements for Discharges of Storm Water Associated with Construction Activities) as appropriate and, except as otherwise authorized by this Order, shall meet the requirements of the general permits for the control of storm water discharges from the quarry site and Soda Lake facility.
4. By October 1 of each year, the Discharger shall inspect, install, and have in proper operational condition all erosion and sediment control systems necessary to ensure compliance with this Order

VII. COMPLIANCE DETERMINATION

For purposes of reporting and administrative enforcement, compliance with effluent limitations or discharge specifications shall be determined as follows:

- A. Dischargers shall be deemed out of compliance with an effluent limitation or discharge specification if the concentration of the constituent in the monitoring sample is greater than the effluent limitation or discharge specification and greater than or equal to the Minimum Level (ML).
- B. When determining compliance with an average monthly effluent limitation or discharge specification or a 4-day average effluent limitation, and more than one sample result is available for the averaging period, the arithmetic mean of the data set shall be computed unless the data set contains one or more reported determinations of "Detected, but Not Quantified" (DNQ) or "Not Detected" (ND). In such cases, the median shall be computed in place of the arithmetic mean in accordance with the following procedure.
 1. The data set shall be ranked from low to high, reported ND determinations lowest, DNQ determinations next, followed by quantified values (if any). The order of the individual ND or DNQ determinations is unimportant.
 2. The median value of the data set shall be determined. If the data set has an odd number of data points, then the median is the middle value. If the data set has an even number of data points, then the median is the average of the two values around the middle unless one or both of the points are

ND or DNQ, in which case the median value shall be the lower of the two data points where DNQ is lower than a value and ND is lower than DNQ.

- C. If only one sample is collected during the time period associated with the effluent limitations (e.g., monthly average or 4-day average), the single measurement shall be used to determine compliance with the effluent limitation for the entire time period.
- D. All analytical data shall be reported uncensored with detection limits and quantitation limits identified. For any effluent limitation, compliance shall be determined using appropriate statistical methods to evaluate multiple samples. Sufficient sampling and analyses shall be conducted to determine compliance.
- E. Minimum Levels (MLs) represent the lowest quantifiable concentrations of a pollutant in water quality samples based on proper application of method-specific analytical procedures and the absence of matrix interferences. MLs also represent the lowest standard concentrations in the calibration curves for specific analytical techniques after the application of method specific factors. For reporting and compliance determinations for toxic pollutants the discharger shall use analytical methods identified in the corresponding ML is below the applicable effluent limitation. If the effluent limitation is below all the MLs identified for the pollutant, the discharger shall select the lowest ML (and corresponding analytical method).
- F. When determining compliance based on a single sample, and a single effluent limitation applies to a group of chemicals (e.g. PCBs), concentrations of individual members of the group may be considered to be zero if the analytical response for individual chemicals falls below the MDL for that parameter.
- G. As defined by the U.S. EPA at 40 CFR 122.2, average monthly discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.
- H. Dischargers shall be deemed out of compliance with an effluent limitation or discharge specification if the concentration of the constituent in the monitoring sample is greater than the effluent limitation or discharge specification and greater than or equal to the Minimum Level (ML).