

ATTACHMENT D –STANDARD PROVISIONS

I. STANDARD PROVISIONS – PERMIT COMPLIANCE

A. Duty to Comply

1. The Discharger must comply with all of the conditions of this Order/Permit. Any noncompliance constitutes a violation of the Clean Water Act (CWA) and the California Water Code and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. (40 CFR part 122.41(a))
2. The Discharger shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if this Order/Permit has not yet been modified to incorporate the requirement. (40 CFR part 122.41(a)(1))

B. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a Discharger 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 Order/Permit. (40 CFR part 122.41(c))

C. Duty to Mitigate

The Discharger shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this Order/Permit that has a reasonable likelihood of adversely affecting human health or the environment. (40 CFR part 122.41(d))

D. Proper Operation and Maintenance

The Discharger 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 Discharger to achieve compliance with the conditions of this Order/Permit. Proper operation and maintenance also 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 Discharger only when necessary to achieve compliance with the conditions of this Order/Permit. (40 CFR part 122.41(e))

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E. Property Rights

1. This Order/Permit does not convey any property rights of any sort or any exclusive privileges. (40 CFR part 122.41(g))
2. The issuance of this Order/Permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations. (40 CFR part 122.5(c))

F. Inspection and Entry

The Discharger shall allow the Regional Water Board, State Water Board, United States Environmental Protection Agency (USEPA), and/or their authorized representatives (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to (40 CFR part 122.41(i); California Water Code (CWC) § 13383):

1. Enter upon the Discharger's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order/Permit (40 CFR part 122.41(i)(1));
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order/Permit (40 CFR part 122.41(i)(2));
3. Inspect and photograph at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order/Permit (40 CFR part 122.41(i)(3)); and
4. Sample or monitor at reasonable times for the purposes of assuring Order/Permit compliance or as otherwise authorized by the CWA or the CWC, any substances or parameters at any location. (40 CFR part 122.41(i)(4))

G. Bypass

1. Definitions
 - a. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. (40 CFR part 122.41(m)(1)(i))
 - b. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities, which 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. (40 CFR part 122.41(m)(1)(ii))

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2. Bypass not exceeding limitations. The Discharger may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions listed in Standard Provisions – Permit Compliance I.G.3, I.G.4, and I.G.5. (40 CFR part 122.41(m)(2))
3. Prohibition of bypass. Bypass is prohibited, and the Regional Water Board and USEPA may take enforcement action against a Discharger for bypass, unless (40 CFR part 122.41(m)(4)(i)):
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage (40 CFR part 122.41(m)(4)(i)(A));
 - 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 in the exercise of reasonable engineering judgment to prevent a bypass, which occurred during normal periods of equipment downtime or preventive maintenance (40 CFR part 122.41(m)(4)(i)(B)); and
 - c. The Discharger submitted notice to the Regional Water Board and USEPA as required under Standard Provisions – Permit Compliance I.G.5 below. (40 CFR part 122.41(m)(4)(i)(C))
4. The Regional Water Board and USEPA may approve an anticipated bypass, after considering its adverse effects, if the Regional Water Board and USEPA determine that it will meet the three conditions listed in Standard Provisions – Permit Compliance I.G.3. (40 CFR part 122.41(m)(4)(ii))
5. Notice
 - a. Anticipated bypass. If the Discharger knows in advance of the need for a bypass, it shall submit a notice, if possible at least 10 days before the date of the bypass. (40 CFR part 122.41(m)(3)(i))
 - b. Unanticipated bypass. The Discharger shall submit notice of an unanticipated bypass as required in Standard Provisions - Reporting V.E (24-hour notice). (40 CFR part 122.41(m)(3)(ii))

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H. Upset

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 Discharger. An upset does not include noncompliance to the extent caused by operational error, improperly designed

treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. (40 CFR part 122.41(n)(1))

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of Standard Provisions – Permit Compliance I.H.2 are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review. (40 CFR part 122.41(n)(2))
2. Conditions necessary for a demonstration of upset. A Discharger who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that (40 CFR part 122.41(n)(3)):
 - a. An upset occurred and that the Discharger can identify the cause(s) of the upset (40 CFR part 122.41(n)(3)(i));
 - b. The permitted facility was, at the time, being properly operated (40 CFR part 122.41(n)(3)(ii));
 - c. The Discharger submitted notice of the upset as required in Standard Provisions – Reporting V.E.2.b below (24-hour notice) (40 CFR part 122.41(n)(3)(iii)); and
 - d. The Discharger complied with any remedial measures required under Standard Provisions – Permit Compliance I.C above. (40 CFR part 122.41(n)(3)(iv))
3. Burden of proof. In any enforcement proceeding, the Discharger seeking to establish the occurrence of an upset has the burden of proof. (40 CFR part 122.41(n)(4))

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II. STANDARD PROVISIONS – PERMIT ACTION

A. General

This Order/Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Discharger for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Order/Permit condition. (40 CFR part 122.41(f))

B. Duty to Reapply

If the Discharger wishes to continue an activity regulated by this Order/Permit after the expiration date of this Order/Permit, the Discharger must apply for and obtain a new Order/Permit. (40 CFR part 122.41(b))

C. Transfers

This Order/Permit is not transferable to any person except after notice to the Regional Water Board and USEPA. The Regional Water Board and USEPA may require modification or revocation and reissuance of the Order/Permit to change the name of the Discharger and incorporate such other requirements as may be necessary under the CWA and CWC. (See 40 CFR part 122.61; in some cases, modification or revocation and reissuance is mandatory.) (40 CFR part 122.41(l)(3).)

III. STANDARD PROVISIONS – MONITORING

- A.** Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. (40 CFR part 122.41(j)(1))
- B.** Monitoring results must be conducted according to test procedures under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503 unless other test procedures have been specified in the Order/Permit. (40 CFR part 122.41(j)(4))

IV. STANDARD PROVISIONS – RECORDS

- A.** Except for records of monitoring information required by this Order/Permit related to the Discharger's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the Discharger 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 Order/Permit, and records of all data used to complete the application for this Order/Permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Regional Water Board Executive Officer or USEPA Water Division Director at any time. (40 CFR part 122.41(j)(2).) It is recommended that the Discharger maintain the results of all analyses indefinitely.

B. Records of monitoring information shall include:

- 1. The date, exact place, and time of sampling or measurements (40 CFR part 122.41(j)(3)(i));
- 2. The individual(s) who performed the sampling or measurements (40 CFR part 122.41(j)(3)(ii));
- 3. The date(s) analyses were performed (40 CFR part 122.41(j)(3)(iii));

4. The individual(s) who performed the analyses (40 CFR part 122.41(j)(3)(iv));
5. The analytical techniques or methods used (40 CFR part 122.41(j)(3)(v)); and
6. The results of such analyses. (40 CFR part 122.41(j)(3)(vi))

C. Claims of confidentiality for the following information will be denied (40 CFR part 122.7(b)):

1. The name and address of any permit applicant or Discharger (40 CFR part 122.7(b)(1)); and
2. Permit applications, permits and effluent data. (40 CFR part 122.7(b)(2))

V. STANDARD PROVISIONS – REPORTING

A. Duty to Provide Information

The Discharger shall furnish to the Regional Water Board, State Water Board, or USEPA, within a reasonable time, any information which the Regional Water Board, State Water Board, or USEPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order/Permit or to determine compliance with this Order/Permit. The Discharger shall also furnish to the Regional Water Board, State Water Board, or USEPA, upon request, copies of records required to be kept by this Order/Permit. (40 CFR part 122.41(h); CWC § 13267)

B. Signatory and Certification Requirements

1. All applications, reports, or information submitted to the Regional Water Board, State Water Board, and/or USEPA shall be signed and certified in accordance with Standard Provisions – Reporting V.B.2, V.B.3, V.B.4, and V.B.5. See 40 CFR § 122.22.
2. All permit applications shall be signed by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of USEPA). (40 CFR part 122.22(a)(3))
3. All reports required by this Order/Permit and other information requested by the Regional Water Board, State Water Board, or USEPA shall be signed by a person described in Standard Provisions – Reporting V.B.2, or by a duly authorized representative of that person. A person is a duly authorized representative only if (40 CFR §122.22(b):

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- a. The authorization is made in writing by a person described in Standard Provisions – Reporting V.B.2 (40 CFR part 122.22(b)(1));
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) (40 CFR part 122.22(b)(2)); and
 - c. The written authorization is submitted to the Regional Water Board, State Water Board, and USEPA. (40 CFR part 122.22(b)(3))
4. If an authorization under Standard Provisions – Reporting V.B.3 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 Standard Provisions – Reporting V.B.3 must be submitted to the Regional Water Board, State Water Board, and USEPA prior to or together with any reports, information, or applications to be signed by an authorized representative. (40 CFR part 122.22(c))
 5. Any person signing a document under Standard Provisions – Reporting V.B.2 or V.B.3 above 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.” (40 CFR part 122.22(d))

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C. Monitoring Reports

1. Monitoring results shall be reported at the intervals specified elsewhere in this Order/Permit. (40 CFR part 122.41(l)(4))
2. Monitoring results must be reported on a Discharge Monitoring Report (DMR) form or forms provided or specified by the Regional Water Board, State Water Board, or USEPA for reporting results of monitoring of sludge use or disposal practices. (40 CFR part 122.41(l)(4)(i))

3. If the Discharger monitors any pollutant more frequently than required by this Order/Permit using test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, or as specified in this Order/Permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Water Board or USEPA. (40 CFR part 122.41(l)(4)(ii))
4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this Order/Permit. (40 CFR part 122.41(l)(4)(iii))

D. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this Order/Permit, shall be submitted no later than 14 days following each schedule date. (40 CFR part 122.41(l)(5))

E. Twenty-Four Hour Reporting

1. The Discharger shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the Discharger becomes aware of the circumstances. A written submission shall also be provided to the Regional Water Board within 5 days of the time the Discharger 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 times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. (40 CFR § 122.41(l)(6)(i))
2. The following shall be included as information that must be reported within 24 hours under this paragraph (See 40 CFR § 122.41(g)) (40 CFR part 122.41(l)(6)(ii)):
 - a. Any unanticipated bypass that exceeds any effluent limitation in the Order/Permit (See 40 CFR part 122.41(g))
 - b. Any upset that exceeds any effluent limitation in this Order/Permit. (40 CFR part 122.41(l)(6)(ii)(B))
 - c. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the Order/Permit to be reported within 24 hours (See 40 CFR 122.44(g).) (40 CFR 122.41(6)(ii)(C).)

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3. The Regional Water Board may waive the above-required written report under this provision on a case-by-case basis if an oral report has been received within 24 hours (40 CFR part 122.41(l)(6)(iii)).

F. Planned Changes

The Discharger shall give notice to the Regional Water Board and USEPA as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when (40 CFR part 122.41(l)(1)):

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR part 122.29(b) (40 CFR part 122.41(l)(1)(i)); or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the Order/Permit, nor to notification requirements under 40 CFR § 122.42(a)(1) (see Additional Provisions — Notification Levels VII.A.1). (40 CFR part 122.41(l)(1)(ii))
3. The alteration or addition results in a significant change in the Discharger's sludge use or disposal practices, and such alteration, addition, or change may justify the application of Order/Permit conditions that are different from or absent in the Order/Permit, including notification of additional use or disposal sites not reported during the Order/Permit application process or not reported pursuant to an approved land application plan. (40 CFR part 122.41(l)(1)(iii))

G. Anticipated Noncompliance

The Discharger shall give advance notice to the Regional Water Board or State Water Board and USEPA of any planned changes in the permitted facility or activity that may result in noncompliance with General Order/Permit requirements. (40 CFR part 122.41(l)(2))

H. Other Noncompliance

The Discharger shall report all instances of noncompliance not reported under Standard Provisions – Reporting V.C, V.D, and V.E, at the time monitoring reports are submitted. The reports shall contain the information listed in Standard Provision – Reporting V.E above. (40 CFR part 122.41(l)(7))

I. Other Information

When the Discharger becomes aware that it failed to submit any relevant facts in an Order/Permit application, or submitted incorrect information in an Order/Permit application or in any report to the Regional Water Board, State Water Board, or

USEPA, the Discharger shall promptly submit such facts or information. (40 CFR part 122.41(l)(8))

VI. STANDARD PROVISIONS – ENFORCEMENT

- A. The Regional Water Board is authorized to enforce the terms of this Order/Permit under provisions of the California Water Code including, but not limited to, sections 13385, 13386, and 13387.
- B. The CWA provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$25,000 per day for each violation. The CWA provides that any person who *negligently* violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who *knowingly* violates such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions (40 CFR 122.41(a)(2)).
- C. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000. Penalties for Class II violations are not to exceed

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\$10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$125,000. (40 CFR 122.41(a)(3)).

- D.** 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, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. (40 CFR 122.41(j)(5))
- E.** 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 non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both. (40 CFR 122.41(k)(2)).

VII. ADDITIONAL PROVISIONS – NOTIFICATION LEVELS

A. Publicly-Owned Treatment Works (POTWs)

All POTWs shall provide adequate notice to the Regional Water Board and USEPA of the following (40 CFR part 122.42(b)):

1. Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to section 301 or 306 of the CWA if it were directly discharging those pollutants (40 CFR part 122.42(b)(1)); and
2. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of adoption of the Order/Permit. (40 CFR part 122.42(b)(2))
3. For the purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW as well as any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW. (40 CFR part 122.42(b)(3))

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