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MAY 08 2013

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SPECTRUM PREFERRED MEATS, INC.)

Petitioner)

v.)

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)

Respondent) **ORIGINAL**

PCB 13-63
(NPDES Permit Appeal)

NOTICE OF FILING

TO: Mr. John T. Therriault
Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of an ENTRY OF APPEARANCE OF ROY M. HARSCH, PETITION FOR REVIEW OF AGENCY NPDES PERMIT DECISION and MOTION TO STAY THE EFFECTIVENESS OF CONTESTED PERMIT CONDITIONS, copies of which are herewith served upon you.

Respectfully submitted,

SPECTRUM PREFERRED MEATS, INC.,
Petitioner,

BY: Roy M Harsch

DATE: May 8, 2013

Roy M. Harsch
Drinker Biddle & Reath LLP
191 N. Wacker Dr., Ste. 3700
Chicago, IL 60606-3700
312-569-1441

THIS FILING IS BEING SUBMITTED ON RECYCLED PAPER

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ENTRY OF APPEARANCE OF ROY M. HARSCH

NOW COMES Roy M. Harsch, of the law firm Drinker Biddle & Reath LLP, and hereby enters his appearance in this matter on behalf of Spectrum Preferred Meats, Inc.

Respectfully submitted,

BY: 

Respectfully submitted,

DATE: May 8, 2013

Roy M. Harsch
Drinker Biddle & Reath LLP
191 N. Wacker Dr., Ste. 3700
Chicago, IL 60606-3700
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PCB 13-63
(NPDES Permit Appeal)

**PETITION FOR REVIEW OF
AGENCY NPDES PERMIT DECISION**

NOW COMES Petitioner, Spectrum Preferred Meats, Inc. ("Spectrum"), by and through its attorneys, DRINKER BIDDLE AND REATH LLP, and pursuant to Section 40(a) of the Illinois Environmental Protection Act, 415 ILCS 5/40(a), and Part 105 of Title 35 of the Illinois Administrative Code, 35 Ill. Admin. Code 105, hereby petitions the Illinois Pollution Control Board ("Board") for review of certain conditions of the final National Pollutant Discharge Elimination System ("NPDES") permit that was reissued to Spectrum on April 4, 2013 (NPDES Permit No. IL0071862) (hereinafter, "Final NPDES Permit"), by the Illinois Environmental Protection Agency ("Agency"). This Petition for Review of Agency NPDES Permit Decision ("Petition") is based upon the fact that certain conditions of the Final NPDES are not necessary to accomplish the purposes of the Illinois Environmental Protection Act ("Act") and Board regulations, or are otherwise arbitrary and capricious.

1. Spectrum owns and operates a pork slaughtering and processing facility located at 6194 West Pines Road, Mt. Morris, Ogle County, Illinois. The facility discharges to an unnamed ditch tributary to Pine Creek through Outfall 001.

2. The facility operates under NPDES Permit No. IL0071862, which was originally issued on November 5, 2004, with an expiration date of November 30, 2009.

3. On May 15, 2009, Spectrum timely submitted an application for renewal of NPDES Permit No. IL0071862, however, no permit renewal was issued until April of 2013.

4. As a consequence of the non-issuance of a permit renewal as noted above, Spectrum has been operating under the limitations set forth in the 2004 version of the NPDES Permit.

5. On April 4, 2013, the Agency issued the Final NPDES Permit. A copy of the Final NPDES Permit is attached hereto as Exhibit A.

6. The Final NPDES Permit contains concentration limitations for Total Nitrogen for Outfall 001. Exhibit A at p. 2. Discharge from Outfall 001 consists of hog pen wash water, kill area wash water, scalding water, evisceration pen wash water, post-evisceration carcass wash water, meat are processing wash water and post production clean-up water. The Total Nitrogen concentration limitations for Outfall 001 include a 30-day average limitation of 134 mg/L, and a daily maximum of 194 mg/L. *Id.*

7. The incorporation of the Total Nitrogen limitations in the Final NPDES Permit represents a substantial change over the previous NPDES Permit that had been in effect since 2004.

8. Spectrum is not capable of consistently complying with the new Total Nitrogen limitations in the Final NPDES Permit without installing certain equipment, which will require substantial expenditures of time and funds.

9. Spectrum respectfully requests the Board to reverse the Agency's decision to incorporate the Total Nitrogen limitations in the Final NPDES Permit.

WHEREFORE, Petitioner, Spectrum Preferred Meats Inc., respectfully requests that the Illinois Pollution Control Board grant review of the Final NPDES Permit reissued by the Agency; find that the Total Nitrogen limitations discussed in this Petition are not necessary to accomplish the purposes of the Act and Board regulations, or are otherwise arbitrary and capricious; and remand the decision to the Agency to reissue the NPDES permit consistent with the concerns addressed in this Petition.

Respectfully submitted,

SPECTRUM PREFERRED MEATS, INC.,
Petitioner,

BY: _____



DATE: May 8, 2013

Roy M. Harsch
Drinker Biddle & Reath LLP
191 N. Wacker Dr., Ste. 3700
Chicago, IL 60606-3700
312-569-1441

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PCB 13-63
(NPDES Permit Appeal)

**MOTION TO STAY THE
EFFECTIVENESS OF THE CONTESTED PERMIT CONDITIONS**

NOW COMES Petitioner, Spectrum Preferred Meats Inc. ("Spectrum"), by and through its attorneys, DRINKER BIDDLE AND REATH LLP, and pursuant to Section 1065(b) of the Illinois Administrative Procedure Act ("APA"), 5 ILCS 100/10-65(b), and the Illinois Pollution Control Board ("Board")'s authority to grant discretionary stays of permit conditions, *see, e.g., Community Landfill Co. and City of Morris v. Illinois EOA*, PCB Nos. 01-48 and 01-49 (Ill.Pol.Control Bd. Oct. 19, 2000), hereby moves the Board to stay the effectiveness of the contested conditions of the final National Pollutant Discharge Elimination System ("NPDES") permit (hereinafter, "Final NPDES Permit") at issue in this matter.

In support of this Motion, Spectrum states as follows:

1. On April 4, 2013, the Illinois Environmental Protection Agency ("Agency") reissued the Final NPDES Permit (NPDES Permit No. IL0071862) to Spectrum, which imposed certain conditions that are not required by the Illinois Environmental Protection Act or regulations promulgated thereunder.

2. Today, Spectrum filed simultaneously with this Motion a timely Petition for Review of Agency NPDES Permit Decision, with regard to such permit conditions.

3. The Board may grant a stay of contested permit conditions where a petitioner has requested such a stay. *See, e.g., Midwest Generation, LLC, Will County Generating Station v. Illinois EPA*, PCB No. 06-156 (Ill.Pol.Control Bd. July 20, 2006) (granting a request for a partial stay of construction permit conditions); *North Shore Sanitary District v. Illinois EPA*, PCB No. 03-146 (Ill.Pol.Control Bd. Mar. 20, 2003) (granting Petitioner's Motion to Stay Condition 1 pending the outcome of the appeal); and *Hartford Working Group v. Illinois EPA*, PCB No. 05-74 (Ill.Pol.Control Bd. Nov. 18, 2004) (granting Petitioner's Motion to Stay Effectiveness of Special Condition 2.0 until the Board takes final action on the appeal).

4. More recently, the Board granted a motion to stay the effectiveness of the provisions and conditions appealed in an NPDES permit in the matter of *Citgo Petroleum Corporation v. Illinois EPA*, PCB No. 07-10 (Ill.Pol.Control Bd. Sept. 21, 2006). In the *Citgo* matter, Citgo was appealing the reissuance of a NPDES permit on the grounds that certain specified conditions in the reissued NPDES permit were unnecessary and contained requirements that either were not applicable or were inconsistent with other requirements already applicable to Citgo's refinery. *Id.* At 1-2. Citgo contended that the Board had granted discretionary stays in the past based on a consideration of the following standards:

(1) A certain and clearly ascertainable right needs protection; (2) irreparable injury will occur without the injunction; (3) no adequate remedy at law exists; and (4) there is a probability of success on the merits. *See* Mot. At 2; citing *Nielsen & Bainbridge, L.L.C. v. IEPA*, PCB 03-98 (Feb. 6, 2003); *Saint-Gobain Containers, Inc. v. IEPA*, PCB 04-47 (Nov. 6, 2003).

Citgo Petroleum Corporation v. Illinois EPA, PCB No. 07-19 at 2 (Ill.Pol.Control Bd. Sept. 21, 2006).

5. Citgo also contended that “it is not necessary for the Board to determine that all four factors exist to grant a discretionary stay.” *Id.* At 2-3, citing *Bridgestone/Firestone Off Road Tire Co. v. Illinois EPA*, PCB No. 02-31 (Ill.Pol.Control Bd. Nov. 1, 2001).

6. The Board ultimately granted Citgo’s motion to stay the effectiveness of the contested conditions in the reissued NPDES permit. *Citgo Petroleum Corporation v. Illinois EPA*, PCB No. 07-10 at 3-4 (Ill.Pol.Control Bd. Sept. 21, 2006).

7. A stay of effectiveness of the Agency’s imposition of the Total Nitrogen concentration limits at Outfall 001, as included in the Final NPDES Permit reissued to Spectrum on April 4, 2013, is necessary to prevent irreparable harm to Spectrum. *See*, Petition for Review of Agency NPDES Permit Action. Further, a stay is necessary to protect Spectrum’s right to appeal permit conditions. That is, Spectrum’s appeal would be rendered meaningless if it must comply with these provisions while its appeal is pending. Finally, no adequate remedy exists at law. *See id.*

8. The Agency, the public, and the environment will not be harmed if stay is granted.

WHEREFORE, Petitioner, Spectrum Preferred Meats, Inc., moves the Illinois Pollution Control Board to grant a Stay of Effectiveness as to the Agency's imposition of the Total Nitrogen concentration limitations at Outfall 001, as included in Spectrum's Final NPDES Permit, until the Board's final action in this matter.

Respectfully submitted,
SPECTRUM PREFERRED MEATS, INC.,
Petitioner,

BY: 

DATE: May 8, 2013

Roy M. Harsch
Drinker Biddle & Reath LLP
191 N. Wacker Dr., Ste. 3700
Chicago, IL 60606-3700
312-569-1441

RECEIVED
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MAY 08 2013

STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing ENTRY OF APPEARANCE OF ROY M. HARSCH, PETITION FOR REVIEW OF AGENCY NPDES PERMIT DECISION and MOTION TO STAY THE EFFECTIVENESS OF CONTESTED PERMIT CONDITIONS, was filed by hand delivery with the Clerk of the Illinois Pollution Control Board on Wednesday, May 08, 2013.





ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-2829

PAT QUINN, GOVERNOR

LISA BONNETT, DIRECTOR

217-782-0610

March 4, 2013

Spectrum Preferred Meats, Inc.
6194 West Pines Road
Mt. Morris, IL 61054

Re: Spectrum Preferred Meats, Inc.
NPDES Permit No. IL0071862
Final Permit

Gentlemen:

Attached is the final NPDES Permit for your discharge. The Permit as issued covers discharge limitations, monitoring, and reporting requirements. Failure to meet any portion of the Permit could result in civil and/or criminal penalties. The Illinois Environmental Protection Agency is ready and willing to assist you in interpreting any of the conditions of the Permit as they relate specifically to your discharge.

The Agency has begun a program allowing the submittal of electronic Discharge Monitoring Reports (eDMRs) instead of paper Discharge Monitoring Reports (DMRs). If you are interested in eDMRs, more information can be found on the Agency website, <http://epa.state.il.us/water/edmr/index.html>. If your facility is not registered in the eDMR program, a supply of preprinted paper DMR Forms for your facility will be sent to you prior to the initiation of DMR reporting under the reissued permit. Additional information and instructions will accompany the preprinted DMRs upon their arrival.

The attached Permit is effective as of the date indicated on the first page of the Permit. Until the effective date of any re-issued Permit, the limitations and conditions of the previously-issued Permit remain in full effect. You have the right to appeal any condition of the Permit to the Illinois Pollution Control Board within a 35 day period following the issuance date.

Should you have questions concerning the Permit, please contact Jaime Rabins at 217/782-0610.

Sincerely,

Alan Keller, P.E.
Manager, Permit Section
Division of Water Pollution Control

SAK:JAR:10011901.dlk

Attachment: Final Permit

cc: Records
Compliance Assurance Section
Des Plaines Region
Billing

Exhibit A

1001 W. Main St., Rockford, IL 61103 (815) 997-7700
1401 W. State St., Springfield, IL 62761 (217) 244-2100
1111 S. Prairie St., Springfield, IL 62761 (217) 244-2100
1001 W. Randolph St., Chicago, IL 60601 (312) 814-5000

6511 Harrison St., Des Plaines, IL 60016 (847) 294-4000
2407 N. University St., Aurora, IL 61614 (309) 693-5402
2309 W. Main St., Suite 115, Moline, IL 62959 (618) 993-7200
100 W. Randolph, Suite 10-300, Chicago, IL 60601 (312) 814-5000

NPDES Permit No. IL0071862

Illinois Environmental Protection Agency

Division of Water Pollution Control

1021 North Grand Avenue East

Post Office Box 19276

Springfield, Illinois 62794-9276

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Reissued (NPDES) Permit

Expiration Date: March 31, 2018

Issue Date: April 4, 2013

Effective Date: April 4, 2013

Name and Address of Permittee:

Spectrum Preferred Meats, Inc.
6194 West Pines Road
Mt. Morris, IL 61054

Facility Name and Address:

Spectrum Preferred Meats, Inc.
6194 West Pines Road
Mt. Morris, IL 61054
(Ogle County)

Discharge Number and Name:

001 Hog Pen Wash Water, Kill Area Wash Water, Scalding Water,
Evisceration Pen Wash Water, Post-Evisceration Carcass
Wash Water, Meat Area Processing Wash Water, and Post
Production Clean-up Water

Receiving Waters:

Unnamed Tributary of Pine Creek

In compliance with the provisions of the Illinois Environmental Protection Act, Title 35 of Ill. Adm. Code, Subtitle C and/or Subtitle D, Chapter 1, and the Clean Water Act (CWA), the above-named permittee is hereby authorized to discharge at the above location to the above-named receiving stream in accordance with the standard conditions and attachments herein.

Permittee is not authorized to discharge after the above expiration date. In order to receive authorization to discharge beyond the expiration date, the permittee shall submit the proper application as required by the Illinois Environmental Protection Agency (IEPA) not later than 180 days prior to the expiration date.



Alan Keller, P.E.
Manager, Permit Section
Division of Water Pollution Control

SAK:JAR:10011901.dfk

Exhibit A

NPDES Permit No. IL0071862

Effluent Limitations and Monitoring

1. From the effective date of this permit until the expiration date, the effluent of the following discharge(s) shall be monitored and limited at all times as follows:

Outfall: 001 Hog Pen Wash Water, Kill Area Wash Water, Scalding Water, Evisceration Pen Wash Water, Post-Evisceration Carcass Wash Water, Meat Area Processing Wash Water, and Post Production Clean-up Water (DAF = 0.04 MGD)

PARAMETER	LOAD LIMITS lbs/day		CONCENTRATION LIMITS mg/l			SAMPLE FREQUENCY	SAMPLE TYPE
	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM			
Flow (MGD)	See Special Condition 1					1/Month	
pH	See Special Condition 2					1/Month	Grab
BOD ₅	3.3	6.7	10	20		1/Month	Grab
Total Suspended Solids	4	8	12	24		1/Month	Grab
Oil and Grease	5	10	15	30		1/Month	Grab
Total Nitrogen			134	194		1/Month	Grab
Chloride				500		1/Month	Grab
Fecal Coliform	See Special Condition 7					1/Month	Grab
Dissolved Oxygen	See Special Condition 8					1/Month	Grab
Ammonia (as N)			Weekly Avg.	Monthly Avg.	Daily Max		
Mar-May/Sep-Oct			3.8	1.5	4.7		
Jun-Aug			3.5	1.4	6.9	1/Month	Grab
Nov-Feb				4.0	8.0		

Dissolved Oxygen shall be reported on the DMR as minimum.

NPDES Permit No. IL0071862

Special Conditions

SPECIAL CONDITION 1. Flow shall be measured in units of Million Gallons per Day (MGD) and reported as a monthly average and a daily maximum value on the monthly Discharge Monitoring Report.

SPECIAL CONDITION 2. The pH shall be in the range 6.5 to 9.0. The monthly minimum and monthly maximum values shall be reported on the DMR form.

SPECIAL CONDITION 3. Samples taken in compliance with the effluent monitoring requirements shall be taken at a point representative of the discharge, but prior to entry into the receiving stream.

SPECIAL CONDITION 4. The Permittee shall record monitoring results on Discharge Monitoring Report (DMR) Forms using one such form for each outfall each month.

In the event that an outfall does not discharge during a monthly reporting period, the DMR Form shall be submitted with no discharge indicated.

The Permittee may choose to submit electronic DMRs (eDMRs) instead of mailing paper DMRs to the IEPA. More information, including registration information for the eDMR program, can be obtained on the IEPA website. <http://www.epa.state.il.us/water/edmr/index.html>.

The completed Discharge Monitoring Report forms shall be submitted to IEPA no later than the 15th day of the following month, unless otherwise specified by the permitting authority.

Permittees not using eDMRs shall mail Discharge Monitoring Reports with an original signature to the IEPA at the following address:

Illinois Environmental Protection Agency
Division of Water Pollution Control
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Attention: Compliance Assurance Section, Mail Code # 19

SPECIAL CONDITION 5. In the event that the permittee shall require the use of water treatment additives, the permittee must request a change in this permit in accordance with the Standard Conditions -- Attachment H.

SPECIAL CONDITION 6. If an applicable effluent standard or limitation is promulgated under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the NPDES Permit, the Agency shall revise or modify the permit in accordance with the more stringent standard or prohibition and shall so notify the permittee.

SPECIAL CONDITION 7. The daily maximum fecal coliform count shall not exceed 400 per 100 ml.

SPECIAL CONDITION 8. Dissolved oxygen shall not be less than 6.0 mg/L during at least 16 hours of any 24 hour period, nor less than 5.0 mg/L at any time.

SPECIAL CONDITION 9. The use or operation of this facility shall be by or under the supervision of a Certified Class K operator.

SPECIAL CONDITION 10. A condition of "No Exposure" as defined by 40 CFR 122.26 (g) shall be maintained at the facility.

SPECIAL CONDITION 11. The Permittee shall conduct biomonitoring of the effluent from outfall 001.

Biomonitoring

- i. Acute Toxicity - Standard definitive acute toxicity tests shall be run on at least two trophic levels of aquatic species (fish, invertebrate) representative of the aquatic community of the receiving stream. Testing must be consistent with Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (Fifth Ed.) EPA/821-R-02-012. Unless substitute tests are pre-approved, the following tests are required:
 - a. Fish - 96 hour static LC50 Bioassay using fathead minnows (*Pimephales promelas*).
 - b. Invertebrate 48-hour static LC50 Bioassay using *Ceriodaphnia*.

NPDES Permit No. IL0071862

Special Conditions

2. Testing Frequency - The above tests shall be conducted twice within the first year of the permit using 24-hour composite samples unless otherwise authorized by the IEPA. Sample collection and testing must be conducted during times of normal plant operation when water treatment additives are likely to be present in the effluent.
3. Reporting - Results shall be reported according to EPA/821-R-02-012, Section 12, Report Preparation, and shall be submitted to IEPA, Bureau of Water, Compliance Assurance Section within one week of receipt from the laboratory.
4. Toxicity - Should a bioassay result in toxicity to >20% of organisms tested in the 100% effluent treatment, the IEPA may require, upon notification, six (6) additional rounds of monthly testing on the affected organism(s) to be initiated within 30 days of the toxic bioassay. Results shall be submitted to IEPA within one (1) week of becoming available to the Permittee. Should any of the additional bioassays result in toxicity to ≥50% of organisms tested in the 100% effluent treatments, the Permittee may wish to contact the IEPA to request the discontinuance of further sampling at which time the IEPA may require the Permittee to begin the toxicity reduction evaluation and identification as outlined below.
5. Toxicity Reduction Evaluation - Should any of the additional bioassays result in toxicity to ≥50% of organisms tested in the 100 % effluent treatment, the IEPA may require, upon notification, that the Permittee prepare a plan for toxicity reduction evaluation and identification. This plan shall be developed in accordance with Toxicity Reduction Evaluation Guidance for Municipal Wastewater Treatment Plants, EPA/833B-99/002, and shall include an evaluation to determine which chemicals have a potential for being discharged in the plant wastewater, a monitoring program to determine their presence or absence and to identify other compounds which are not being removed by treatment, and other measures as appropriate. The Permittee shall submit to the IEPA its plan for toxicity reduction evaluation within ninety (90) days following notification by the IEPA. The Permittee shall implement the plan within ninety (90) days or other such date as contained in a notification letter received from the IEPA.

The IEPA may modify this Permit during its term to incorporate additional requirements or limitations based on the results of the biomonitoring. In addition, after review of the monitoring results, the IEPA may modify this Permit to include numerical limitations for specific toxic pollutants. Modifications under this condition shall follow public notice and opportunity for hearing.

Attachment H
Standard Conditions
Definitions

Act means the Illinois Environmental Protection Act, 415 ILCS 5 as Amended.

Agency means the Illinois Environmental Protection Agency.

Board means the Illinois Pollution Control Board.

Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) means Pub. L 92-500, as amended, 33 U.S.C. 1251 et seq.

NPDES (National Pollutant Discharge Elimination System) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318 and 405 of the Clean Water Act.

USEPA means the United States Environmental Protection Agency.

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

Maximum Daily Discharge Limitation (daily maximum) means the highest allowable daily discharge.

Average Monthly Discharge Limitation (30 day average) 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.

Average Weekly Discharge Limitation (7 day average) means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Aliquot means a sample of specified volume used to make up a total composite sample.

Grab Sample means an individual sample of at least 100 milliliters collected at a randomly-selected time over a period not exceeding 15 minutes.

24-Hour Composite Sample means a combination of at least 8 sample aliquots of at least 100 milliliters, collected at periodic intervals during the operating hours of a facility over a 24-hour period.

8-Hour Composite Sample means a combination of at least 3 sample aliquots of at least 100 milliliters, collected at periodic intervals during the operating hours of a facility over an 8-hour period.

Flow Proportional Composite Sample means a combination of sample aliquots of at least 100 milliliters collected at periodic intervals such that either the time interval between each aliquot or the volume of each aliquot is proportional to either the stream flow at the time of sampling or the total stream flow since the collection of the previous aliquot.

- (1) **Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, permit termination, revocation and reissuance, modification, or for denial of a permit renewal application. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirements.
- (2) **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. If the permittee submits a proper application as required by the Agency no later than 180 days prior to the expiration date, this permit shall continue in full force and effect until the final Agency decision on the application has been made.
- (3) **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.
- (4) **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.
- (5) **Proper operation and maintenance.** 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 conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up, or auxiliary facilities, or similar systems only when necessary to achieve compliance with the conditions of the permit.
- (6) **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause by the Agency pursuant to 40 CFR 122.62 and 40 CFR 122.63. 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.
- (7) **Property rights.** This permit does not convey any property rights of any sort, or any exclusive privilege.
- (8) **Duty to provide information.** The permittee shall furnish to the Agency within a reasonable time, any information which the Agency may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with the permit. The permittee shall also furnish to the Agency upon request, copies of records required to be kept by this permit.

- (9) **Inspection and entry.** The permittee shall allow an authorized representative of the Agency or USEPA (including an authorized contractor acting as a representative of the Agency or USEPA), upon the presentation of credentials and other documents as may be required by law, to:
- 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;
 - Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
 - Sample or monitor at reasonable times, for the purpose of assuring permit compliance, or as otherwise authorized by the Act, any substances or parameters at any location.
- (10) **Monitoring and records.**
- 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 records, and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of this permit, measurement, report or application. Records related to the permittee's sewage sludge use and disposal activities shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503). This period may be extended by request of the Agency or USEPA at any time.
 - Records of monitoring information shall include:
 - The date, exact place, and time of sampling or measurements;
 - The individual(s) who performed the sampling or measurements;
 - The date(s) analyses were performed;
 - The individual(s) who performed the analyses;
 - The analytical techniques or methods used; and
 - The results of such analyses.
 - Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit. Where no test procedure under 40 CFR Part 136 has been approved, the permittee must submit to the Agency a test method for approval. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals to ensure accuracy of measurements.
- (11) **Signatory requirement.** All applications, reports or information submitted to the Agency shall be signed and certified.
- Application.** All permit applications shall be signed as follows:
 - For a corporation: by a principal executive officer of at least the level of vice president or a person or position having overall responsibility for environmental matters for the corporation;
 - For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 - For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.
 - Reports.** All reports required by permits, or other information requested by the Agency shall be signed by a person described in paragraph (a) or by a duly authorized representative of that person. A person is a duly

authorized representative only if:

- The authorization is made in writing by a person described in paragraph (a); and
 - The authorization specifies either an individual or a position responsible for the overall operation of the facility, from which the discharge originates, such as a plant manager, superintendent or person of equivalent responsibility; and
 - The written authorization is submitted to the Agency.
- (c) **Changes of Authorization.** If an authorization under (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 (b) must be submitted to the Agency prior to or together with any reports, information, or applications to be signed by an authorized representative.
- (d) **Certification.** Any person signing a document under paragraph (a) or (b) of 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.

(12) **Reporting requirements.**

- Planned changes.** The permittee shall give notice to the Agency as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required when:
 - The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source pursuant to 40 CFR 122.29 (b); or
 - The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements pursuant to 40 CFR 122.42 (a)(1).
 - The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- Anticipated noncompliance.** The permittee shall give advance notice to the Agency of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- Transfers.** This permit is not transferable to any person except after notice to the Agency.
- 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.
- Monitoring reports.** Monitoring results shall be reported at the intervals specified elsewhere in this permit.
 - Monitoring results must be reported on a Discharge Monitoring Report (DMR).

- (2) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.
 - (3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Agency in the permit.
- (f) **Twenty-four hour reporting.** The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24-hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 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 which must be reported within 24-hours:
- (1) Any unanticipated bypass which exceeds any effluent limitation in the permit.
 - (2) Any upset which exceeds any effluent limitation in the permit.
 - (3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Agency in the permit or any pollutant which may endanger health or the environment.
The Agency may waive the written report on a case-by-case basis if the oral report has been received within 24-hours.
- (g) **Other noncompliance.** The permittee shall report all instances of noncompliance not reported under paragraphs (12) (d), (e), or (f), at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (12) (f).
- (h) **Other information.** Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, or in any report to the Agency, it shall promptly submit such facts or information.
- (13) **Bypass.**
- (a) **Definitions.**
 - (1) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
 - (2) 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 which 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) **Bypass not exceeding limitations.** The permittee 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 of paragraphs (13)(c) and (13)(d).
 - (c) **Notice.**
 - (1) **Anticipated bypass.** If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
 - (2) **Unanticipated bypass.** The permittee shall submit notice of an unanticipated bypass as required in paragraph (12)(f) (24-hour notice).
- (d) **Prohibition of bypass.**
- (1) Bypass is prohibited, and the Agency may take enforcement action against a permittee for bypass, unless:
 - (i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal 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; and
 - (iii) The permittee submitted notices as required under paragraph (13)(c).
 - (2) The Agency may approve an anticipated bypass, after considering its adverse effects, if the Agency determines that it will meet the three conditions listed above in paragraph (13)(d)(1).
- (14) **Upset.**
- (a) **Definition.** 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, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
 - (b) **Effect of an upset.** An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (14)(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
 - (c) **Conditions necessary for a demonstration of upset.** A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous 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; and
 - (3) The permittee submitted notice of the upset as required in paragraph (12)(f)(2) (24-hour notice).
 - (4) The permittee complied with any remedial measures required under paragraph (4).
 - (d) **Burden of proof.** In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.
- (15) **Transfer of permits.** Permits may be transferred by modification or automatic transfer as described below:
- (a) **Transfers by modification.** Except as provided in paragraph (b), a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued pursuant to 40 CFR 122.62 (b) (2), or a minor modification made pursuant to 40 CFR 122.63 (d), to identify the new permittee and incorporate such other requirements as may be necessary under the Clean Water Act.
 - (b) **Automatic transfers.** As an alternative to transfers under paragraph (a), any NPDES permit may be automatically

transferred to a new permittee if:

- (1) The current permittee notifies the Agency at least 30 days in advance of the proposed transfer date;
 - (2) The notice includes a written agreement between the existing and new permittees containing a specified date for transfer of permit responsibility, coverage and liability between the existing and new permittees; and
 - (3) The Agency does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement.
- (16) All manufacturing, commercial, mining, and silvicultural dischargers must notify the Agency as soon as they know or have reason to believe:
- (a) That any activity has occurred or will occur which would result in the discharge of any toxic pollutant identified under Section 307 of the Clean Water Act 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 ug/l);
 - (2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile, five hundred micrograms per liter (500 ug/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 NPDES permit application; or
 - (4) The level established by the Agency in this permit.
 - (b) That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the NPDES permit application.
- (17) All Publicly Owned Treatment Works (POTWs) must provide adequate notice to the Agency of the following:
- (a) Any new introduction of pollutants into that POTW from an indirect discharge which would be subject to Sections 301 or 306 of the Clean Water Act if it were directly discharging those pollutants; and
 - (b) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
 - (c) For purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.
- (18) If the permit is issued to a publicly owned or publicly regulated treatment works, the permittee shall require any industrial user of such treatment works to comply with federal requirements concerning:
- (a) User charges pursuant to Section 204 (b) of the Clean Water Act, and applicable regulations appearing in 40 CFR 35;
 - (b) Toxic pollutant effluent standards and pretreatment standards pursuant to Section 307 of the Clean Water Act; and
 - (c) Inspection, monitoring and entry pursuant to Section 308 of the Clean Water Act.
- (19) If an applicable standard or limitation is promulgated under Section 301(b)(2)(C) and (D), 304(b)(2), or 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked, and reissued to conform to that effluent standard or limitation.
 - (20) Any authorization to construct issued to the permittee pursuant to 35 Ill. Adm. Code 309.154 is hereby incorporated by reference as a condition of this permit.
 - (21) The permittee shall not make any false statement, representation or certification in any application, record, report, plan or other document submitted to the Agency or the USEPA, or required to be maintained under this permit.
 - (22) The Clean Water Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$25,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318 or 405 of the Clean Water Act 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. Additional penalties for violating these sections of the Clean Water Act are identified in 40 CFR 122.41 (a)(2) and (3).
 - (23) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, 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.
 - (24) The Clean Water 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 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.
 - (25) Collected screening, slurries, sludges, and other solids shall be disposed of in such a manner as to prevent entry of those wastes (or runoff from the wastes) into waters of the State. The proper authorization for such disposal shall be obtained from the Agency and is incorporated as part hereof by reference.
 - (26) In case of conflict between these standard conditions and any other condition(s) included in this permit, the other condition(s) shall govern.
 - (27) The permittee shall comply with, in addition to the requirements of the permit, all applicable provisions of 35 Ill. Adm. Code, Subtitle C, Subtitle D, Subtitle E, and all applicable orders of the Board or any court with jurisdiction.
 - (28) The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit is held invalid, the remaining provisions of this permit shall continue in full force and effect.