KPDES

KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM

PERMIT

PERMIT NO.: KYG120000
AI NO.: 35050

AUTHORIZATION TO DISCHARGE UNDER THE KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM (KPDES)

Pursuant to Authority in KRS 224,

Orphan Landfills with Leachate Discharges

is authorized to discharge from a facility located at

Within any of the 120 counties of the Commonwealth of Kentucky

to receiving waters named

Those water bodies of the Commonwealth that comprise the Mississippi and Ohio River basins and sub-basins within the political and geographic boundaries of Kentucky

in accordance with effluent limitations, monitoring requirements and other conditions set forth in this permit.

This permit shall become effective on April 1, 2015.

This permit and the authorization to discharge shall expire at midnight, March 31, 2020.

March 30, 2015

Date Signed

Peter T. Goodmann, Director
Division of Water

DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601

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SECTION 1

COVERAGE

1. COVERAGE

"Orphan Landfills" are formerly permitted municipal solid waste disposal facilities or abandoned solid waste disposal site or facilities that ceased accepting wastes before July 1, 1992 that were not closed in accordance with 401 KAR Chapters 47 and 48. Such landfills are the target of the Energy and Environment Cabinet (EEC) for remediation. The Division of Waste Management (DWM) within the EEC's Department for Environmental Protection (DEP) is charged with inventorying, evaluating, and overseeing their remediation. Upon satisfactory completion of remediation the Orphan Landfill is transferred to a municipality or county government that has the resources and is willing to accept responsibility for post remediation care.

This general permit covers those post remediation Orphan Landfills where discharge of treated leachate to Waters of the Commonwealth cannot be eliminated. Leachate means liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such wastes.

1.1. Eligibility

Eligible sites are sites that have been:

1) Remediated under the supervision of DWM;
2) Released to a county or municipality by DWM; and
3) Discharge of treated leachate to Waters of the Commonwealth

1.2. Exclusions

The following are excluded from coverage under this general permit:

1) Active landfills;
2) Landfills closed in accordance with the requirements of Title 401 of the Kentucky Administrative Regulations (KAR); or
3) Sites that DOW has determined would be more appropriately addressed by an individual permit or an alternate general permit

SECTION 2

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

2. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

This section of the permit establishes the KPDES effluent limitations and monitoring requirements for the discharge of treated leachate.

TABLE 1.								
EFFLUENT LIMITATIONS							MONITORING REQUIREMENTS	
Effluent Characteristic	**STORET Code**	**Units**	**Minimum**	**Monthly Average**	**Daily Maximum**	**Maximum**	**Frequency**	**Sample Type**
Flow	50050	MGD	N/A	Report	Report	N/A	1/Quarter	Instantaneous
Biochemical Oxygen Demand (5 day)	00310	mg/l	N/A	37	140	N/A	1/Quarter	Grab
Total Suspended Solids	00530	mg/l	N/A	27	88	N/A	1/Quarter	Grab
Ammonia (as N)	00610	mg/l	N/A	4.9	10	N/A	1/Quarter	Grab
α-Terpineol	51045	mg/l	N/A	0.016	0.033	N/A	1/Quarter	Grab
Benzoic acid	77247	mg/l	N/A	0.071	0.12	N/A	1/Quarter	Grab
ρ-Cresol	77146	mg/l	N/A	0.014	0.025	N/A	1/Quarter	Grab
Phenol	34964	mg/l	N/A	0.015	0.026	N/A	1/Quarter	Grab
Zinc	01094	mg/l	N/A	0.11	0.12	N/A	1/Quarter	Grab
pH	00400	SU	6.0	N/A	N/A	9.0	1/Quarter	Grab

The discharges to waters of the Commonwealth shall not produce floating solids, visible foam or a visible sheen on the surface of the receiving waters.

SECTION 3

BEST MANAGEMENT PRACTICES (BMP) PLAN REQUIREMENTS

3. Best Management Practices

The permittee shall develop and implement a Best Management Practices Plan (BMPP) consistent with 401 KAR 5:065, Section 2(4).

3.1. General Conditions

3.1.1. Applicability

These conditions apply to all permittees who use, manufacture, store, handle, or discharge any pollutant listed as: (1) toxic under Section 307(a)(1) of the Clean Water Act; (2) oil, as defined in Section 311(a)(1) of the Act; (3) any pollutant listed as hazardous under Section 311 of the Act; or (4) is defined as a pollutant pursuant to KRS 224.01-010(35) and who have operations which could result in (1) the release of a hazardous substance, pollutant, or contaminant, or (2) an environmental emergency, as defined in KRS 224.01-400, as amended, or any regulation promulgated pursuant thereto (hereinafter, the "BMP pollutants"). These operations include material storage areas; plant site runoff; in-plant transfer, process and material handling areas; loading and unloading operations, and sludge and waste disposal areas.

3.1.2. Plan

The permittee shall develop and implement a Best Management Practices (BMP) plan consistent with 401 KAR 5:065, Section 2(10) pursuant to KRS 224.70-110, which prevents or minimizes the potential for the release of BMP pollutants from ancillary activities through site runoff; spillage or leaks, sludge or waste disposal; or drainage from raw material storage.

3.1.3. Implementation

The permittee shall implement the BMP plan upon of the commencement of regulated activity. Modifications to the plan as a result of ineffectiveness or plan changes to the facility shall be implemented as soon as possible.

Within 90 days of the effective date of the permit the permittee shall evaluate the current BMP plan and make any necessary modifications to insure its continued effectiveness.

3.1.4. General Requirements

The BMP plan shall:

1) Be documented in narrative form, and shall include any necessary plot plans, drawings, or maps.
2) Establish specific objectives for the control of toxic and hazardous pollutants.
    a. Each facility component or system shall be examined for its potential for causing a release of BMP pollutants due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc.
    b. Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances which could result in a release of BMP pollutants, the plan should include a prediction of the direction, rate of flow, and total quantity of the pollutants which could be released from the facility as result of each condition or circumstance.
3) Establish specific Best Management Practices to meet the objectives identified under paragraph b of this section, addressing each component or system capable of causing a release of BMP pollutants.
4) Include any special conditions established in part b of this section.
5) Be reviewed by plant engineering staff and the site manager.

3.2. Specific Requirements

The plan shall be consistent with the general guidance contained in the publication entitled "NPDES Best Management Practices Guidance Document," and shall include the following baseline BMPs as a minimum.

1) BMP Committee
2) Reporting of BMP Incidents
3) Risk Identification and Assessment
4) Employee Training
5) Inspections and Records
6) Preventive Maintenance
7) Good Housekeeping
8) Materials Compatibility
9) Security
10) Materials Inventory

3.2.1. BMP - SPCC Plans

The BMP plan may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under Section 311 of the Act and 40 CFR Part 151, and may incorporate any part of such plans into the BMP plan by reference.

3.2.2. BMP - Hazardous Waste Management

The permittee shall assure the proper management of solid and hazardous waste in accordance with the regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1978 (RCRA) (40 U.S.C. 6901 et seq.) Management practices required under RCRA regulations shall be referenced in the BMP plan.

3.2.3. BMP - Documentation

The permittee shall maintain a description of the BMP plan at the facility and shall make the plan available upon request to EEC personnel.

3.2.4. BMP - Modification

The permittee shall amend the BMP plan whenever there is a change in the facility or change in the operation of the facility which materially increases the potential for the ancillary activities to result in the release of BMP pollutants.

3.2.5. BMP - Modification for Ineffectiveness

If the BMP plan proves to be ineffective in achieving the general objective of preventing the release of BMP pollutants, then the specific objectives and requirements under paragraphs b and c of Section 3.1.4, the permit, and/or the BMP plan shall be subject to modification to incorporate revised BMP requirements. If at any time following the issuance of this permit the BMP plan is found to be inadequate pursuant to a state or federal site inspection or plan review, the plan shall be modified to incorporate such changes necessary to resolve the concerns.

3.3. BMP - Specific Conditions

3.3.1. Groundwater Protection Plan (GPP)

The BMP plan shall incorporate the elements of the GPP required by 401 KAR 5:037.

3.3.2. DWM Termination Letter

The requirements of the DWM Termination Letter are incorporated as enforceable BMP conditions of this permit. Failure to perform the requirements of the DWM Termination Letter may result in enforcement action by DEP including the revocation of coverage this general permit and the necessity to obtain an individual KPDES permit for the discharge of treated leachate to Waters of the Commonwealth.

SECTION 4

MONITORING AND REPORTING REQUIREMENTS

4. MONITORING AND REPORTING REQUIREMENTS

4.1. KPDES Outfalls

Discharge samples and measurements shall be collected at the compliance point for each KPDES Outfall identified in coverage document issued for the permitted facility.

4.2. Compliance Point

The compliance point for each KPDES outfall is the nearest accessible point after final treatment, but prior to actual discharge to or mixing with the receiving waters or wastestreams from other outfalls.

4.3. Number of Required Samples

A minimum of one (1) grab sample per parameter shall be collected each calendar quarter during a period of discharge.

4.4. Sample Collection

Samples and measurements taken to determine compliance with permit effluent limitations in Section 2 of this permit shall be representative volume and nature of the monitored discharge. In the event the minimum number of samples cannot be obtained the permittee shall provide the necessary documentation specified in Section 4.5 to the Cabinet upon request.

4.5. No Discharge Reporting

If the permittee is unable to collect the required number of samples specified in Section 4.3 the permittee shall report the appropriate No Discharge (NODI) Code for each uncollected sample on the monthly DMR for that outfall. The permittee shall document its claim that no discharge occurred during the monitoring period. Such documentation shall be made available to the cabinet upon request. The use of a NODI Code is conditionally approved until such time as the Cabinet determines the submitted documentation for the use of that NODI CODE is inadequate.

NODI Codes are used in EPA's Integrated Compliance Information System (ICIS) to report a No Discharge on a DMR. The following table lists the NODI codes that DOW has determined to be appropriate for use on DMRs.

TABLE 2.	
NODI Code	**Definition**
2	Operation Shutdown
5	Frozen Conditions
C	No Discharge
K	Natural Disaster
Q	Not Quantifiable
V	Weather Related

The circumstances under which each code is used and the required documentation in addition to the documentation and certification requirements of Sections 7.10 and 7.11 of this permit are as follows:

<u>NODI Code 2</u>

This code is to be used when the operation has been shut down.

<u>NODI Code 5</u>

This code is to be used when the discharge or outfall structure is frozen. Additional documentation includes: (1) dated photographs; and (2) a narrative of the severity and duration of the condition shall be included.

NODI Code C

This code is to be used when there are no discharges during the monitoring period.

NODI Code K

This code is to be used when the outfall is destroyed or inaccessible due to a natural disaster such as flooding, tornado, etc. Additional documentation includes: (1) dated photographs; and (2) a narrative of the severity and duration of the condition shall be included.

NODI Code Q

This code is to be used when an outfall is discharging however due to the shallowness of the discharge a valid sample could not be collected. Additional documentation includes: (1) dated photographs; and (2) estimated flow rate.

NODI Code V

This code is to be used when outfalls are inaccessible due to extreme weather conditions. Additional documentation includes: (1) a description of the weather conditions; (2) dated photographs of the conditions; and (3) duration of the conditions preventing access.

4.6. Sufficiently Sensitive Analytical Methods

Analytical methods utilized to demonstrate compliance with the effluent limitations established in this permit shall be sufficiently sensitive to detect pollutant levels at or below the required effluent limit. It is the responsibility of the permittee to demonstrate compliance with permit parameter limitations by utilization of sufficiently sensitive analytical methods.

4.7. Submission of Discharge Monitoring Reports (DMRs)

Monitoring results obtained during each monitoring period must be reported. The completed DMR for each monitoring period must be submitted no later than the 28th day of the month following the monitoring period for which monitoring results were obtained

The completed DMR for each monitoring period must be entered into the DOW approved electronic system no later than midnight on the 28th day of the month following the monitoring period for which monitoring results were obtained.

For more information regarding electronic submittal of DMRs, please visit the Division's website at: http://water.ky.gov/permitting/Pages/netDMRInformation.aspx or contact the DMR Coordinator at (502) 564-3410.

SECTION 5

ADDITIONAL REQUIREMENTS

5. Additional Requirements

5.1. Schedule of Compliance

The permittee shall attain compliance with all requirements of this permit on the effective date of this permit unless otherwise stated.

5.2. Other Permits

This permit has been issued under the provisions of KRS Chapter 224 and regulations promulgated pursuant thereto. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by this Cabinet and other state, federal, and local agencies.

5.3. Continuation of Expiring Permit

In the event the permit expires prior to reissuance by KDOW the conditions and requirements of this version of KYG12 shall continue in effect until KDOW reissues the permit. However, new or expanded coverages cannot be authorized until the permit is reissued.

5.4. Notice of Intent (NOI) Requirements

In lieu of requiring the submission of an NOI for a remediated Orphan Landfill to obtain coverage under this permit DWM will provide notification through TEMPO that an eligible site has received a DWM Termination Letter and should be granted coverage under this permit. Those Orphan Landfills that have existing individual KPDES permits may request conversion to general permit coverage at the time of renewal of the individual KPDES permit.

5.5. Antidegradation

The eligible sites and the activities conducted on them are not and will not result in any new or expanded discharges; therefore the requirements of 401 KAR 10:029, Section 1 are met.

5.6. Discharge and Monitoring Point Accessibility

The permittee is required to conduct monitoring that is representative of the regulated discharges. Additionally in accordance with the conditions that apply to all permits, as stated in Section 6.9, the permittee shall allow authorized agency representatives to inspect the facility and collect samples to determine compliance. In order for such monitoring to be conducted either by the permittee or authorized agency personnel all monitoring and discharge points required by this permit shall be readily and safely accessible.

5.7. Commingling of Waste Streams

Where waste streams from any drainage area covered by this permit are combined for treatment or discharge with waste streams from another drainage area, the concentration of each pollutant in the combined discharge may not exceed the most stringent limitations for that pollutant applicable to any component waste stream of the discharge. This requirement is consistent with the requirements of 401 KAR 5:065, Section 2(9).

5.8. Reopener Clause

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved in accordance with 401 KAR 5:050 through 5:080, if the effluent standard or limitation so issued or approved:

1) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
2) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of KRS Chapter 224 when applicable.

5.9. DWS Intake

In addition to the requirements of Section 3.4 of this permit, operations that discharge within 5 miles upstream of an existing domestic water supply (DWS) intake shall incorporate within the operation's Best Management Practices (BMP) Plans language addressing catastrophic releases and the notification procedures.

The language shall be included under the Specific Conditions Section of the BMP plan and shall provide the following:

1. The criteria for determining a catastrophic release;
2. The notification method(s) to be used to inform the affected DWS intake that a catastrophic release has occurred;
3. The names, telephone numbers, and e-mail addresses of the contacts with the subject water supply; and
4. The names, telephone numbers, and e-mail addresses of the contacts with the permittee.

5.10. Outfall Signage

For discharges to the Ohio River the permittee shall comply with the permanent marker requirements of Part V, Section A 3 of ORSANCO's Pollution Control Standards.

For discharges to receiving waters other than the Ohio River the permittee may place and maintain permanent markers at each of the monitoring locations to better document and clarify these locations.

SECTION 6

STANDARD CONDITIONS

6. STANDARD CONDITIONS

6.1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Any person who violates applicable statutes or who fails to perform any duty imposed, or who violates any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty as provided at KRS 224.99.010.

6.2. 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 a new permit.

6.3. 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.

6.4. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

6.5. 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 the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

6.6. Permit Actions

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

6.7. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

6.8. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

6.9. Inspection and Entry

The permittee shall allow the Director or an authorized representative (including an authorized contractor acting as a representative of the Director), upon presentation of credentials and other documents as may be required by law, to:

(1) 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;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by KRS 224, any substances or parameters at any location.

6.10. Monitoring and Records

(1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five (5) years (or longer as required by 401 KAR 5:065 Section 2(10), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(3) Records of monitoring information shall include:

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

(4) Monitoring must be conducted according to test procedures approved under 401 KAR 5:065 Section 2(8) unless another method is required under 401 KAR 5:065 Section 2(9) or (10).

(5) KRS 224.99-010 provides that any person who knowingly violates KRS 224.70-110 or other enumerated statutes, or who knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall be guilty of a Class D felony and, upon conviction, shall be punished by a fine of not more than $25,000, or by imprisonment for not more than one (1) year, or both. Each day upon which a violation occurs shall constitute a separate violation.

6.11. Signatory Requirement

(1) All applications, reports, or information submitted to the Director shall be signed and certified pursuant to 401 KAR 5:060, Section 4.

(2) KRS 224.99-010 provides that any person who knowingly provides false information in any document filed or required to be maintained under KRS Chapter 224 shall be guilty of a Class D felony and upon conviction thereof, shall b punished by a fine not to exceed twenty-five thousand dollars ($25,000), or by imprisonment, or by fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.

6.12. Reporting Requirements

6.12.1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in KRS 224.16-050; or
(ii) 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 under KRS 224.16-050.
(iii) 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.

6.12.2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

6.12.3. Transfers

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS 224; see 401KAR 5:070, Section 5; in some cases, modification or revocation and reissuance is mandatory.

6.12.4. Monitoring Reports

Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.
(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 401 KAR 5:065 Section 2(8), or another method required for an industry-specific waste stream under 401 KAR 5:065 Section 2(9) or (10), the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
(iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

6.12.5. 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 fourteen (14) days following each schedule date.

6.12.6. Twenty-four Hour Reporting

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five (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 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.
(ii) The following shall be included as information which must be reported within twenty-four (24) hours under this paragraph.
(A) Any unanticipated bypass which exceeds any effluent limitation in the permit.
(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within twenty-four (24) hours.
(iii) The Director may waive the written report on a case-by-case basis for reports under paragraph ii of this section if the oral report has been received within twenty-four (24) hours.

6.12.7. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Sections 6.12.1, 6.12.4, 6.12.5, and 6.12.6, at the time monitoring reports are submitted. The reports shall contain the information listed in Section 6.12.6.

6.12.8. 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 Director, it shall promptly submit such facts or information.

6.13. Bypass

6.13.1. Definitions

(i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
(ii) 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.

6.13.2. 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 Section 6.13.1.

6.13.3. Notice

(i) 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.
(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section 6.12.6.

6.13.4. Prohibition of Bypass

(i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
(C) The permittee submitted notices as required under Section 6.13.3.
(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in Section 6.13.3.

6.14. Upset

6.14.1. 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.

6.14.2. 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 Section 6.14.3 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.

6.14.3. 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:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;
(ii) The permitted facility was at the time being properly operated; and
(iii) The permittee submitted notice of the upset as required in Section 6.12.6;
(iv) The permittee complied with any remedial measures required under Section 6.4.

6.14.4. Burden of Proof

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.