

**Wyoming Department of Environmental Quality
Water Quality Division
WYPDES (Wyoming Pollutant Discharge Elimination System) Program**

STATEMENT OF BASIS

NEW

APPLICANT NAME: Lippincott Feeding, Inc.

MAILING ADDRESS: 5583 State Highway 92
Torrington, WY 82240

FACILITY LOCATION: Lippincott Feeding Inc., which is located in NWSW Section 31, Township 23N, Range 60W, Goshen County. Potential receiving water(s): Horse Creek (class 2AB), via unnamed ephemeral tributaries (class 3B), North Platte River basin.

PERMIT NUMBER: WY0094935

This permit has been developed in accordance with current WYPDES permitting requirements and with current WDEQ regulations and policy.

A site-specific nutrient management plan (NMP) submitted with the permit application was developed in accordance with the Wyoming Nutrient Management Plan Technical Standards of January 8, 2010, which parallel federal standards. The permit requires that this facility shall maintain and implement the NMP. The NMP specifically identifies and describes practices that require implementation to assure compliance with the effluent limitations and standards. A properly designed and operated CAFO will 1) contain any wastewater within the *production area* up to or exceeding a 25-year/24 hour storm event, and 2) apply manure at agronomic rates in the *land application area* to prevent nitrogen and phosphorus from entering groundwater and surface water.

Background: This is a new CAFO located approximately 8 miles south of Torrington, WY, just off of Wyoming State Highway 92 in Goshen County, WY. The feedlot capacity is 3,000 beef cattle to be placed in the feedlot for approximately 240 days annually. The 25 year/24 hour storm event is 3.4 inches in this area, the closest perennial water of the state is Horse Creek, (class 2AB), located approximately 3.5 miles from the facility, and is a tributary to the North Platte River basin.

There is a three foot berm constructed to the north of the feedlot and an irrigation canal on all other sides that divert all clean waters from the feedlot. Liquid wastes are stored in a bentonite clay lined waste water pond 2.5 MG in size, and the water is pumped to nearby hay fields or pasture for irrigation purposes.

Manure is pen stored and then disposed of on 450 acres in a rotating combination of alfalfa, corn, corn silage, and wheat farm ground and is incorporated into the ground within 3 days. Any remaining manure will be sold to neighbors. Most of the farm ground is under center pivot or irrigated via gated pipe and flood irrigated.

The permit requires immediate compliance with Best Practical Control Technology (BPT) and Best Available Technology (BAT) Limits that are defined in the EPA Effluent Guidelines and Standards for Feedlots (all subcategories except ducks), 40 CFR PART 412, and *Chapter 2, Wyoming Water Quality Rules and Regulations, Appendix G*. According to these standards, there shall be no discharge of process wastewater to navigable waters except in the case of a chronic or catastrophic storm event which causes an overflow from the runoff and/or wastewater control structures. These facilities are to be designed, constructed and operated to contain all process generated wastewaters plus the runoff from a 25-year/24 hour storm event (3.4 inches).

Periodic inspections and record-keeping are required of the production and land application areas. The permit requires other operational standards and maintenance requirements such as isolation of manure disposal sites, and proper disposal of pest control wastes.

Whenever a precipitation or snowmelt event occurs, the permittee is required to bring the runoff control structures back to full capacity within 15 days. This is accomplished by pumping the water from the ponds onto fields in the area. The permit also requires other operational standards and maintenance requirements such as the removal of sediment from the runoff control ponds, isolation of manure disposal sites, and proper disposal of pest control wastes. In addition to the limitation on discharge described above, the permit includes best management practices which regulate the operation and maintenance of the feedlot.

Nutrient Management Plan (NMP) Documentation: The NMP for this facility was developed by the United States Department of Agriculture, Natural Resource Conservation Service. Documentation used to develop the NMP are available at the Cheyenne Office of the State of Wyoming Department of Environmental Quality, Water Quality Division, WYPDES Permitting, 122 W. 25th Street, Herschler 4W, Cheyenne, WY 82002.

The conditions that are established in this permit have been reviewed to ensure that the levels of water quality necessary to protect the designated uses of the receiving waters are maintained and protected. An antidegradation review has been conducted and verifies that the permit conditions, including the effluent limitations established, provide a level of protection to the receiving water consistent with the antidegradation provisions of Wyoming surface water quality standards. An evaluation has been completed to ensure that the receiving water has not been listed on the 303(d) list as a waterbody that cannot support designated uses. The evaluation has revealed that the receiving water is not included on this list.

Self monitoring of runoff controls and land application areas are required on a regular basis with annual reporting. The permit is scheduled to expire on **December 31, 2017**.

Marcia Porter
Water Quality Division
Department of Environmental Quality
Drafted: October 10, 2012

AUTHORIZATION TO DISCHARGE UNDER THE
WYOMING POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Federal Water Pollution Control Act, (hereinafter referred to as "the Act"), and the Wyoming Environmental Quality Act,

Lippincott Feeding, Inc.

is authorized to discharge from the wastewater treatment facilities serving the

Lippincott Feeding, Inc.

located in

NWSW Section 31, Township 23N, Range 60W, Goshen County

to receiving waters named

Horse Creek (class 2AB) via unnamed ephemeral tributaries (class 3B), North Platte River basin.

in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I, II and III hereof.

This permit shall become effective on the date of issuance below.

This permit and the authorization to discharge shall expire **December 31, 2017** at midnight.

John F. Wagner, Administrator
Water Quality Division

John V. Corra, Director
Department of Environmental Quality

Date of Issuance: _____

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

During the period beginning immediately and lasting through **December 31, 2017**, the permittee is authorized to discharge as limited and specified below.

1. Effluent Limitations

There shall be no discharge of pollutants to the surface waters of the State of Wyoming except that:

Pollutants may be discharged to surface waters of the State of Wyoming whenever chronic or catastrophic storm events cause an overflow from facilities designed, constructed and operated to contain all process generated wastewaters plus the runoff from a 25 year - 24 hour precipitation event (3.4 inches).

2. Monitoring Requirements

- a. The permittee has the option of maintaining a precipitation gage at the facility. If the permittee elects to maintain a precipitation gage at the facility, the permittee shall monitor and record precipitation daily using a National Weather Service standard rain gage or equivalent.
- b. The permittee shall monitor and report any discharge resulting from a precipitation event to the permit issuing authority within 24 hours or during the first business day following a discharge that occurs on a weekend or holiday. Any discharge resulting from a non-precipitation event (e.g., dike or structural failure, equipment breakdown, human error) shall be monitored and reported immediately by calling (307) 777-7781, any time day or night. The permittee shall provide the permit issuing authority with the following written information within thirty (30) days of either such notification:
 - 1) A description of the discharge and cause, whether excess precipitation, snow melt or other specified causes (e.g., structural failure, equipment breakdown, flooding);
 - 2) The period of discharge, including exact dates and times;
 - 3) An estimate of discharge volume;
 - 4) Name of receiving stream;
 - 5) Name of person recording discharge;
 - 6) Corrective steps taken, if appropriate;
 - 7) A record of the precipitation at the nearest official U. S. Weather Station or at a facility rain gage for the period of inclement weather that resulted in the discharge.
- c. If the NMP includes any land application area(s), the permittee shall annually soil test each field in accordance with Wyoming Nutrient Management Plan Technical Standards prior to use for manure application.
- d. The permittee shall annually conduct a manure analysis for nutrient content in accordance with Wyoming Nutrient Management Plan Technical Standards prior to land application or transfer.

- e. If the NMP includes any land application area(s), the permittee shall document the calibration of application equipment to assure accurate application rates in the first year of this permit and maintain such record for the life of the permit.

3. Nutrient Management Plan (NMP).

This facility shall develop and implement a site-specific nutrient management plan. At a minimum, a nutrient management plan must include best management practices and procedures necessary to implement applicable effluent limitations and standards.

The nutrient management plan is to be developed in accordance with the Wyoming Nutrient Management Plan Technical Standards; and *Chapter 2, Appendix G (j) (ii), Wyoming Water Quality Rules and Regulations.*

- a. The nutrient management plan must, to the extent applicable:
 - i. Ensure adequate storage of manure and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
 - ii. Ensure proper management of mortalities (i.e., dead animals) so they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
 - iii. Ensure that stormwater runoff is diverted, as appropriate, from the production area;
 - iv. Prevent direct contact of confined animals with surface waters of the state;
 - v. Ensure that chemicals and other contaminants handled onsite, are not disposed of in any manure, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
 - vi. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface waters of the state;
 - vii. Identify protocols for appropriate testing of manure, process wastewater and soil;
 - viii. Establish protocols to land apply manure or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure or process wastewater; and
 - ix. Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.
- b. A current copy of the nutrient management plan shall be kept on site in accordance with Part I (A) 5 of this permit and provided to authorized representatives of the Wyoming Department of Environmental Quality, Water Quality Division or the U.S. Environmental Protection Agency. In addition, a copy of the current WYPDES permit is to be maintained on site.

- c. The permittee must amend the nutrient management plan and apply for a permit modification whenever the facility makes a substantive change in how it manages its operation,; including the addition of land application area, increase in animal numbers, changes in manure handling, storage, treatment, or application rate, changes in crops grown, or reduction in manure transferred off site. So that the nutrient management plan and WYPDES permit reflect the current operational characteristics and practices of the concentrated animal feeding operation (CAFO).
4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the administrator **by January 28** of each year. The annual report must include:
 - a. The number and type of animals, whether in open confinement or housed under roof (buffalo, beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
 - b. Estimated amount of total manure and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
 - c. Estimated amount of total manure and process waste water transferred to other person(s) by the CAFO in the previous 12 months (ton/gallons);
 - d. Total number of acres under control of the CAFO that were used for land application of manure and process wastewater in the previous 12 months including the field name and acreage of each field that received manure and the application rate of each field.
 - e. Summary of all manure and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and
 - f. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and
 - g. If the NMP includes any land application area(s), the actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, and process wastewater, the results of calculations conducted in accordance with Wyoming Nutrient Management Plan Technical Standards, and the amount of manure and process wastewater applied to each field during the previous 12 months, and the amount of any supplemental fertilizer applied during the previous 12 months;
 - h. Manure test results from previous 12 months (attach lab report);
 - i. If the NMP includes any land application area(s), soil test results for each field receiving manure from previous 12 months (attach lab report).
 5. Additional Measures
 - a. Visual Inspections of the CAFO production area
 - 1) Weekly inspections shall be conducted of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structure;

- 2) Daily inspection of water lines, including drinking water or cooling water lines shall be conducted and documented weekly at a minimum, for the purpose of identifying leaks, corrosion, mechanical defects or other conditions that may result in an inadvertent discharge from the facility;
 - 3) Weekly inspections shall be conducted of the manure and process wastewater impoundments; the inspection will note the level in liquid impoundments as indicated by the depth marker. All open surface liquid impoundments must have a depth marker which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event (2.8 inches);
 - 4) The visual inspection requirements may be waived if insurmountable or dangerous weather conditions exist and the weather conditions justifying the waiver are documented.
- b. Depth marker. All open surface liquid impoundments must have a depth marker which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event.
- c. Corrective actions. Any deficiencies found as a result of any inspections must be corrected as soon as possible.
- d. Mortality handling. Mortalities must not be disposed of in any liquid manure or process wastewater system, and must be handled in such a way as to prevent the discharge of pollutants to surface water, unless alternative technologies pursuant to Appendix G (m) (ii) (II) and approved by the director are designed to handle mortalities.
- e. Record keeping requirements for the production area. Each CAFO must maintain on-site for a period of five (5) years from the date they are created a complete copy of the information required by the *Appendix G(d)(iii), Chapter 2, Wyoming Water Quality Rules and Regulations*, and the **Nutrient Management Plan** (Part I(A)(4)) and the records specified as follows (items 1-8 below). The CAFO must make these records available to authorized representatives of the Wyoming Department of Environmental Quality, Water Quality Division or the U.S. Environmental Protection Agency upon request.
- 1) Records documenting the weekly visual inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structure as required under paragraphs (a)(1-4), “**Visual Inspections of the CAFO Production Area**” of this section
 - 2) Weekly records of the depth of the manure and process wastewater in the liquid impoundment as indicated by the depth marker.
 - 3) Records documenting any deficiencies that are identified in daily and weekly inspections.
 - 4) Records of mortalities management and practices used by the CAFO.
 - 5) Records documenting the current design of any manure storage structures, including volume for solids accumulation design treatment volume, total design volume, and approximate number of days of storage capacity.
 - 6) Records of the date, time, and estimated volume of any overflow.

- f. Record keeping requirements. Each CAFO must maintain on-site a complete copy of the information required by site-specific nutrient-management plan (NMP) that reflects existing operational characteristics. The operation must also maintain on-site all necessary records to document that the NMP is being properly implemented with respect to manure and wastewater generation, storage and handling, and land application. In addition records are to be maintained for a period of five (5) years documenting that the development and implementation of the NMP is in accordance with the minimum practices defined in **Wyoming Nutrient Management Plan Technical Standards**; and **Chapter 2, Wyoming Water Quality Rules and Regulations Appendix G (j) (ii)**.

NOTE: Many of the items below are required by the site nutrient management plan. It is not necessary to duplicate record keeping. Items 1-9 below apply only if the NMP includes land application area(s). For transfers of waste water item 12 applies.

- 1) The date(s) manure or process waste water is applied to each field;
 - 2) Weather conditions at time of application and for 24-hours prior to and following application;
 - 3) Test methods used to sample and analyze manure, process waste water, and soil;
 - 4) Results from manure, process waste water, and soil sampling;
 - 5) Explanation of the basis for determining manure application rates;
 - 6) Calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than manure or process wastewater;
 - 7) Total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied;
 - 8) The method used to apply the manure or process wastewater;
 - 9) Date(s) of manure application equipment inspection;
 - 10) Records of mortalities management and practices;
 - 11) A copy of the CAFOs site-specific nutrient management plan must be maintained on site and made available to the authorized representatives of the Wyoming Department of Environmental Quality, Water Quality Division or the U.S. Environmental Protection Agency upon request;
 - 12) Prior to transferring manure or process wastewater to other persons, the permittee must provide the recipient with the most current nutrient analysis. Also, the CAFO must retain for five (5) years records of the date, recipient name and address, and approximate amount of manure or process wastewater transferred to another person.
6. Other Requirements

The permittee shall:

- a. Institute a program for periodic removal of sediment from all runoff control ponds;
- b. Provide for full recovery of all runoff control ponds within 15 days of any runoff condition by decanting, pumping, irrigation or other measures which do not result in a direct or indirect discharge to surface waters of the state;

- c. Isolate all land areas utilized by and operated under the authority of the permittee for the disposal of manure, other waste solids and liquid wastes to prevent any pollutant from such materials from entering the surface waters of the state.
- d. Isolate all land areas utilized by and operated under the authority of the permittee for the storage or holding of manure, bedding materials, silage, feeds and feed concentrates and other substances having a waste contributing potential to prevent any pollutant from such materials from entering the surface waters of the state.
- e. Dispose of all wastes from dipping vats, pest and parasite control units and other facilities utilized for the application of potentially hazardous or toxic chemicals in a manner such as to prevent any pollutant from such materials from entering the surface waters of the state.
- f. If runoff collection ponds are not used, the permittee shall take those actions necessary to spread contaminated runoff over as wide an area as possible.
- g. Ensure that stormwater runoff is diverted, as appropriate, from the production area;
- h. Implement measures to prevent direct contact of confined animals with surface waters of the state;
- i. Ensure that chemicals and other contaminants handled onsite, are not disposed of in any manure, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants

7. DEFINITIONS

- a. Animal feeding operation (AFO) means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (ii) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
- b. Concentrated animal feeding operation (CAFO) means an AFO which is defined as a Large CAFO or Medium CAFO by 40 CFR 122.23 (4) and (6), or that is designated as a CAFO.
- c. Fecal coliform means the bacterial count (Parameter 1) at 40 CFR 136.3 in Table 1A, which also cites the approved methods of analysis.
- d. Grab sample means a sample which is taken from a waste stream on a one-time basis without consideration of the flow rate of the waste stream and without consideration of time.
- e. Land application means the application of manure or process wastewater onto or incorporated into the soil.
- f. Land application area means land under the control of a CAFO owner or operator, whether it is owned, rented, or leased, to which manure or process wastewater from the production area is or may be applied.
- g. Large concentrated animal feeding operation (large CAFO). An AFO is defined as a large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories.

- i. 700 mature dairy cows, whether milked or dry;
 - ii. 1,000 veal calves;
 - iii. 1,500 buffalo (Bison);
 - iv. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
 - v. 2,500 swine each weighing 55 pounds or more;
 - vi. 10,000 swine each weighing less than 55 pounds;
 - vii. 500 horses;
 - viii. 10,000 sheep or lambs;
 - ix. 55,000 turkeys;
 - x. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
 - xi. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
 - xii. 82,000 laying hens, (if the AFO uses other than a liquid manure handling system);
 - xiii. 30,000 ducks (if the AFO uses other than a liquid manure handling system); or
 - xiv. 5,000 ducks (if the AFO uses a liquid manure handling system).
- h. Liquid manure handling system means a system that collects and transports or moves waste material with the use of water, such as in washing of pens and flushing of confinement facilities. This would include the use of water impoundments for manure and/or wastewater treatment.
- i. Manure is defined to include animal excreta or other commonly associated wastes of animal husbandry including but not limited to bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.
- j. Process wastewater means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, feed, milk, eggs or bedding.
- k. Production area means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal containment area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.
- l. Setback means a specified distance from waters of the state or potential conduits to waters of the State where manure and process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to: Open tile line intake structures, sinkholes, and agricultural well heads.

**Table 1, Outfalls
WY0094935
Lippincott Feeding, Inc.**

Table 1, Discharge Location Lippincott Feeding, Inc.							
Outfall	Qtr/Qtr	Section	Township- North	Range- West	Latitude	Longitude	Receiving Water
001	NWSW	31	23	60	41.922282	-104.125416	Horse Creek (class 2AB), via unnamed ephemeral tributaries (class 3B), North Platte River basin.

PART II

A. MANAGEMENT REQUIREMENTS

1. Changes

The permittee shall give notice to the administrator of the Water Quality Division as soon as possible of any physical alterations or additions to the permitted facility. Notice is required when:

- a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29 (b); or
- b. The alteration or addition could change the nature or increase the quantity of pollutants discharged.
- c. The operator makes substantive changes to the operation as identified in Part I, A, 3, c.

2. Noncompliance Notification

- a. The permittee shall give advance notice of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- b. The permittee shall report any unanticipated noncompliance which may endanger health or the environment as soon as possible, but no later than 24 hours from the time the permittee first became aware of the circumstances. The report shall be made to the Water Quality Division, Wyoming Department of Environmental Quality at (307) 777-7781.
- c. The following occurrences of unanticipated noncompliance shall be reported by telephone to the Water Quality Division, Watershed Management Section, WYPDES Program (307) 777-7781 by the first workday following the day the permittee became aware of the circumstances.
 - (1) Any unanticipated bypass which exceeds any effluent limitation as described in Part I, A, 1 in the permit;
 - (2) Any upset which exceeds any effluent limitation as described in Part I, A, 1 in the permit;
- d. A written submission shall be provided within five (5) days of the time that the permittee becomes aware of a noncompliance circumstance as described in paragraph c. above.

The written submission shall contain:

- (1) A description of the noncompliance and its cause;
- (2) The period of noncompliance, including exact dates and times;
- (3) The estimated time noncompliance is expected to continue if it has not been corrected; and
- (4) Steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance.

- e. The administrator of the Water Quality Division may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Quality Division, Watershed Management Section, WYPDES Program (307) 777-7781.
- f. Reports shall be submitted to the Department of Environmental Quality, Water Quality Division, 122 West 25th Street, Cheyenne, WY 82002.
- g. The permittee shall report all instances of noncompliance that have not been specifically addressed in any part of this permit at the time the monitoring reports are due.

3. Facilities Operation

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 include 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 the permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

4. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact to waters of the state resulting from noncompliance with any effluent limitations specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

5. Bypass of Treatment Facilities

- a. Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- b. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs c. and d. of this section. Return of removed substances to the discharge stream shall not be considered a bypass under the provisions of this paragraph.
- c. Notice:
 - (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice at least 60 days before the date of the bypass.
 - (2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.A.2.
- d. Prohibition of bypass.
 - (1) Bypass is prohibited and the administrator of the Water Quality Division may take enforcement action against a permittee for a bypass, unless:
 - (a) The 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 to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- (c) The permittee submitted notices as required under paragraph c. of this section.
- e. The administrator of the Water Quality Division may approve an anticipated bypass, after considering its adverse effects, if the administrator determines that it will meet the three (3) conditions listed above in paragraph d. (1) of this section.

6. Upset Conditions

- a. 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, improper designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- b. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of paragraph c. of this section are met.
- c. 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;
 - (3) The permittee submitted notice of the upset as required under Part II.A.2; and
 - (4) The permittee complied with any remedial measures required under Part II.A.4.
- d. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

7. Removed Substances

Solids, sludges, filter backwash or other pollutants removed in the course of treatment or control of wastewaters or intake waters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering waters of the state.

8. Power Failures

In order to maintain compliance with the effluent limitations and prohibitions of this permit, the permittee shall either:

- a. In accordance with a schedule of compliance contained in Part I, provide an alternative power source sufficient to operate the wastewater control facilities; or

- b. If such alternative power source as described in paragraph a. above is not in existence and no date for its implementation appears in Part I, take such precautions as are necessary to maintain and operate the facility under its control in a manner that will minimize upsets and insure stable operation until power is restored.

9. Duty to Comply

The permittee must comply with all conditions of this permit and the associated Nutrient Management Plan. Any permit noncompliance constitutes a violation of the federal act and the Wyoming Environmental Quality Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give the administrator of the Water Quality Division advance notice of any planned changes at the permitted facility or of any activity which may result in permit noncompliance.

10. 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.

11. Signatory Requirements

All applications, reports or information submitted to the administrator of the Water Quality Division shall be signed and certified.

- a. All permit applications shall be signed as follows:
 - (1) For a corporation: by a responsible corporate officer;
 - (2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
 - (3) For a municipality, state, federal or other public agency: by either a principal executive officer or ranking elected official.
- b. All reports required by the permit and other information requested by the administrator of the Water Quality Division shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - (1) The authorization is made in writing by a person described above and submitted to the administrator of the Water Quality Division; and
 - (2) The authorization specified 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.
- c. If an authorization under paragraph II.A.11.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 paragraph II.A.11.b must be submitted to the administrator of the Water Quality Division prior to or together with any reports, information or applications to be signed by an authorized representative.

- d. Any person signing a document under 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."

B. RESPONSIBILITIES

1. Inspection and Entry

If requested, the permittee shall provide written certification from the surface landowner(s), if different than the permittee, that the administrator or the administrator's authorized agent has access to all physical locations associated with this permit including well heads, discharge points, reservoirs, monitoring locations, and any waters of the state.

The permittee shall allow the administrator of the Water Quality Division or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

- a. 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;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and
- d. Sample or monitor, at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the federal act, any substances or parameters at any location.

2. Transfer of Ownership or Control

In the event of any change in control or ownership of facilities from which the authorized discharges emanate, the permittee shall notify the succeeding owner or controller of the existence of this permit by letter, a copy of which shall be forwarded to the regional administrator of the Environmental Protection Agency and the administrator of the Water Quality Division. The administrator of the Water Quality Division shall then provide written notification to the new owner or controller of the date in which they assume legal responsibility of the permit. The permit may be modified or revoked and reissued to change the name of the permittee and incorporate such other requirements as described in the federal act.

3. Availability of Reports

Except for data determined to be confidential under Section 308 of the federal act, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of the Wyoming Department of Environmental Quality. As required by the federal act, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the federal act.

4. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under Section 307 (a) of the federal act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. As long as the conditions related to the provisions of "Bypass of Treatment Facilities" (Part II.A.5), "Upset Conditions" (Part II.A.6), and "Power Failures" (Part II.A.8) are satisfied then they shall not be considered as noncompliance.

6. 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.

7. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject under Section 311 of the federal act.

8. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties established pursuant to any applicable state or federal law or regulation. In addition, issuance of this permit does not substitute for any other permits required under the Clean Water Act or any other federal, state, or local law.

9. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights nor any infringement of federal, state or local laws or regulations.

10. 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. The application should be submitted at least 180 days before the expiration date of this permit.

11. Duty to Provide Information

The permittee shall furnish to the administrator of the Water Quality Division, within a reasonable time, any information which the administrator 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 administrator, upon request, copies of records required by this permit to be kept.

12. Duty to Retain Records

The permittee shall retain all records identified in this permit, including those described in the Nutrient Management Plan to be submitted under Part I.A.6.(3), for a period of at least three (3) years.

13. Facility Closure

The permittee shall furnish to the administrator of the Water Quality Division, at such time as the operations of the facility are discontinued, a closure plan. This closure plan is subject to the approval of the administrator of the Water Quality Division. Facility closure shall be conducted in accordance with the approved facility closure plan. Abandonment of structures associated with the operation of the facility constitutes a violation of this permit.

14. Other Information

When 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 any report to the administrator of the Water Quality Division, it shall promptly submit such facts or information.

15. Permit Action

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.

16. Permit Fees

Once this permit has been issued, the permittee will be assessed a \$100.00 per-year permit fee by the Water Quality Division. The fee year runs from July 1 through June 30. This permit fee will continue to be assessed for as long as the permit is active, regardless of whether discharge actually occurs. This fee is not pro-rated. If the permit is active during any portion of the fee year, the full fee will be billed to the permittee for that fee year. In the event that this permit is transferred from one permittee to another, each party will be billed the full permit fee for the fee year in which the permit transfer was finalized. See the Wyoming Environmental Quality Act §35-11-312 for further information.

PART III

A. OTHER REQUIREMENTS

1. Flow Measurement

At the request of the administrator of the Water Quality Division, the permittee must be able to show proof of the accuracy of any flow measuring device used in obtaining data submitted in the monitoring report. The flow measuring device must indicate values of within plus or minus ten (10) percent of the actual flow being measured.

2. 208(b) Plans

This permit may be modified, suspended or revoked to comply with the provisions of any 208(b) plan certified by the Governor of the State of Wyoming.

3. Reopener Provision

This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations (and compliance schedule, if necessary) or other appropriate requirements if one or more of the following events occurs:

- a. The state water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit;
- b. A total maximum daily load (TMDL) and/or watershed management plan is developed and approved by the state and/or the Environmental Protection Agency which specifies a wasteload allocation for incorporation in this permit;
- c. A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit;
- d. Downstream impairment is observed and the permitted facility may be contributing to the impairment.
- e. The limits established by the permit no longer attain and/or maintain applicable water quality standards;
- f. The permit does not control or limit a pollutant that has the potential to cause or contribute to a violation of a state water quality standard.
- g. If new applicable effluent guidelines and/or standards have been promulgated and the standards are more stringent than the effluent limits established by the permit.
- h. In order to protect water quality standards in neighboring states, effluent limits may be incorporated into this permit or existing limits may be modified to ensure that the appropriate criteria, water quality standards and assimilative capacity are attained.

4. Permit Modification

After notice and opportunity for a hearing, this permit may be modified, suspended or revoked in whole or in part during its term for cause including, but not limited to, the following:

- a. Violation of any terms or conditions of this permit;
- b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge; or
- d. If necessary to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b) (2) (C) and (D), 304 (b) (2) and 307 (a) (2) of the federal act, 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.

5. Severability

The provisions of this permit are severable and if any provision of this permit, or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit, shall not be affected thereby.

6. Penalties for Falsification of Reports

The federal 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 noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation or by imprisonment for not more than two (2) years per violation or both.