

Official Draft Public Notice Version **September 24, 2020**

The findings, determinations, and assertions contained in this document are not final and subject to change following the public comment period.

STATE OF UTAH
DIVISION OF WATER QUALITY
DEPARTMENT OF ENVIRONMENTAL QUALITY
SALT LAKE CITY, UTAH

UTAH POLLUTANT DISCHARGE ELIMINATION SYSTEM (UPDES) PERMITS

Major Industrial Permit No. **UT0023540**

In compliance with provisions of the *Utah Water Quality Act, Title 19, Chapter 5, Utah Code Annotated ("UCA") 1953, as amended* (the "Act"),

CANYON FUEL COMPANY, LLC – SKYLINE MINE

is hereby authorized to discharge from its facility to receiving waters named **Eccles Creek, UP Canyon Creek, Winter Quarters Canyon Creek, and Electric Lake** (tributaries to the Colorado River),

in accordance with specific limitations, outfalls, and other conditions set forth herein.

This permit shall become effective on **DATE/MONTH**, 2020.

This permit expires at midnight on **DATE/MONTH**, 2025.

Signed this **DATE** day of **MONTH**, 2020.

Erica Brown Gaddis, PhD
Director

DWQ-2020-008787

Table of Contents

Outline	Page Number
I. DISCHARGE LIMITATIONS AND REPORTING REQUIREMENTS.....	2
A. Description of Discharge Points	2
B. Narrative Standard	2
C. Specific Limitations and Self-Monitoring Requirements	2
D. Reporting of Monitoring Results	99
E. Storm Water Requirements	99
II. MONITORING, RECORDING & GENERAL REPORTING REQUIREMENTS	1010
A. Representative Sampling	1010
B. Monitoring Procedures.....	10
C. Penalties for Tampering.....	1010
D. Compliance Schedules.....	1010
E. Additional Monitoring by the Permittee	1010
F. Records Contents.....	1010
G. Retention of Records	10
H. Twenty-four Hour Notice of Noncompliance Reporting.....	10
I. Other Noncompliance Reporting.....	11
J. Inspection and Entry	11
III. COMPLIANCE RESPONSIBILITIES.....	1313
A. Duty to Comply	13
B. Penalties for Violations of Permit Conditions	13
C. Need to Halt or Reduce Activity not a Defense.....	13
D. Duty to Mitigate.....	13
E. Proper Operation and Maintenance.....	13
F. Removed Substances.....	13
G. Bypass of Treatment Facilities	14
H. Upset Conditions	14
I. Toxic Pollutants.....	15
J. Changes in Discharge of Toxic Substances	15
K. Industrial Pretreatment.....	1616
IV. GENERAL REQUIREMENTS.....	17
A. Planned Changes.....	17
B. Anticipated Noncompliance.....	17
C. Permit Actions	17
D. Duty to Reapply	17
E. Duty to Provide Information	17
F. Other Information.....	17
G. Signatory Requirements.....	17
H. Penalties for Falsification of Reports.....	18
I. Availability of Reports	18
J. Oil and Hazardous Substance Liability.....	18
K. Property Rights	18
L. Severability	18
M. Transfers.....	18
N. State or Federal Laws	19
O. Water Quality - Reopener Provision.....	19
P. Toxicity Limitation - Reopener Provision.....	19
V. DEFINITIONS.....	2020

DISCHARGE LIMITATIONS AND REPORTING REQUIREMENTS

- A. Description of Discharge Points. The authorization to discharge wastewater provided under this part is limited to those outfalls specifically designated below as discharge locations. Discharges at any location not authorized under a UPDES permit are violations of the *Act* and may be subject to penalties under the *Act*. Knowingly discharging from an unauthorized location or failing to report an unauthorized discharge may be subject to criminal penalties as provided under the *Act*.

<u>Outfall Number(s)</u>	<u>Location of Discharge Outfall(s)</u>
001	Located at Latitude 39°41'04", Longitude 111°12'04". Outfall from sedimentation pond and mine water discharges to Eccles Creek.
002	Located at Latitude 39°41'05", Longitude 111°09'23". Outfall from sedimentation pond at the load-out facility discharging to Eccles Creek.
003	Located at Latitude 39°43'13", Longitude 111°09'13". Outfall from sedimentation pond associated with the waste rock disposal site discharging to UP Canyon Creek.
004	Located at Latitude 39°43'13", Longitude 111°11'59". Outfall from sedimentation pond and mine water discharges to Winter Quarters Canyon Creek.
005	Located at Latitude 39°38'58", Longitude 111°14'22" as proposed. Proposed Outfall for mine water discharges into Electric Lake.

- B. Narrative Standard. It shall be unlawful, and a violation of this permit, for the permittee to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum, or other nuisances such as color, odor or taste, or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by a bioassay or other tests performed in accordance with standard procedures.

- C. Specific Limitations and Self-Monitoring Requirements.

1. Effective upon permit issuance, and lasting through the life of this permit, there shall be no chronic toxicity in Outfall(s) 001, 004 and 005 as defined in *Part VI*, and determined by test procedures described in *Part I. C.7* of this permit.

PART I
DISCHARGE PERMIT NO. UT0023540

2. Effective immediately and lasting the duration of this permit, the permittee is authorized to discharge from Outfalls 001, 002, 003, 004, and 005 as described above. Such discharges shall be limited and monitored by the permittee as specified below:

OUTFALLS 001, 002, 003, & 004

Parameter, Units	Effluent Limitations *a			
	Maximum Monthly Average	Maximum Weekly Average	Daily Minimum	Daily Maximum
Total Effluent Flow, MGD, *b	Report	--	--	Report
Total Iron, mg/L	--	--	--	1.0
Total Suspended Solids (TSS), mg/L	Report	Report	--	70
Total Dissolved Solids (TDS), mg/L, *c	Report	--	--	1,200
Total Dissolved Solids (TDS), tons/day, *c	Report	--	--	--
Dissolved Oxygen, mg/L	--	--	5.0	--
pH, Standard Units(SU)	--	--	6.5	9.0
Oil & Grease, mg/L, *d	--	--	--	10
Whole Effluent Toxicity (WET), Chronic Biomonitoring (Outfalls 001 & 004 only)	--	--	--	IC ₂₅ > 100% effluent

OUTFALL 005

Parameter, Units	Effluent Limitations *a			
	Maximum Monthly Average	Maximum Annual Average	Daily Minimum	Daily Maximum
Total Effluent Flow, MGD, *b	Report	--	--	Report
Total Iron, mg/L	--	0.38	--	0.45
Total Suspended Solids (TSS), mg/L	Report	Report	--	31
Total Dissolved Solids (TDS), mg/L, *c	Report	202	--	235
Total Dissolved Solids (TDS), tons/day, *c	Report	--	--	--
Dissolved Oxygen, mg/L	--	--	5.0	--
pH, Standard Units(SU)	--	--	6.5	9.0
Oil & Grease, mg/L, *d	--	--	--	10
Whole Effluent Toxicity (WET), Chronic Biomonitoring	--	--	--	IC ₂₅ > 100% effluent
Total & Dissolved Metals, mg/L, *e	--	Report	--	Report

MGD - million gallons per day;

mg/L - milligrams per liter

ALL OUTFALLS (Unless stated otherwise)

Self-Monitoring and Reporting Requirements *a			
Parameter	Frequency	Sample Type	Units
Total Flow, *b	Continuous/Monthly	Recorder/Measured	MGD
Total Iron	Twice Monthly	Grab	mg/L
TSS	Weekly	Grab	mg/L
TDS, *c	Twice Monthly	Grab	mg/L & tons/day
pH	Weekly	Grab	SU
Oil & Grease, *d	Weekly, Twice Monthly	Grab, Visual	mg/L, Yes/No
Turbidity, *f	Monthly	Grab	NTU
Dissolved Oxygen	Monthly	Grab	mg/L
Chronic WET Biomonitoring (Outfalls 001, 004 & 005)	Quarterly	Composite	Pass/Fail
Total & Dissolved Metals, *e (Outfalls 001, 004 & 005)	Monthly	Grab	mg/L

There shall be no visible sheen or floating solids or visible foam in other than trace amounts upon any discharges and there shall be no discharge of any sanitary wastes at any time.

*a See Permit *Part VI* for definition of terms.

*b Mine water discharges via Outfalls 001, 004 & 005 shall be continuously measured. If the rate of discharge is controlled, such as from intermittent discharging outfalls, the rate and duration of discharge shall be reported. Flow measurements of effluent volumes from all outfalls shall be made in such a manner that the permittee can affirmatively demonstrate that representative values are being obtained.

*c The TDS concentration from each of the outfalls shall not exceed the daily maximum limit. No tons per day loading limit will be applied if the concentration of TDS from each outfall is equal to or less than 500 mg/L as a thirty-day average. However, if the 30-day average concentration exceeds 500 mg/L, then the permittee cannot discharge more than 7.1 tons per day as a sum from all discharge points. Upon previous determinations by the Director, if the permittee is not able to meet the 500 mg/L 30-day average or the 7.1 tons per day loading limit, then the permittee is required to continue to participate in and/or fund a salinity offset project to include the TDS offset credits as appropriate.

The salinity-offset project shall include TDS credits on a ton-for-ton basis for which the permittee is over the 7.1 tons per day loading limit. The tonnage reduction from the offset project must be calculated by a method similar to one used by the NRCS, Colorado River Basin Salinity Control Forum, and/or other applicable agency.

A monitoring and adjustment plan to track the TDS credits shall continue to be submitted to the Director for each monthly monitoring period during the life of this permit. Any changes to the monitoring and adjustment plan must be approved by the Director and upon approval shall be appended to this permit.

- *d Weekly oil & grease sample analyses shall be conducted at outfalls 001, 004 & 005 when discharging. At outfalls 002 & 003, oil & grease monitoring shall initially be a visual test conducted at least twice per month. If any oil and/or grease sheens are observed visually, or there is any other reason to believe that oil and/or grease may be present in the discharge, then a grab sample of the effluent must be immediately taken and this sample shall not exceed 10 mg/L.
- *e Total Recoverable and Dissolved Metals includes; aluminum, arsenic, cadmium, chromium, copper, iron, lead, mercury, nickel, selenium, silver, and zinc. After the first year of metals monitoring, the permit may be reopened at any time and modified to include more protective effluent limits based upon a subsequent Reasonable Potential Analysis of all new data sets as provided.
- *f Turbidity monitoring shall be conducted monthly whenever possible from all discharging Outfalls to ensure that there is not an increase of more than 10 NTU over the receiving waters, if applicable.

3. Samples taken in compliance with the monitoring requirements specified above shall be taken at the following locations: at all outfalls prior to mixing with the receiving water.
4. Any overflow, increase in volume of a discharge or discharge from a bypass system caused by precipitation within a 24-hour period less than or equal to the 10-year, 24-hour precipitation event (or snow-melt of equivalent volume) at surface water runoff pond outfalls only may comply with the following limitation instead of the otherwise applicable limitation (for TSS) contained in Part I.C:

<u>Effluent Characteristic</u>	<u>Daily Maximum</u>
Settleable Solids	0.5 mL/L

In addition to the monitoring requirements specified under Part I.C, all effluent samples collected during storm water discharge events may also be analyzed for settleable solids. Such analyses shall be conducted by grab samples.

5. The operator shall have the burden of proof that the discharge or increase in discharge was caused by the applicable precipitation event described in Part I.D.3. The alternate limitations in Parts I.C.3 shall not apply to treatment systems that treat underground mine water only.
6. The permittee shall complete a geochemical mixing model that will be used to predict potential hydrogeochemical changes at the discharge point in Electric Lake (Outfall 005) and verify that water quality degradation will not occur. A static model that incorporates the range in individual monitoring constituents is recommended; however, a rate-kinetic model may also be utilized. The modeling results and a report describing the geochemical modeling shall be provided to the Director within one year from the date of permit issuance. Once the study has been submitted to the Director, the permit may be reopened and modified to include more protective effluent limits based upon both the study itself, as well a subsequent Reasonable Potential Analysis of all new data sets, or other relevant information as provided.

7. Chronic Whole Effluent Toxicity (WET) Testing.

1. *Whole Effluent Testing – Chronic Toxicity.*

Starting on the effective date of this permit, the permittee shall quarterly, conduct chronic static renewal toxicity tests on a composite sample of the final effluent at Outfall(s) 001, 004 & 005 when discharging. The sample shall be collected at the point of compliance before mixing with the receiving water.

Three samples are required and samples shall be collected on Monday, Wednesday and Friday of each sampling period or collected on a two day progression for each sampling period. This may be changed with Director approval.

The chronic toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms, Fourth Edition*, October 2002, EPA—821-R-02-013 as per 40 CFR 136.3(a) TABLE IA-LIST OF APPROVED BIOLOGICAL METHODS . Test species, alternating quarterly, shall consist of *Ceriodaphnia dubia* and *Pimephales promelas* (fathead minnow). A CO₂ atmosphere may be used (in conjunction with an unmodified test) in order to account for artificial pH drift, as previously authorized by the Director.

If test acceptability criteria are not met for control survival, growth, or reproduction, the test shall be considered invalid. A valid replacement test is required within the specified sampling period to remain in compliance with this permit. Chronic toxicity occurs when, during a chronic toxicity test, the 25% inhibition concentration (IC25) calculated on the basis of test organism survival and growth or survival and reproduction, is less than or equal to 100% effluent concentration. If a sample is found to be chronically toxic during a routine test, the monitoring frequency shall become biweekly (see *Accelerated Testing*). If possible, dilution water should be obtained from the receiving stream.

Quarterly test results shall be reported along with the Discharge Monitoring Report (DMR) submitted for the end of the required reporting period (e.g., biomonitoring results for the calendar quarter ending March 31 shall be reported with the DMR due April 28, with the remaining biomonitoring reports submitted with DMRs due each July 28, October 28, and January 28). Quarterly test results shall be reported along with the DMR submitted for that month. The format for the report shall be consistent with Appendix C of “Utah Pollutant Discharge Elimination System (UPDES) Permitting and Enforcement Guidance Document for Whole Effluent Toxicity, Utah Division of Water Quality, February, 2018.

If the results for ten consecutive tests indicate no chronic toxicity, the permittee may submit a request to the Director to allow a reduction in chronic toxicity testing by alternating species, or using only the most sensitive species. The permit issuing authority may approve or deny the request based on the results and other available information without public notice. If the request is approved, the test procedures are to be the same as specified above for the test species. Under no circumstances shall monitoring for WET at major facilities be reduced less than quarterly. Minor facilities may be less than quarterly at the discretion of the Director.

2. *Accelerated Testing.* When whole effluent toxicity is indicated during routine WET testing as specified in this permit, the permittee shall notify the Director in writing within 5 days after becoming aware of the test result. The permittee shall

perform an accelerated schedule of WET testing to establish whether a pattern of toxicity exists unless the permittee notifies the Director and commences a PTI, TIE, or a TRE. Accelerated testing or the PTI, TIE, or TRE will begin within fourteen days after the permittee becomes aware of the test result. Accelerated testing shall be conducted as specified under Part I. Pattern of Toxicity. If the accelerated testing demonstrates no pattern of toxicity, routine monitoring shall be resumed.

3. *Pattern of Toxicity.* A pattern of toxicity is defined by the results of a series of up to five biomonitoring tests pursuant to the accelerated testing requirements using a full set of dilutions for acute (five plus the control) and five effluent dilutions for chronic (five plus the control), on the species found to be more sensitive, once every week for up to five consecutive weeks for acute and once every two weeks up to ten consecutive weeks for chronic.

If two (2) consecutive tests (not including the scheduled test which triggered the search for a pattern of toxicity) do not result in an exceedance of the acute or chronic toxicity criteria, no further accelerated testing will be required and no pattern of toxicity will be found to exist. The permittee will provide written verification to the Director within 5 days of determining no pattern of toxicity exists, and resume routine monitoring.

A pattern of toxicity may or may not be established based on the following:

WET tests should be run at least weekly (acute) or every two weeks (chronic) (note that only one test should be run at a time), for up to 5 tests, until either:

- 1) 2 consecutive tests fail, or 3 out of 5 tests fail, at which point a pattern of toxicity will have been identified, or
- 2) 2 consecutive tests pass, or 3 out of 5 tests pass, in which case no pattern of toxicity is identified.

4. *Preliminary Toxicity Investigation.*

- a. When a pattern of toxicity is detected the permittee will notify the Director in writing within 5 days and begin an evaluation of the possible causes of the toxicity. The permittee will have 15 working days from demonstration of the pattern of toxicity to complete an optional Preliminary Toxicity Investigation (PTI) and submit a written report of the results to the Director. The PTI may include, but is not limited to: additional chemical and biological monitoring, examination of pretreatment program records, examination of discharge monitoring reports, a thorough review of the testing protocol, evaluation of treatment processes and chemical use, inspection of material storage and transfer areas to determine if any spill may have occurred.
- b. If the PTI identifies a probable toxicant and/or a probable source of toxicity, the permittee shall submit, as part of its final results, written notification of that effect to the Director. Within thirty days of completing the PTI the permittee shall submit to the Director for approval a control program to control effluent toxicity and shall proceed to implement such plan in accordance with the Director's approval. The control program, as submitted to or revised by the Director, will be incorporated into the permit. After final implementation, the permittee must demonstrate successful removal of toxicity by passing a two species WET test as outlined in this permit. With adequate justification, the Director may extend these deadlines.

- c. If no probable explanation for toxicity is identified in the PTI, the permittee shall notify the Director as part of its final report, along with a schedule for conducting a Phase I Toxicity Reduction Evaluation (TRE) (see Part I.C.3.e, Toxicity Reduction Evaluation).
 - d. If toxicity spontaneously disappears during the PTI, the permittee shall submit written notification to that effect to the Director, with supporting testing evidence.
5. *Toxicity Reduction Evaluation (TRE)*. If a pattern of toxicity is detected the permittee shall initiate a TIE/TRE within 7 days unless the Director has accepted the decision to complete a PTI. With adequate justification, the Director may extend the 7-day deadline. The purpose of the TIE portion of a TRE will be to establish the cause of the toxicity, locate the source(s) of the toxicity, and the TRE will control or provide treatment for the toxicity. A TRE may include but is not limited to one, all, or a combination of the following:
- a. Phase I – Toxicity Characterization
 - b. Phase II – Toxicity Identification Procedures
 - c. Phase III – Toxicity Control Procedures
 - d. Any other appropriate procedures for toxicity source elimination and control.

If the TRE establishes that the toxicity cannot be immediately eliminated, the permittee shall submit a proposed compliance plan to the Director. The plan shall include the proposed approach to control toxicity and a proposed compliance schedule for achieving control. If the approach and schedule are acceptable to the Director, this permit may be reopened and modified.

If toxicity spontaneously disappears during the TIE/TRE, the permittee shall submit written notification to that effect to the Director.

If the TRE shows that the toxicity is caused by a toxicant(s) that may be controlled with specific numerical limitations, the permittee shall submit the following:

- i. An alternative control program for compliance with the numerical requirements.
- ii. If necessary, as determined by the Director, provide a modified biomonitoring protocol which compensates for the pollutant(s) being controlled numerically.

This permit may be reopened and modified to incorporate any additional numerical limitations, a modified compliance schedule if judged necessary by the Director, and/or modified WET testing requirements without public notice.

Failure to conduct an adequate TIE/TRE plan or program as described above, or the submittal of a plan or program judged inadequate by the Director, shall be considered a violation of this permit. After implementation of TIE/TRE plan, the permittee must demonstrate successful removal of toxicity by passing a two species WET test as outlined in this permit.

- D. Reporting of Monitoring Results. Monitoring results obtained during the previous month shall be summarized for each month and reported on a Discharge Monitoring Report Form (EPA No. 3320-1)* or by NetDMR, post-marked or entered into NetDMR no later than the 28th day of the month following the completed reporting period. If no discharge occurs during the reporting period, “no discharge” shall be reported. Legible copies of these, and all other reports including whole effluent toxicity (WET) test reports required herein, shall be signed and certified in accordance with the requirements of *Signatory Requirements (see Part IV.G)*, and submitted by NetDMR, or to the Division of Water Quality at the following address:

Department of Environmental Quality
Division of Water Quality
PO Box 144870
Salt Lake City, Utah 84114-4870

- E. Storm Water Requirements.

1. Industrial Storm Water Permit. Based on the type of industrial activities occurring at the facility, the permittee is required to maintain separate coverage or an appropriate exclusion under the Multi-Sector General Permit (MSGP) for Storm Water Discharges Associated with Industrial Activities (UTR000000). If the facility is not already covered, it has 30 days from when this permit is issued to submit the appropriate Notice of Intent (NOI) for the MSGP or exclusion documentation.
2. Construction Storm Water Permit. Any non-mining construction at the facility that disturbs an acre or more of land, including less than an acre if it is part of a common plan of development or sale, is required to obtain coverage under the UPDES Construction General Storm Water Permit (UTRC00000). Non-mining construction is not related to the excavation of material for the purposes of mining, and typically includes construction of parking lots, buildings, paved or permanent roads, utilities, etc. Permit coverage must be obtained prior to land disturbance. If the site qualifies, a Low Erosivity Waiver (LEW) Certification may be submitted instead of permit coverage.

* Starting January 1, 2017 monitoring results must be submitted using NetDMR unless the permittee has successfully petitioned for an exception.

II. MONITORING, RECORDING & GENERAL REPORTING REQUIREMENTS

- A. Representative Sampling. Samples taken in compliance with the monitoring requirements established under *Part I* shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.
- B. Monitoring Procedures. Monitoring must be conducted according to test procedures approved under *Utah Administrative Code ("UAC") R317-2-10 and 40CFR Part 503*, unless other test procedures have been specified in this permit.
- C. Penalties for Tampering. The *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 per violation, or by imprisonment for not more than six months per violation, or by both.
- D. Compliance Schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any Compliance Schedule of this permit shall be submitted no later than 14 days following each schedule date.
- E. Additional Monitoring by the Permittee. If the permittee monitors any parameter more frequently than required by this permit, using test procedures approved under *UAC R317-2-10 and 40 CFR 503* or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated. Only those parameters required by the permit need to be reported.
- F. Records Contents. Records of monitoring information shall include:
1. The date, exact place, and time of sampling or measurements;
 2. The individual(s) who performed the sampling or measurements;
 3. The date(s) and time(s) analyses were performed;
 4. The individual(s) who performed the analyses;
 5. The analytical techniques or methods used; and,
 6. The results of such analyses.
- G. Retention of Records. 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 five years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time. A copy of this UPDES permit must be maintained on site during the duration of activity at the permitted location
- H. Twenty-four Hour Notice of Noncompliance Reporting.
1. The permittee shall (orally) report any noncompliance including transportation accidents, spills, and uncontrolled runoff from biosolids transfer or land application sites which may seriously endanger health or environment, as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of circumstances. The report shall be made to the Division of Water Quality, (801) 536-4300, or 24-hour answering service (801) 536-4123.

PART II
DISCHARGE PERMIT NO. UT0023540

2. The following occurrences of noncompliance shall be reported by telephone (801) 536-4300 as soon as possible but no later than 24 hours from the time the permittee becomes aware of the circumstances:
 - a. Any noncompliance which may endanger health or the environment;
 - b. Any unanticipated bypass, which exceeds any effluent limitation in the permit (See *Part III.G, Bypass of Treatment Facilities.*);
 - c. Any upset which exceeds any effluent limitation in the permit (See *Part III.H, Upset Conditions.*); or,
 - d. Violation of a daily discharge limitation for any of the pollutants listed in the permit.
3. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times;
 - c. The estimated time noncompliance is expected to continue if it has not been corrected;
 - d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; and,
 - e. Steps taken, if any, to mitigate the adverse impacts on the environment and human health during the noncompliance period.
4. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Division of Water Quality, (801) 536-4300.
5. Reports shall be submitted to the addresses in *Part I.D, Reporting of Monitoring Results.*
- I. Other Noncompliance Reporting. Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for *Part I.D* are submitted. The reports shall contain the information listed in *Part II.H.3*
- J. Inspection and Entry The permittee shall allow the Director, or an authorized representative, upon the 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 the 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, including but not limited to, biosolids treatment, collection, storage facilities or area, transport vehicles and containers, and land application sites;

PART II
DISCHARGE PERMIT NO. UT0023540

4. 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, including, but not limited to, any ground or surface waters at the permitted sites; and,
5. The permittee shall make the necessary arrangements with the landowner or leaseholder to obtain permission or clearance so that the Director, or authorized representative, upon the presentation of credentials and other documents as may be required by law will be permitted to enter without delay for the purposes of performing their responsibilities.

PN DRAFT

III. COMPLIANCE RESPONSIBILITIES

- A. 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; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. 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.
- B. Penalties for Violations of Permit Conditions. The Act provides that any person who violates a permit condition implementing provisions of the Act is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions or the Act is subject to a fine not exceeding \$25,000 per day of violation. Any person convicted under UCA 19-5-115(2) a second time shall be punished by a fine not exceeding \$50,000 per day. Except as provided at Part III.G, *Bypass of Treatment Facilities* and Part III.H, *Upset Conditions*, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.
- C. 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.
- D. 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. The permittee shall also take all reasonable steps to minimize or prevent any land application in violation of this permit.
- E. 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 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.
- F. Removed Substances. Collected screening, grit, solids, sludge, or other pollutants removed in the course of treatment shall be disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard.
- G. Bypass of Treatment Facilities.
1. 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 paragraph 2 and 3 of this section.
 2. Prohibition of Bypass.
 - a. Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

PART III
DISCHARGE PERMIT NO. UT0023540

- (1) Bypass was unavoidable to prevent loss of human life, personal injury, or severe property damage;
 - (2) There were no feasible alternatives to 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 backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance, and
 - (3) The permittee submitted notices as required under *section III.G.3*.
- b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in *sections III.G.2.a (1), (2) and (3)*.
3. Notice.
- a. *Anticipated bypass.* Except as provided above in *section III.G.2* and below in *section III.G.3.b*, if the permittee knows in advance of the need for a bypass, it shall submit prior notice, at least ninety days before the date of bypass. The prior notice shall include the following unless otherwise waived by the Director:
 - (1) Evaluation of alternative to bypass, including cost-benefit analysis containing an assessment of anticipated resource damages;
 - (2) A specific bypass plan describing the work to be performed including scheduled dates and times. The permittee must notify the Director in advance of any changes to the bypass schedule;
 - (3) Description of specific measures to be taken to minimize environmental and public health impacts;
 - (4) A notification plan sufficient to alert all downstream users, the public and others reasonably expected to be impacted by the bypass;
 - (5) A water quality assessment plan to include sufficient monitoring of the receiving water before, during and following the bypass to enable evaluation of public health risks and environmental impacts; and,
 - (6) Any additional information requested by the Director.
 - b. *Emergency Bypass.* Where ninety days advance notice is not possible, the permittee must notify the Director, and the Director of the Department of Natural Resources, as soon as it becomes aware of the need to bypass and provide to the Director the information in *section III.G.3.a.(1) through (6)* to the extent practicable.
 - c. *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass to the Director as required under *Part II.H*, Twenty Four Hour Reporting. The permittee shall also immediately notify the Director of the Department of Natural

PART III
DISCHARGE PERMIT NO. UT0023540

Resources, the public and downstream users and shall implement measures to minimize impacts to public health and environment to the extent practicable.

H. Upset Conditions.

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of paragraph 2 of this section are met. Director's administrative determination regarding a claim of upset cannot be judiciously challenged by the permittee until such time as an action is initiated for noncompliance.
 2. 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:
 - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required under *Part II.H, Twenty-four Hour Notice of Noncompliance Reporting*; and,
 - d. The permittee complied with any remedial measures required under *Part III.D, Duty to Mitigate*.
 3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.
- I. Toxic Pollutants. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of *The Water Quality Act of 1987* 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.
- J. Changes in Discharge of Toxic Substances. Notification shall be provided to the Director as soon as the permittee knows of, or has reason to believe:
1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - a. One hundred micrograms per liter (100 ug/L);
 - b. 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;
 - c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with *UAC R317-8-3.4(7)* or (10); or,
 - d. The level established by the Director in accordance with *UAC R317-8-4.2(6)*.

PART III
DISCHARGE PERMIT NO. UT0023540

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - a. Five hundred micrograms per liter (500 ug/L);
 - b. One milligram per liter (1 mg/L) for antimony;
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with *UAC R317-8-3.4(9)*; or,
 - d. The level established by the Director in accordance with *UAC R317-8-4.2(6)*.
- K. Industrial Pretreatment Requirements.
1. Definition

POTW or publicly owned treatment works means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.
 2. Discharges to a POTW

Any process wastewater that the facility may discharge to the sanitary sewer, either as direct discharge or as a hauled waste, is subject to federal, state and local pretreatment regulations. Pursuant to Section 307 of the Clean Water Act, the permittee shall comply with all applicable Federal General Pretreatment Regulations promulgated, found in *40 CFR Part 403*, the State Pretreatment Requirements found in *UAC R317-8-8*, and any specific local discharge limitations developed by the Publicly Owned Treatment Works (POTW) accepting the waste.
 3. Hazardous Waste Requirements.

In accordance with *40 CFR Part 403.12(p)(1)*, the permittee must notify the POTW, the EPA Regional Waste Management Director, and the State hazardous waste authorities, in writing, if they discharge any substance into a POTW which if otherwise disposed of would be considered a hazardous waste under *40 CFR Part 261*. This notification must include the name of the hazardous waste, the EPA hazardous waste number, and the type of discharge (continuous or batch).
 4. Hauled Hazardous Waste.

Hauled hazardous waste shall not be discharged to a POTW without notification to the Division of Water Quality.

IV. GENERAL REQUIREMENTS

- A. 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 the alteration or addition could significantly change the nature or increase the quantity of parameters discharged or pollutant sold or given away. This notification applies to pollutants, which are not subject to effluent limitations in the permit. In addition, if there are any planned substantial changes to the permittee's existing sludge facilities or their manner of operation or to current sludge management practices of storage and disposal, the permittee shall give notice to the Director of any planned changes at least 30 days prior to their implementation.
- B. 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.
- C. 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.
- D. Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit.
- E. 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.
- F. 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 Director, it shall promptly submit such facts or information.
- G. Signatory Requirements. All applications, reports or information submitted to the Director shall be signed and certified.
1. All permit applications shall be signed by either a principal executive officer or ranking elected official.
 2. All reports required by the permit and other information requested by the Director 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:
 - a. The authorization is made in writing by a person described above and submitted to the Director, and,
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position

PART IV
DISCHARGE PERMIT NO. UT0023540

having overall responsibility for environmental matters. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

3. Changes to authorization. If an authorization under *paragraph IV.G.2* 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 IV.G.2* must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. Certification. 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."
- H. Penalties for Falsification of Reports. The *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 \$10,000.00 per violation, or by imprisonment for not more than six months per violation, or by both.
- I. Availability of Reports. Except for data determined to be confidential under *UAC R317-8-3.2*, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of Director. As required by the *Act*, permit applications, permits and effluent data shall not be considered confidential.
- J. Oil and Hazardous Substance Liability. Nothing in this permit shall be construed to preclude the permittee of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under the *Act*.
- K. Property Rights. The issuance of this permit does not convey any property rights of any sort, 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.
- L. Severability. The provisions of this permit are severable, and if any provisions 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.
- M. Transfers. This permit may be automatically transferred to a new permittee if:
 1. The current permittee notifies the Director at least 20 days in advance of the proposed transfer date;

PART IV
DISCHARGE PERMIT NO. UT0023540

2. The notice includes a written agreement between the existing and new permittee's containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,
 3. The Director does not notify the existing permittee and the proposed new permittee of his or her 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 mentioned in paragraph 2 above.
- N. State or Federal 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 law or regulation under authority preserved by *UCA 19-5-117* and *Section 510* of the *Act* or any applicable Federal or State transportation regulations, such as but not limited to the Department of Transportation regulations.
- O. Water Quality - Reopener Provision. This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations and compliance schedule, if necessary, if one or more of the following events occurs:
1. Water Quality Standards for 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.
 2. A final wasteload allocation is developed and approved by the State and/or EPA for incorporation in this permit.
 3. Revisions to the current CWA § 208 areawide treatment management plans or promulgations/revisions to TMDLs (40 CFR 130.7) approved by the EPA and adopted by DWQ which calls for different effluent limitations than contained in this permit.
- P. Toxicity Limitation - Reopener Provision. This permit may be reopened and modified (following proper administrative procedures) to include, whole effluent toxicity (WET) limitations, a compliance date, a compliance schedule, a change in the whole effluent toxicity (biomonitoring) protocol, additional or modified numerical limitations, or any other conditions related to the control of toxicants if one or more of the following events occur;
4. Toxicity is detected, as per *Part I.C.* of this permit, during the duration of this permit.
 5. The TRE results indicate that the toxicant(s) represent pollutant(s) or pollutant parameter(s) that may be controlled with specific numerical limits and the Director concludes that numerical controls are appropriate.
 6. Following the implementation of numerical control(s) of toxicant(s), the Director agrees that a modified biomonitoring protocol is necessary to compensate for those toxicants that are controlled numerically.
 7. The TRE reveals other unique conditions or characteristics, which in the opinion of the permit issuing authority justify the incorporation of unanticipated special conditions in the permit.

V. DEFINITIONS

A. Wastewater.

1. The "7-day (and weekly) average" is the arithmetic average of all samples collected during a consecutive 7-day period or calendar week, whichever is applicable. The 7-day and weekly averages are applicable only to those effluent characteristics for which there are 7-day average effluent limitations. The calendar week, which begins on Sunday and ends on Saturday, shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms. Weekly averages shall be calculated for all calendar weeks with Saturdays in the month. If a calendar week overlaps two months (i.e., the Sunday is in one month and the Saturday in the following month), the weekly average calculated for that calendar week shall be included in the data for the month that contains Saturday.
2. The "30-day (and monthly) average" is the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.
3. "Act," means the *Utah Water Quality Act*.
4. "Bypass," means the diversion of waste streams from any portion of a treatment facility.
5. "Chronic toxicity" occurs when the $IC_{25} > 100\%$ effluent. The 100% effluent is the concentration of the effluent in the receiving water, at the end of the mixing zone expressed as percent effluent.
6. " IC_{25} " is the concentration of toxicant (given in % effluent) that would cause a 25% reduction in mean young per female, or a 25% reduction in overall growth for the test population.
7. "Composite Samples" shall be flow proportioned. The composite sample shall, as a minimum, contain at least four (4) samples collected over the compositing period. Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six (6) hours nor more than 24 hours. Acceptable methods for preparation of composite samples are as follows:
 - a. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;
 - b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;
 - c. Constant sample volume, time interval between samples proportional to flow (i.e., sample taken every "X" gallons of flow); and,
 - d. Continuous sample volume, with sample collection rate proportional to flow rate.

PART V
DISCHARGE PERMIT NO. UT0023540

8. "CWA," means *The Federal Water Pollution Control Act*, as amended, by *The Clean Water Act of 1987*.
9. "Daily Maximum" (Daily Max.) is the maximum value allowable in any single sample or instantaneous measurement.
10. "Daily Minimum" ("Daily Min.") is the minimum value allowable in any single sample or instantaneous measurement.
11. "EPA," means the United States Environmental Protection Agency.
12. "Director," means Director of the Division of Water Quality.
13. A "grab" sample, for monitoring requirements, is defined as a single "dip and take" sample collected at a representative point in the discharge stream.
14. An "instantaneous" measurement, for monitoring requirements, is defined as a single reading, observation, or measurement.
15. "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.
16. "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 preventative maintenance, or careless or improper operation.