



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

NOTICE OF APPEAL FORM
APPEAL INFORMATION

1. Name, address, telephone number, and email address (if available) of Appellant:

Food & Water Watch
1616 P St. NW, Suite 300
Washington, DC 20036
(202) 683-2457
theinzen@fwwatch.org

2. Describe the subject of your appeal:

(a) What action of the Department do you seek review?

(NOTE: If you received written notification of the action, you must attach a copy of the action to this form.)

Authorization ID No. 1142712, issuance of the final national pollutant discharge elimination system (NPDES) permit for PA0009911, Michael Foods Egg Products.

(b) Which Department official took the action?

Bharat Patel, P.E., Environmental Program Manager, Clean Water Program

(c) What is the location of the operation or activity which is the subject of the Department's action (municipality, county)?

Upper Mahantango Township, Schuylkill County

(d) How, and on what date, did you receive notice of the Department's action?

Via U.S. mail on approximately January 3, 2017 and via publication in the Pennsylvania Bulletin on January 14, 2017.

3. Describe your objections to the Department's action in separate, numbered paragraphs.

(NOTE: The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets, if necessary.)

(1) NPDES Permit No. PA0009911 (the Permit) authorizes Michael Foods to engage in water pollution trading that is not authorized under the federal Clean Water Act



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- (CWA). The CWA provides no authority for offsets or trading of pollutants. The CWA establishes detailed programs to clean up impaired waters, by requiring states to identify impaired waters and issue total maximum daily loads (TMDLs), point source wasteload allocations (WLAs), and nonpoint source load allocations (LAs) through a public process. Once WLAs are assigned and incorporated into NPDES permits, dischargers must comply with their own permit limits. The Permit impermissibly allows Michael Foods to purchase pollution credits in lieu of limiting its discharges to comply with its assigned WLA.
- (2) The Permit impermissibly establishes “net” Nitrogen and Phosphorus limits, rather than establishing the required water quality based effluent limits (WQBELs). The net limits in the Permit do not meet the definition of effluent limits, which are restrictions on discharges from point sources themselves. The net limits in the Permit do nothing to restrict or limit Michael Foods’ point source discharges; they only impose a cost for discharges above a certain limit, by authorizing the purchase of pollution reductions derived from other, yet-unknown sources.
- (3) The Permit as issued violates the CWA because Michael Foods has been assigned Nitrogen and Phosphorus WLAs under the TMDL for the Chesapeake Bay, and the Permit does not impose those WLAs as effluent limitations, in violation of 40 CFR 122.44(d)(1)(vii)(B).
- (4) Even if the CWA did authorize pollution trading, the Permit is still unlawful because it does not ensure the authorized trading will not lead to violations of local WQS, including those for nitrate, dissolved oxygen, and aquatic life. The CWA and EPA’s regulations prohibit DEP from issuing a NPDES permit that would cause or contribute to violations of WQS. 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. § 122.44(d). This necessarily requires the establishment of geographic limitations on pollution trades to ensure that credit purchasers’ discharges do not lead to WQS violations. The Permit does not require all trading credits to be generated in the same stream segment as the discharge, and the Permit and Fact Sheet did not demonstrate that DEQ conducted an adequate analysis of receiving water quality to show that discharges in excess of net permit limits will not cause or contribute to WQS violations. This violates federal and state law.
- (5) For similar reasons, the Permit violates the CWA’s antidegradation provisions, which provide that “[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” 40 C.F.R. § 131.12(a)(1). The Permit Fact Sheet does not indicate that DEP undertook an antidegradation analysis to review the trading provisions’ potential impacts on existing uses in the receiving streams, which may be broader than the designated uses. Without a limit on nitrogen and phosphorus discharges from the facility, or assurance that adequate credits from the same stream segment will be available for purchase, DEP cannot ensure that the Permit will protect all existing uses in the receiving water.



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- (6) The Permit lacks any technology-based limits for nitrogen or phosphorus, in violation of the federal requirement to establish best professional judgment (BPJ) limits for pollutants not limited by EPA's Effluent Limitation Guidelines (ELGs) for Michael Foods' industry sector. Such technology-based limits are the minimum level of water quality protection required by the CWA, 40 C.F.R. § 122.44, and must reflect the best available technology. These BPJ limits are required even if the applicable ELGs do not establish limits for particular pollutants, and even if the Permit separately includes WQBELs for those pollutants.
 - (7) DEP's approach to setting WQBELs as net limits subject to credit purchases also violates the CWA's public participation requirements, which provide that citizens have the right to participate in the "development, revision, and enforcement of . . . [an] effluent limitation." 33 U.S.C. § 1251(e). The CWA also affords the public the right to enforce NPDES permit limit violations. 33 U.S.C. § 1365(a)(1). Michael Foods' compliance with its Permit limits is contingent on nutrient credit purchases, so information relevant to the credits generated, including the practices implemented, verification plans, and demonstrations of compliance, must be subject to the CWA's public participation requirements and the credit sources must be determined before the Permit is issued.
 - (8) The Permit violates the CWA by authorizing Michael Foods to meet its Outfall 001 Nitrogen and Phosphorus limits through the use of "offsets" created through other activities. The CWA does not authorize this "bubble permit" approach, either when offsets are created within a facility and applied to a separate point source outfall, or when they are created by other "facilities owned by the same entity." Permit Part C.I.D.4.
 - (9) The Permit violates Article 1, Section 27 of Pennsylvania's Constitution, which establishes a constitutional right to pure water and the preservation of the environment. Due to its trading provisions, the Permit fails to impose any actual standard for, or limit on, Michael Foods' discharges of pollution into public waterways. The Permit therefore "does not provide any ascertainable standards by which public natural resources are to be protected." *Robinson Township v. Commonwealth of Pa.*, 623 Pa. 564, 698 (2013).
4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

N/A

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PROOF OF SERVICE

In addition to filing this form with the Environmental Hearing Board, the Appellant *must* certify, by indicating below, how the Notice of Appeal was served on the Department under numbers (1) and (2) below, and where applicable, upon other interested parties indicated by numbers (3) and (4). Failure to do so may result in dismissal of your appeal. Please check the box indicating the method by which you served the following:

- (1) Department of Environmental Protection
Office of Chief Counsel
Attn: April Hain
16th Flr. Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464
- via*
- ☐ first class mail, postage pre-paid
☐ overnight delivery
☐ personal delivery
☒ electronic filing

AND

- (2) The officer of the Department
who took the action being
appealed.
- via*
- ☐ first class mail, postage pre-paid
☐ overnight delivery
☐ personal delivery
☒ electronic filing

Note to Attorneys who *electronically* file a Notice of Appeal: A copy is automatically served on the Department's Office of Chief Counsel and the officer who took the action being appealed. There is no need for you to independently serve the Department.

Additionally, if your appeal is from the Department of Environmental Protection's issuance of a permit, license, approval, or certification to another person, you *must* serve the following, as applicable:

- (3) The entity to whom the permit,
license, approval, or
certification was issued.
- via*
- ☐ first class mail, postage pre-paid
☐ overnight delivery
☐ personal delivery

AND

- (4) Where applicable, any of the following:
- ☐ Any affected municipality, its municipal authority, and the proponent of the decision, where applicable, in appeals involving a decision under Sections 5 or 7 of the Sewage Facilities Act, 35 P.S. §§ 750.5, 750.7;
 - ☐ The mining company in appeals involving a claim of subsidence damage or water loss under the Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. § 1406.1 et seq.;
 - ☐ The well operator in appeals involving a claim of pollution or diminution of a water supply under Section 3218 of the Oil and Gas Act, 58 Pa.C.S. § 3218;
 - ☐ The owner or operator of a storage tank in appeals involving a claim of an affected water supply under Section 1303 of the Storage Tank and Spill Prevention Act, 35 P.S. § 6021.1303.

NOTICE OF APPEAL FORM

SIGNATURE PAGE

By filing this Notice of Appeal with the Environmental Hearing Board, I hereby certify that the information submitted is true and correct to the best of my information and belief. Additionally, I certify that a copy of this Notice of Appeal was served upon each of the individuals indicated on Page 2 of this form on the following date: 2/10/17.

/s/ Kenneth T. Kristl (PA Bar #207825)
Signature of Appellant or Appellant's Counsel

Date: 2/10/17

If you have authorized counsel to represent you, please supply the following information (*Corporations must be represented by counsel*):

Kenneth T. Kristl (PA Bar #207825)
Attorney Name (Type or Print)

Environmental & Natural Resources Law Clinic

4601 Concord Pike

Wilmington, DE 19803
Address

Telephone No.: (302) 477-2053

Email: ktkristl@widener.edu

TDD users please contact the Pennsylvania Relay Service at 1-800-654-5984. If you require an accommodation or this information in an alternative form, please contact the Secretary to the Board at 717-787-3483.



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

December 29, 2019

CERTIFIED MAIL NO. 7016 2140 0000 5700 3024

Shane Menefee
Papettis Hygrade Egg Products Inc.
68 Spain Road
Klingerstown, PA 17941-9656

Re: Final NPDES Permit- Industrial Waste
Michael Foods Egg Products
NPDES Permit No. PA0009911
Authorization ID No. 1142712
Upper Mahantango Township, Schuylkill County

Dear Mr. Menefee:

Your NPDES permit is enclosed. Please read the permit carefully. The permit expires on the date identified on page 1 of the permit. A renewal application must be submitted to this office 180 days prior to the permit expiration date, if a discharge is expected to continue past the expiration date of the permit.

The permit requires that you use the Department of Environmental Protection's (DEP's) electronic Discharge Monitoring Report (eDMR) system to report the results of self-monitoring activities. The information you must submit within 30 days to register for use of the eDMR system is available at www.dep.state.pa.us/edmr. DEP has also enclosed paper DMR templates and DMR instructions with the permit. It is recommended that you retain the DMR templates in the event you are unable to submit DMRs electronically through the eDMR system.

Also enclosed is a Supplemental Form Inventory, which identifies the forms that are attached to the permit and must be submitted as attachments to eDMR reports, as applicable (see individual form instructions). The submission of other supplemental forms may be required in accordance with the permit. We encourage you to use the spreadsheet versions of supplemental forms that contain appropriate validation and DEP-approved calculations.

Comments (see attachment) dated October 31, 2016 were received by Tarah Heinzen, Staff Attorney, Food & Water Watch, 1616 P St. NW, Suite 300, Washington, DC 20036 to DEP's draft permit which was published Saturday, October 1, 2016 in the Pa Bulletin.

The following five responses are offered to the respective five objections:

I. The Clean Water Act does not Authorize Pollution Trading

DEP's Response:

Nutrient trading is an accepted concept by EPA and is allowed by EPA to address total load impairments in the Chesapeake Bay.

II. PA DEP Lacks Authority to Establish "Net" Nitrogen and Phosphorus Limits

DEP's Response:

The net effluent limits are imposed to allocate loading allowances to the downstream impaired Chesapeake Bay. The net effluent limits are not designed to protect water quality in the immediate vicinity of the discharge, miles upstream of the Chesapeake Bay.

III. The Draft Permit Will Likely Lead to Water Quality Standards Violations and Antidegradation Violations

DEP's Response:

Nutrient trading is an accepted concept by EPA to limit degradation in the Chesapeake Bay. The issuance of the NPDES permit and its associated conditions is not expected to cause or contribute to violations of the WQS either by this individual discharge or in aggregate with other discharges.

IV. DEP Must Establish Best Professional Judgment Limits for Nitrogen and Phosphorus

DEP's Response:

The inclusion of nutrient limits as implemented through the Watershed Implementation Plan (WIP) satisfies the Best Professional Judgment (BPJ) requirement to protect the Chesapeake Bay.

V. The Draft Permit Violates the CWA's Public Participation Requirements

DEP's Response:

Nutrient trading is an accepted concept by EPA and is allowed by EPA to address total load impairments in the Chesapeake Bay. All trades and transfers are available for public review on the PA DEP website.



Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717.787.3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800.654.5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717.787.3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717.787.3483) FOR MORE INFORMATION.

If you have any questions, please contact Bernard Feist at 570.830.3088.

Sincerely,



Bharat Patel, P.E.
Environmental Program Manager
Clean Water Program

Enclosures

cc: U.S. Environmental Protection Agency
Food & Water Watch - Tarah Heinzen
K L Fulford Associates Inc.
Central Office, Division of Operations, Monitoring and Data Systems
Monitoring & Compliance Section
File

October 31, 2016

Amy Bellanca, P.E.
Environmental Engineer Manager
Pennsylvania Department of Environmental Protection
Northeast Regional Office
2 Public Square
Wilkes-Barre, PA 18701

Via email to Amy Bellanca, abellanca@pa.gov

**Re: Food & Water Watch Comments on the Michael Foods Egg Products NPDES
Permit Renewal, PA0009911**

Dear Ms. Bellanca:

Thank you for the opportunity to comment on the draft National Pollutant Discharge Elimination System (NPDES) permit renewal for Michael Foods Egg Products (Draft Permit). Food & Water Watch (FWW) is a national membership organization that works to ensure safe food and clean water, advocating for safe, wholesome food produced in a humane and sustainable manner and the public, rather than private, control of water resources, including oceans, rivers, and groundwater. FWW submits these comments on behalf of the organization and our members, including our more than 60,000 members and supporters in Pennsylvania.

FWW opposes the continuation of the nutrient trading approach proposed for Michael Foods' annual nitrogen and phosphorus limits, particularly considering this facility is one of just thirty significant industrial dischargers in Pennsylvania with individual wasteload allocations (WLAs) in the Chesapeake Bay Total Maximum Daily Load (TMDL).¹ We are also concerned that DEP's failure to establish best professional judgment (BPJ) permit limits for nitrogen and phosphorus will exacerbate the threat posed by pollution trading. These deficiencies in the Draft Permit threaten local water quality and the Chesapeake Bay, and fall short of what the federal Clean Water Act (CWA) requires.

I. The Clean Water Act does not Authorize Pollution Trading

As an initial matter, the CWA does not authorize nutrient or other pollution trading under any circumstances. The statute is silent as to pollution trading, which is not surprising considering the CWA's intent and purpose is to "restore and maintain the chemical, physical, and biological integrity of the nation's waters" by eventually eliminating all discharges of pollutants to waters of the United States.² The CWA is simply not a cap and trade program, and provides no

¹ Pa. Dep't of Env'tl. Prot., Phase 2 WIP Wastewater Supplement T. 7-2, 7-4 (revised Oct. 14, 2016), http://files.dep.state.pa.us/water/Wastewater%20Management/EDMRPortalFiles/Phase_2_WIP_Supplement.pdf.

² 33 U.S.C. § 1251.

authority for offsets or trading of pollutants. EPA's Water Quality Trading Policy³ also fails to point to any statutory authority to use pollution trading as a means to attaining water quality standards (WQS).

To the contrary, the CWA establishes detailed programs to clean up impaired waters, by requiring states to identify impaired waters and issue TMDLs, point source WLAs, and nonpoint source load allocations (LAs) through a public process. EPA's regulations make clear that the flexibility for "tradeoffs" between point and nonpoint sources only exists in the TMDL process itself; WLAs may only be made less stringent if a TMDL process concurrently assigns more stringent LAs to nonpoint sources.⁴ Once WLAs are assigned and incorporated into NPDES permits, dischargers must comply with their own permit limits.

Moreover, pollution trading is fundamentally at odds with the CWA because it circumvents the CWA's technology-forcing principles. By allowing permit-holders who buy credits to exceed their permit limits, as well as by allowing permit holders who sell credits to surpass their permit's requirements without triggering more stringent permit limits, trading creates a disincentive to the technological innovation underlying the statute's goal of continually reducing point source pollution.

II. PA DEP Lacks Authority to Establish "Net" Nitrogen and Phosphorus Limits

Not only is trading generally unauthorized under the CWA, but DEP also lacks authority to replace firm water quality based effluent limits (WQBELs) with "net" limits for nitrogen and phosphorus. In fact, the Draft Permit altogether lacks required WQBELs, because the net limits in the Draft Permit do not meet the definition of effluent limits. Effluent limitations are defined as "any restriction . . . on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged *from point sources* . . ."⁵ (emphasis added). The net limits in the Draft Permit do nothing to restrict or limit Michael Foods' point source discharges; they only impose a cost for discharges above a certain limit, ostensibly for the purchase of pollution reductions derived from other, yet-unknown sources. The CWA clearly requires permits to include WQBELs where necessary to protect WQS,⁶ and DEP must include firm annual discharge limits of 8,104 pounds of nitrogen and 532 pounds of phosphorus—the applicable WLAs for Michael Foods—in the final permit.

But even if the proposed net limits did qualify as WQBELs, they violate the federal regulations prescribing how permitting agencies must establish such limits. DEP has structured these "limits" such that Michael Foods can exceed its annual nitrogen and phosphorus WLAs at will, and subsequently buy its way into compliance by purchasing credits after the compliance

³ OFFICE OF WATER, U.S. ENVTL PROT. AGENCY, WATER QUALITY TRADING POLICY (Jan. 13, 2003) [EPA Trading Policy], available at: <http://water.epa.gov/type/watersheds/trading/finalpolicy2003.cfm>.

⁴ 40 C.F.R. § 130.2(i) (defining "Total maximum daily load" and stating "If Best Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs.").

⁵ 33 U.S.C. § 1362(11).

⁶ 33 U.S.C. § 1311(b)(1)(C) (requiring "any more stringent [effluent] limitation, including those necessary to meet water quality standards"); 40 C.F.R. § 122.44(d) (requiring NPDES permits to include "any requirements in addition to or more stringent than [technology-based limits] necessary to . . . achieve water quality standards").

period has ended.⁷ EPA regulations prohibit this approach: "WLAs constitute a type of water quality-based effluent limitation," and QBELs must be "consistent with the assumptions and requirements of any available wasteload allocation for the discharge."⁸ Replacing a limit on discharges with a threshold number that does not limit pollution, but rather limits how much pollution Michael Foods will have to pay for, is inconsistent with the facility's Chesapeake Bay TMDL WLA and clearly violates the federal requirements for establishing QBELs in NPDES permits.

III. The Draft Permit Will Likely Lead to Water Quality Standards Violations and Antidegradation Violations

Even assuming the CWA did not prohibit pollution trading, the Draft Permit violates the CWA, EPA's trading policy, and Pennsylvania's trading regulations by failing to ensure the authorized trading will not lead to violations of local WQS. The CWA and EPA's regulations prohibit DEP from issuing a NPDES permit that would cause or contribute to violations of WQS,⁹ and EPA's 2003 Trading Policy explains that this requires the establishment of geographic limitations on trades. The policy states that "[a]ll water quality trading should occur within a watershed or a defined area for which a TMDL has been approved," such that trades "affect the same water body or stream segment."¹⁰ And although the Bay TMDL itself allows that some trading may occur across Bay segments, such trades are strictly limited to circumstances where they will not "cause or contribute to an exceedance of the WQS in either receiving segment or anywhere else in the Bay watershed."¹¹ This caveat to EPA's otherwise strict requirement of intra-segment trading plainly requires a case-by-case analysis of receiving water quality before approving credit purchases from an adjacent stream segment. The Draft Permit fact sheet does not indicate that DEP conducted such an analysis in this case. Pennsylvania's trading regulations do not comply with EPA's guidance, but do also impose some geographic limitations on trading by providing that "[c]redits generated in either the Susquehanna or Potomac basins may only be used in the basin in which they were generated, unless otherwise approved by the Department."¹²

According to the permit fact sheet, the receiving streams are classified for Cold Water Fishes, Warm Water Fishes, aquatic life, water supply, and recreation. To support these uses, the segment must attain both general and specific water quality criteria for numerous pollutants, some of which may be impacted by nitrogen and phosphorus pollution. The trading provisions in the Draft Permit specifically threaten to lead to exceedances of the receiving water's numeric nitrate and dissolved oxygen criteria and general aquatic life criterion.¹³

⁷ See Pa. Dep't of Env'tl. Prot., NPDES Permit No: PA0009911, Papettis Hygrade Egg Products Inc., Part II (Jan. 1 2012); the permit renewal fact sheet indicates DEP will not change the effluent limits.

⁸ 40 C.F.R. §§ 130.2(h), 122.44(d)(1)(vii)(B).

⁹ 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. § 122.44(d).

¹⁰ See EPA Trading Policy at III.B.

¹¹ See *id.* at Section 10.2.

¹² 25 Pa. Code § 96.8(h)(2).

¹³ 25 Pa. Code §§ 93.6, 93.7.

The Draft Permit would allow Michael Foods to discharge unlimited nitrogen and phosphorus without any assurance that there will be enough credits generated in the same basin, much less water body or segment, available for purchase to meet the permit's "net limits." The facts that DEP intends to allow Michael Foods to purchase an unknown quantity of credits that have not yet even been identified, and that many of these are likely to be generated by nonpoint sources, exacerbate the uncertainties associated with the Draft Permit and its risks to local WQS.

For similar reasons, the Draft Permit violates the CWA's antidegradation provisions, which provide that "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."¹⁴ While the fact sheet states DEP conducted a reasonable potential analysis and subsequently established a WQBEL for ammonia, it does not indicate that DEP undertook an antidegradation analysis to review the trading provisions' potential impacts on existing uses in the receiving streams, which may be broader than the designated uses. Without a real limit on nitrogen and phosphorus discharges from the facility, or assurance that adequate credits from that segment will be available for purchase, DEP cannot ensure that the Draft Permit will protect all existing uses as required.

IV. DEP Must Establish Best Professional Judgment Limits for Nitrogen and Phosphorus

The Draft Permit lacks any technology-based limits for nitrogen or phosphorus, in violation of the federal requirement to establish BPJ limits for pollutants not limited by EPA's Effluent Limitation Guidelines (ELGs) for the industry. This exacerbates the water quality threats posed by the Draft Permit's trading provisions, because there are no technology based effluent limitations (TBELs) to act as a "backstop" for Michael Foods' nitrogen and phosphorus pollution. Absent the inclusion of BPJ limits, the only limits to Michael Foods' nutrient discharges will be the availability of credits and the company's ability to pay for them.

There are no federal ELGs applicable to Michael Foods. However, the lack of federal best available technology (BAT) limits for nitrogen and phosphorus does not end DEP's obligation to impose numeric nutrient limits in its permit. TBELs afford the minimum level of water quality protection required by the CWA.¹⁵ Pursuant to the CWA, TBELs must reflect pollutant controls constituting BAT, and these effluent limitations "shall require the elimination of discharges of all Pollutants if the Administrator finds, on the basis of information available to [her] . . . that such elimination is technologically and economically achievable."¹⁶ Recent EPA guidance further clarifies that permitting agencies must establish BPJ limits for pollutant discharges not covered by the applicable ELGs:

¹⁴ 40 C.F.R. § 131.12(a)(1).

¹⁵ 40 C.F.R. § 122.44 ("[E]ach NPDES permit shall include conditions meeting the following requirements . . . Technology-based effluent limitations and standards based on: effluent limitations and standards promulgated under section 301 of the CWA, or new source performance standards promulgated under section 306 of CWA, on [sic] case-by-case effluent limitations determined under section 402(a)(1) of CWA, or a combination of the three, in accordance with § 125.3 of this chapter"); 40 C.F.R. § 125.3 ("Technology-based treatment requirements under section 301(b) of the Act represent the minimum level of control that must be imposed in a permit issued under section 402 of the Act").

¹⁶ 33 U.S.C. § 1311(b)(2)(A).

Where EPA has not promulgated technology-based effluent guidelines for a particular class or category of industrial discharger, or where the technology-based effluent guidelines do not address all wastestreams or pollutants discharged by the industrial discharger, EPA must establish technology-based effluent limitations on a case-by-case basis in individual NPDES permits, based on its best professional judgment or “BPJ.”

...
[A]n authorized state must include technology-based effluent limitations in its permits for pollutants not addressed by the effluent guidelines for that industry. 33 USC § 1314(b); 40 CFR § 122.44(a)(1), 123.25, 125.3. In the absence of an effluent guideline for those pollutants, the CWA requires permitting authorities to conduct the “BPJ” analysis discussed above on a case-by-case basis for those pollutants in each permit.¹⁷

Emphases added.

On their own, Michael Foods’ nitrogen and phosphorus WLAs allow for significant nutrient discharges.¹⁸ But EPA’s Discharge Monitoring Report (DMR) Pollutant Loading Tool of actual reported discharges and DEP’s nutrient credit purchase records indicate that the facility has taken full advantage of its “net” limits, regularly discharging far in excess of both its nitrogen and phosphorus WLA.

EPA Pollutant Loading Tool Data 2014 -2016:¹⁹

Year	Total N (lbs)	Total N WLA (lbs)	Total P (lbs)	Total P WLA (lbs)
2016 (to date)	41,375	8,104	4,689	532
2015	59,260	8,104	6,651	532
2014	52,867	8,104	10,014	532

These nitrogen and phosphorus discharges dramatically exceed the applicable WLAs, and clearly trigger DEP’s mandatory duty to establish BAT-based BPJ limits for each.

The fact that DEP has ostensibly included nitrogen and phosphorus WQBELs in the Draft Permit in no way lessens the agency’s duty to also include TBELs based on BPJ. To the contrary, EPA and courts have explained that TBELs “constitute a minimum floor of controls that must be included in a permit, irrespective of the discharger’s effect on the quality of the

¹⁷ James A. Hanlon, Director, EPA Office of Wastewater Management, *National Pollutant Discharge Elimination System (NPDES) Permitting of Wastewater Discharges from Flue Gas Desulfurization (FGD) and Coal Combustion Residuals (CCR) Impoundments at Steam Electric Power Plants*, Attachment A 1-2 (Jun. 7, 2010) [Hanlon Memo]. Although this Memorandum discussed coal plant discharge limits, the statutory requirement to establish technology-based limits using BPJ is equally applicable across industries.

¹⁸ As noted, Michael Foods is one of just thirty Pennsylvania facilities classified as Chesapeake Bay TMDL “significant industrial dischargers” based on their nutrient discharges.

¹⁹ See EPA, Discharge Monitoring Report (DMR) Pollutant Loading Tool, https://cfpub.epa.gov/dmr/facility_detail.cfm (enter PA0009911 in “Facility Search”).

receiving water.”²⁰ The fact that nitrogen and phosphorus TBELs based on BPJ could prove more stringent than the Chesapeake Bay TMDL WLAs for these pollutants underscores the importance of the requirement to establish such technology-based limits. In the event the BPJ limits are more stringent, they must control.

But even if the proposed annual nutrient limits are more stringent than the BPJ limits DEP must derive, when compared based on annual loadings, the BPJ limits serve an essential purpose in Cherokee’s permit by limiting the quantity of credits Cherokee could purchase to comply with the WQBELs. Both EPA and DEP have made clear that industrial dischargers may not trade to meet technology-based permit requirements.²¹ To avoid running afoul of this basic trading limitation, credits purchased must be limited to the difference between the TBEL and the WQBEL. The Draft Permit, instead, impermissibly omits TBELs altogether and allows unlimited nutrient discharges and credit purchases.

In setting TBELs for Cherokee’s nitrogen and phosphorus discharges, DEP must follow the requirements of the CWA in its administration of NPDES permits, in accordance with the CWA’s goal of eliminating pollutant discharges.²² Although a zero-discharge limit is not strictly attainable in all settings, the best available technologies must be applied in an effort to get as close as possible to zero discharge. DEP can and must consider the same mandatory factors that the EPA would consider in setting national effluent limitations, including the age of the facility, the process employed, engineering aspects of various control techniques, process changes, and non-water environmental impacts.²³ Part of DEP’s responsibility in exercising BPJ is considering all available, economically achievable technologies.²⁴ A technology is considered “available” if it is practicable, even if it has not yet been applied.²⁵ A technology is economically achievable if the best-performing facilities in the industry can implement it.²⁶ DEP must propose BAT-based BPJ nitrogen and phosphorus limits that reflect its thorough analysis of these factors, and must provide for public participation in the establishment of these effluent limitations.

V. The Draft Permit Violates the CWA’s Public Participation Requirements

DEP’s approach to setting WQBELs as net limits subject to credit purchases also violates the CWA’s public participation requirements, which provide that citizens have the right to participate in the “development, revision, and enforcement of . . . [an] effluent limitation.”²⁷ These requirements dictate that if DEP authorizes facilities to meet their net nutrient limits by

²⁰ Hanlon Memo Attachment A at 1, citing *Am. Petroleum Inst. v. EPA*, 661 F.2d 340, 344 (5th Cir. 1981).

²¹ EPA Trading Policy at III.E.4, 25 Pa. Code § 96.8 (b)(6).

²² *NRDC v. EPA*, 863 F.2d 1420, 1426 (9th Cir. 1988) (“BAT should represent ‘a commitment of the maximum resources economically possible to the ultimate goal of eliminating all polluting discharges.’”).

²³ 33 U.S.C. § 1314(b)(2)(B).

²⁴ 33 U.S.C. § 1311(b)(2)(A).

²⁵ *Hooker Chems. & Plastics Corp. v. Train*, 537 F.2d 620, 636 (2d Cir. 1976) (“That no plant in a given industry has adopted a pollution control device which could be installed does not mean that the device is not ‘available.’”).

²⁶ *Chem. Mfrs. Ass’n v. EPA*, 870 F.2d 177, 226 (5th Cir. 1989) (requiring that BAT be based on “the performance of the single best-performing plant in an industrial field.”).

²⁷ 33 U.S.C. § 1251(e).

purchasing credits, the credit generation and application to a given limit must be considered part of the permit itself.²⁸

Pennsylvania regulations make clear that Cherokee will be “responsible for enforcing the terms of its trade contract, when needed to ensure compliance with its permit.”²⁹ Because compliance with the permit limits is contingent on nutrient credit purchases, and the CWA also affords the public the right to enforce NPDES permit limit violations,³⁰ information relevant to the credits generated, including the practices implemented, verification plans, and demonstrations of compliance, must be subject to the CWA’s public participation requirements. It follows that credit purchases must be determined before the permit issues, rather than after each annual compliance period ends, making the credits subject to public scrutiny in Cherokee’s NPDES permit process, not only in a separate credit certification process. The open-ended nature of DEP’s proposed permit terms will make it extremely difficult for DEP to determine compliance and potentially enforce any trade-related permit violations, but will make it virtually impossible for citizens to do so.

In conclusion, the Draft Permit’s trading provisions fall short of what the CWA requires and threaten both local water quality and the Chesapeake Bay. DEP should address these deficiencies by setting firm nitrogen and phosphorus limits based on both BPJ and Michael Foods’ Bay TMDL WLAs, and prohibiting the facility from purchasing pollution credits altogether. Thank you for your consideration of these comments.

Sincerely,



Tarah Heinzen
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²⁸ See, e.g., *Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486, 503-04 (2d Cir. 2005).

²⁹ 25 Pa. Code § 96.8(h)(5).

³⁰ 33 U.S.C. § 1365(a)(1).



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF POINT AND NON-POINT SOURCE MANAGEMENT

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM DISCHARGE REQUIREMENTS FOR INDUSTRIAL WASTEWATER FACILITIES

NPDES PERMIT NO: PA0009911

In compliance with the provisions of the Clean Water Act, 33 U.S.C. Section 1251 *et seq.* ("the Act") and Pennsylvania's Clean Streams Law, as amended, 35 P.S. Section 691.1 *et seq.*,

Papettis Hygrade Egg Products Inc.
68 Spain Road
Klingerstown, PA 17941-9656

is authorized to discharge from a facility known as **Michael Foods Egg Products**, located in **Upper Mahantango Township, Schuylkill County**, to **Pine Creek and Mahantango Creek** in Watershed(s) **6-C** in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts A, B and C hereof.

THIS PERMIT SHALL BECOME EFFECTIVE ON JANUARY 1, 2017

THIS PERMIT SHALL EXPIRE AT MIDNIGHT ON DECEMBER 31, 2021

The authority granted by this permit is subject to the following further qualifications:

1. If there is a conflict between the application, its supporting documents and/or amendments and the terms and conditions of this permit, the terms and conditions shall apply.
2. Failure to comply with the terms, conditions or effluent limitations of this permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. (40 CFR 122.41(a))
3. A complete application for renewal of this permit, or notice of intent to cease discharging by the expiration date, must be submitted to DEP at least 180 days prior to the above expiration date (unless permission has been granted by DEP for submission at a later date), using the appropriate NPDES permit application form. (40 CFR 122.41(b), 122.21(d)(2))

In the event that a timely and complete application for renewal has been submitted and DEP is unable, through no fault of the permittee, to reissue the permit before the above expiration date, the terms and conditions of this permit, including submission of the Discharge Monitoring Reports (DMRs), will be automatically continued and will remain fully effective and enforceable against the discharger until DEP takes final action on the pending permit application. (25 Pa. Code §§ 92a.7(b), (c))

4. This NPDES permit does not constitute authorization to construct or make modifications to wastewater treatment facilities necessary to meet the terms and conditions of this permit.

DATE PERMIT ISSUED December 29, 2016

ISSUED BY /s/

Bharat Patel, P.E.
Environmental Program Manager
Clean Water Program

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. A. For Outfall 001, **Latitude** 40° 39' 11.00", **Longitude** 76° 41' 43.00", **River Mile Index** , **Stream Code** 17208

Receiving Waters: Pine Creek

Type of Effluent: IW Process Effluent without ELG

1. The permittee is authorized to discharge during the period from **January 1, 2017** through **December 31, 2021**.
2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements and Footnotes).

Parameter	Effluent Limitations				Monitoring Requirements	
	Mass Units (lbs/day) ⁽¹⁾		Concentrations (mg/L)		Minimum ⁽²⁾ Measurement Frequency	Required Sample Type
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instant. Maximum
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	9.0 Max	XXX
Total Residual Chlorine (TRC)	XXX	XXX	XXX	1.0	XXX	2.0
Carbonaceous Biochemical Oxygen Demand (CBOD5)	Report	Report	XXX	25.0	50.0	62.5
Total Suspended Solids	Report	Report	XXX	30.0	60.0	75.0
Oil and Grease	XXX	XXX	XXX	15.0	30.0	XXX
Fecal Coliform (CFU/100 ml) Oct 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000
Fecal Coliform (CFU/100 ml) May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Ammonia-Nitrogen Oct 1 - Mar 31	Report	XXX	XXX	Report	XXX	XXX
Ammonia-Nitrogen May 1 - Sep 30	37	74	XXX	15.0	30.0	XXX
Total Phosphorus	Report	XXX	XXX	Report	XXX	XXX
					Continuous	Measured
					1/day	Grab
					1/day	Grab
					1/week	8-Hr Composite
					1/week	8-Hr Composite
					1/week	Grab
					1/week	8-Hr Composite
					2/week	8-Hr Composite
					2/week	8-Hr Composite
					2/week	8-Hr Composite

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

at Outfall 001

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. B. For Outfall 002, **Latitude** 40° 39' 42.00", **Longitude** 76° 41' 43.00", **River Mile Index** , **Stream Code** 17208

Receiving Waters: Pine Creek

Type of Effluent: Stormwater

1. The permittee is authorized to discharge during the period from **January 1, 2017** through **December 31, 2021**.
2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements and Footnotes).

Parameter	Effluent Limitations				Monitoring Requirements	
	Mass Units (lbs/day) ⁽¹⁾		Concentrations (mg/L)		Minimum ⁽²⁾ Measurement Frequency	Required Sample Type
	Average Monthly	Average Weekly	Minimum	Average Monthly	Daily Maximum	Instant. Maximum
pH (S.U.)	XXX	XXX	XXX	XXX	Report	XXX
Carbonaceous Biochemical Oxygen Demand (CBOD5)	XXX	XXX	XXX	XXX	Report	XXX
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	XXX	Report	XXX
Total Suspended Solids	XXX	XXX	XXX	XXX	Report	XXX
Oil and Grease	XXX	XXX	XXX	XXX	Report	XXX
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	XXX	Report	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	XXX	Report	XXX
Total Phosphorus	XXX	XXX	XXX	XXX	Report	XXX
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):
at Outfall 002

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. C. For Outfall 003, **Latitude** 40° 39' 36.00", **Longitude** 76° 42' 6.00", **River Mile Index**, **Stream Code** 17117

Receiving Waters: Mahantango Creek

Type of Effluent: Stormwater

1. The permittee is authorized to discharge during the period from **January 1, 2017** through **December 31, 2021**.

2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements and Footnotes).

Parameter	Effluent Limitations				Monitoring Requirements	
	Mass Units (lbs/day) ⁽¹⁾		Concentrations (mg/L)		Minimum ⁽²⁾ Measurement Frequency	Required Sample Type
	Average Monthly	Average Weekly	Minimum	Average Monthly	Daily Maximum	Instant. Maximum
pH (S.U.)	XXX	XXX	XXX	XXX	Report	XXX
Carbonaceous Biochemical Oxygen Demand (CBOD5)	XXX	XXX	XXX	XXX	Report	XXX
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	XXX	Report	XXX
Total Suspended Solids	XXX	XXX	XXX	XXX	Report	XXX
Oil and Grease	XXX	XXX	XXX	XXX	Report	XXX
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	XXX	Report	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	XXX	Report	XXX
Total Phosphorus	XXX	XXX	XXX	XXX	Report	XXX
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

at Outfall 003

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. D. For Outfall 004, Latitude 40° 39' 36.00", Longitude 76° 41' 42.00", River Mile Index, Stream Code 17208

Receiving Waters: Pine Creek
Type of Effluent: Stormwater

1. The permittee is authorized to discharge during the period from **January 1, 2017** through **December 31, 2021**.
2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements and Footnotes).

Parameter	Effluent Limitations				Monitoring Requirements	
	Mass Units (lbs/day) ⁽¹⁾		Concentrations (mg/L)		Minimum ⁽²⁾ Measurement Frequency	Required Sample Type
	Average Monthly	Average Weekly	Minimum	Average Monthly	Daily Maximum	Instant. Maximum
pH (S.U.)	XXX	XXX	XXX	XXX	Report	XXX
Carbonaceous Biochemical Oxygen Demand (CBOD5)	XXX	XXX	XXX	XXX	Report	XXX
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	XXX	Report	XXX
Total Suspended Solids	XXX	XXX	XXX	XXX	Report	XXX
Oil and Grease	XXX	XXX	XXX	XXX	Report	XXX
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	XXX	Report	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	XXX	Report	XXX
Total Phosphorus	XXX	XXX	XXX	XXX	Report	XXX
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):
at Outfall 004

**PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS
(Continued)**

Additional Requirements

The permittee may not discharge:

1. Floating solids, scum, sheen or substances that result in observed deposits in the receiving water. (25 Pa Code § 92a.41(c))
2. Oil and grease in amounts that cause a film or sheen upon or discoloration of the waters of this Commonwealth or adjoining shoreline, or that exceed 15 mg/l as a daily average or 30 mg/l at any time (or lesser amounts if specified in this permit). (25 Pa. Code § 92a.47(a)(7), § 95.2(2))
3. Substances in concentration or amounts sufficient to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life. (25 Pa Code § 93.6(a))
4. Foam or substances that produce an observed change in the color, taste, odor or turbidity of the receiving water, unless those conditions are otherwise controlled through effluent limitations or other requirements in this permit. For the purpose of determining compliance with this condition, DEP will compare conditions in the receiving water upstream of the discharge to conditions in the receiving water approximately 100 feet downstream of the discharge to determine if there is an observable change in the receiving water. (25 Pa Code § 92a.41(c))

Footnotes

- (1) When sampling to determine compliance with mass effluent limitations, the discharge flow at the time of sampling must be measured and recorded.
- (2) This is the minimum number of sampling events required. Permittees are encouraged, and it may be advantageous in demonstrating compliance, to perform more than the minimum number of sampling events.

Supplemental Information

The effluent limitations for Outfall 001 were determined using an effluent discharge rate of 0.295 MGD.

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. E. For Outfall 001, Latitude 40° 39' 11.00", Longitude 76° 41' 43.00", River Mile Index 0.8800, Stream Code

Receiving Waters: Pine Creek

Type of Effluent: IW Process Effluent without ELG

1. The permittee is authorized to discharge during the period from **January 1, 2017** through **December 31, 2021**.
2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements and Footnotes).

Parameter	Effluent Limitations				Monitoring Requirements	
	Mass Units (lbs/day) ⁽¹⁾		Concentrations (mg/L)		Minimum ⁽²⁾ Measurement Frequency	Required Sample Type
	Monthly	Annual	Monthly Average	Maximum		
Ammonia--N	Report	Report	Report	XXX	2/week	8-Hr Composite
Kjeldahl--N	Report	XXX	Report	XXX	2/week	8-Hr Composite
Nitrate-Nitrite as N	Report	XXX	Report	XXX	2/week	8-Hr Composite
Total Nitrogen	Report	Report	Report	XXX	1/month	Calculation
Total Phosphorus	Report	Report	Report	XXX	2/week	8-Hr Composite
Net Total Nitrogen	Report	8,104	XXX	XXX	1/month	Calculation
Net Total Phosphorus	Report	532	XXX	XXX	1/month	Calculation

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

at Outfall 001

Footnotes:

(1) See Part C for Chesapeake Bay Requirements.

(2) This is the minimum number of sampling events required. Permittees are encouraged, and it may be advantageous in demonstrating compliance, to perform more than the minimum number of sampling events required.

II. DEFINITIONS

At Outfall (XXX) means a sampling location in outfall line XXX below the last point at which wastes are added to outfall line (XXX), or where otherwise specified.

Average refers to the use of an arithmetic mean, unless otherwise specified in this permit. (40 CFR 122.41(l)(4)(iii))

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollutant loading to surface waters of the Commonwealth. The term also includes treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. The term includes activities, facilities, measures, planning or procedures used to minimize accelerated erosion and sedimentation and manage stormwater to protect, maintain, reclaim, and restore the quality of waters and the existing and designated uses of waters within this Commonwealth before, during and after earth disturbance activities. (25 Pa. Code § 92a.2)

Bypass means the intentional diversion of waste streams from any portion of a treatment facility. (40 CFR 122.41(m)(1)(i))

Calendar Week is defined as the seven consecutive days from Sunday through Saturday, unless the permittee has been given permission by DEP to provide weekly data as Monday through Friday based on showing excellent performance of the facility and a history of compliance. In cases when the week falls in two separate months, the month with the most days in that week shall be the month for reporting.

Clean Water Act means the Federal Water Pollution Control Act, as amended. (33 U.S.C.A. §§ 1251 to 1387).

Chemical Additive means a chemical product (including products of disassociation and degradation, collectively "products") introduced into a waste stream that is used for cleaning, disinfecting, or maintenance and which may be detected in effluent discharged to waters of the Commonwealth. The term generally excludes chemicals used for neutralization of waste streams, the production of goods, and treatment of wastewater.

Composite Sample (for all except GC/MS volatile organic analysis) means a combination of individual samples (at least eight for a 24-hour period or four for an 8-hour period) of at least 100 milliliters (mL) each obtained at spaced time intervals during the compositing period. The composite must be flow-proportional; either the volume of each individual sample is proportional to discharge flow rates, or the sampling interval is proportional to the flow rates over the time period used to produce the composite. (EPA Form 2C)

Composite Sample (for GC/MS volatile organic analysis) consists of at least four aliquots or grab samples collected during the sampling event (not necessarily flow proportioned). The samples must be combined in the laboratory immediately before analysis and then one analysis is performed. (EPA Form 2C)

Daily Average Temperature means the average of all temperature measurements made, or the mean value plot of the record of a continuous automated temperature recording instrument, either during a calendar day or during the operating day if flows are of a shorter duration.

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day. (25 Pa. Code § 92a.2, 40 CFR 122.2)

Daily Maximum Discharge Limitation means the highest allowable "daily discharge."

Discharge Monitoring Report (DMR) means the DEP or EPA supplied form(s) for the reporting of self-monitoring results by the permittee. (25 Pa. Code § 92a.2, 40 CFR 122.2)

Estimated Flow means any method of liquid volume measurement based on a technical evaluation of the sources contributing to the discharge including, but not limited to, pump capabilities, water meters and batch discharge volumes.

Geometric Mean means the average of a set of n sample results given by the nth root of their product.

Grab Sample means an individual sample of at least 100 mL collected at a randomly selected time over a period not to exceed 15 minutes. (EPA Form 2C)

Hazardous Substance means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the Clean Water Act. (40 CFR 122.2)

Hauled-In Wastes means any waste that is introduced into a treatment facility through any method other than a direct connection to the wastewater collection system. The term includes wastes transported to and disposed of within the treatment facility or other entry points within the collection system.

Immersion Stabilization (i-s) means a calibrated device is immersed in the wastewater until the reading is stabilized.

Instantaneous Maximum Effluent Limitation means the highest allowable discharge of a concentration or mass of a substance at any one time as measured by a grab sample. (25 Pa. Code § 92a.2)

Measured Flow means any method of liquid volume measurement, the accuracy of which has been previously demonstrated in engineering practice, or for which a relationship to absolute volume has been obtained.

Monthly Average Discharge Limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month. (25 Pa. Code § 92a.2)

Municipal Waste means garbage, refuse, industrial lunchroom or office waste and other material, including solid, liquid, semisolid or contained gaseous material resulting from operation of residential, municipal, commercial or institutional establishments and from community activities; and sludge not meeting the definition of residual or hazardous waste under this section from a municipal, commercial or institutional water supply treatment plant, waste water treatment plant or air pollution control facility. (25 Pa. Code § 271.1)

Non-contact Cooling Water means water used to reduce temperature which does not come in direct contact with any raw material, intermediate product, waste product (other than heat), or finished product.

Residual Waste means garbage, refuse, other discarded material or other waste, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, mining and agricultural operations and sludge from an industrial, mining or agricultural water supply treatment facility, wastewater treatment facility or air pollution control facility, if it is not hazardous. The term does not include coal refuse as defined in the Coal Refuse Disposal Control Act. The term does not include treatment sludges from coal mine drainage treatment plants, disposal of which is being carried on under and in compliance with a valid permit issued under the Clean Streams Law. (25 Pa Code § 287.1)

Severe Property Damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. (40 CFR 122.41(m)(1)(ii))

Stormwater means the runoff from precipitation, snow melt runoff, and surface runoff and drainage. (25 Pa. Code § 92a.2)

Stormwater Associated With Industrial Activity means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant, and as defined at 40 CFR 122.26(b)(14) (i) - (ix) & (xi) and 25 Pa. Code § 92a.2.

Total Dissolved Solids means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

Toxic Pollutant means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains may, on the basis of information available to DEP cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in these organisms or their offspring. (25 Pa. Code § 92a.2)

III. SELF-MONITORING, REPORTING AND RECORDKEEPING

A. Representative Sampling

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity (40 CFR 122.41(j)(1)). Representative sampling includes the collection of samples, where possible, during periods of adverse weather, changes in treatment plant performance and changes in treatment plant loading. If possible, effluent samples must be collected where the effluent is well mixed near the center of the discharge conveyance and at the approximate mid-depth point, where the turbulence is at a maximum and the settlement of solids is minimized. (40 CFR 122.48, 25 Pa. Code § 92a.61)

2. Records Retention (40 CFR 122.41(j)(2))

Except for records of monitoring information required by this permit related to the permittee's sludge use and disposal activities which shall be retained for a period of at least 5 years, all records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records), copies of all reports required by this permit, and records of all data used to complete the application for this permit shall be retained by the permittee for 3 years from the date of the sample measurement, report or application, unless a longer retention period is required by the permit. The 3-year period shall be extended as requested by DEP or the EPA Regional Administrator.

3. Recording of Results (40 CFR 122.41(j)(3))

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

- a. The exact place, date and time of sampling or measurements.
- b. The person(s) who performed the sampling or measurements.
- c. The date(s) the analyses were performed.
- d. The person(s) who performed the analyses.
- e. The analytical techniques or methods used; and the associated detection level.
- f. The results of such analyses.

4. Test Procedures

- a. Facilities that test or analyze environmental samples used to demonstrate compliance with this permit shall be in compliance with laboratory accreditation requirements of Act 90 of 2002 (27 Pa. C.S. §§ 4101-4113) and 25 Pa. Code Chapter 252, relating to environmental laboratory accreditation.
- b. Test procedures (methods) for the analysis of pollutants or pollutant parameters shall be those approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapters N or O, unless the method is specified in this permit or has been otherwise approved in writing by DEP. (40 CFR 122.41(j)(4), 122.44(i)(1)(iv))
- c. Test procedures (methods) for the analysis of pollutants or pollutant parameters shall be sufficiently sensitive. A method is sufficiently sensitive when 1) the method minimum level is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or 2) the method has the lowest minimum level of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapters N or O, for the measured pollutant or pollutant parameter; or 3) the method is specified in this permit or has been otherwise approved in writing by DEP for the measured pollutant or pollutant parameter. Permittees have the option of providing matrix or sample-specific minimum levels rather than the published levels. (40 CFR 122.44(i)(1)(iv))

5. Quality/Assurance/Control

In an effort to assure accurate self-monitoring analyses results:

- a. The permittee, or its designated laboratory, shall participate in the periodic scheduled quality assurance inspections conducted by DEP and EPA. (40 CFR 122.41(e), 122.41(i)(3))
- b. The permittee, or its designated laboratory, shall develop and implement a program to assure the quality and accurateness of the analyses performed to satisfy the requirements of this permit, in accordance with 40 CFR Part 136. (40 CFR 122.41(j)(4))

B. Reporting of Monitoring Results

1. The permittee shall effectively monitor the operation and efficiency of all wastewater treatment and control facilities, and the quantity and quality of the discharge(s) as specified in this permit. (40 CFR 122.41(e), 122.44(i)(1))
2. Discharge Monitoring Reports (DMRs) must be completed in accordance with DEP's published DMR Instructions (3800-FM-BPNPSM0463). DMRs are based on calendar reporting periods unless Part C of this permit requires otherwise. DMR(s) must be received by the agency(ies) specified in paragraph 3 below in accordance with the following schedule:
 - Monthly DMRs must be received within 28 days following the end of each calendar month.
 - Quarterly DMRs must be received within 28 days following the end of each calendar quarter, i.e., January 28, April 28, July 28, and October 28.
 - Semiannual DMRs must be received within 28 days following the end of each calendar semiannual period, i.e., January 28 and July 28.
 - Annual DMRs must be received by January 28, unless Part C of this permit requires otherwise.
3. The permittee shall complete all Supplemental Reporting forms (Supplemental DMRs) provided by DEP in this permit (or an approved equivalent), and submit the signed, completed forms as an attachment to the DMR(s). If the permittee elects to use DEP's electronic DMR (eDMR) system, one electronic submission may be made for DMRs and Supplemental DMRs. If paper forms are used, the completed forms shall be mailed to:

Department of Environmental Protection
Clean Water Program
2 Public Square
Wilkes-Barre, PA 18701-1915
4. If the permittee elects to begin using DEP's eDMR system to submit DMRs required by the permit, the permittee shall, to assure continuity of business operations, continue using the eDMR system to submit all DMRs and Supplemental Reports required by the permit, unless the following steps are completed to discontinue use of eDMR:
 - a. The permittee shall submit written notification to the regional office that issued the permit that it intends to discontinue use of eDMR. The notification shall be signed by a principal executive officer or authorized agent of the permittee.
 - b. The permittee shall continue using eDMR until the permittee receives written notification from DEP's Central Office that the facility has been removed from the eDMR system, and electronic report submissions are no longer expected.
5. The completed DMR Form shall be signed and certified by either of the following applicable persons, as defined in 25 Pa. Code § 92a.22:

- For a corporation - by a principal executive officer of at least the level of vice president, or an authorized representative, if the representative is responsible for the overall operation of the facility from which the discharge described in the NPDES form originates.
- For a partnership or sole proprietorship - by a general partner or the proprietor, respectively.
- For a municipality, state, federal or other public agency - by a principal executive officer or ranking elected official.

If signed by a person other than the above, written notification of delegation of DMR signatory authority must be submitted to DEP in advance of or along with the relevant DMR form. (40 CFR 122.22(b))

6. If the permittee monitors any pollutant at monitoring points as designated by this permit, using analytical methods described in Part A III.A.4. herein, more frequently than the permit requires, the results of this monitoring shall be incorporated, as appropriate, into the calculations used to report self-monitoring data on the DMR. (40 CFR 122.41(l)(4)(ii))

C. Reporting Requirements

1. **Planned Changes to Physical Facilities** – The permittee shall give notice to DEP as soon as possible but no later than 30 days prior to planned physical alterations or additions to the permitted facility. A permit under 25 Pa. Code Chapter 91 may be required for these situations prior to implementing the planned changes. A permit application, or other written submission to DEP, can be used to satisfy the notification requirements of this section.

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 in 40 CFR 122.29(b). (40 CFR 122.41(l)(1)(i))
 - b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to effluent limitations in this permit. (40 CFR 122.41(l)(1)(ii))
 - c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan. (40 CFR 122.41(l)(1)(iii))
 - d. The planned change may result in noncompliance with permit requirements. (40 CFR 122.41(l)(2))
2. **Planned Changes to Waste Stream** – Under the authority of 25 Pa. Code § 92a.24(a), the permittee shall provide notice to DEP as soon as possible but no later than 45 days prior to any changes in the volume or pollutant concentration of its influent waste stream as a result of indirect discharges or hauled-in wastes, as specified in paragraphs 2.a. and 2.b., below. Notice shall be provided on the "Planned Changes to Waste Stream" Supplemental Report (3800-FM-BPNPSM0482), available on DEP's website. The permittee shall provide information on the quality and quantity of waste introduced into the facility, and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the facility. The Report shall be sent via Certified Mail or other means to confirm DEP's receipt of the notification. DEP will determine if the submission of a new application and receipt of a new or amended permit is required.
- a. **Introduction of New Pollutants** (25 Pa. Code § 92a.24(a))

New pollutants are defined as parameters that meet all of the following criteria:

- (i) Were not detected in the facilities' influent waste stream as reported in the permit application; and

- (ii) Have not been approved to be included in the permittee's influent waste stream by DEP in writing.

The permittee shall provide notification of the introduction of new pollutants in accordance with paragraph 2 above. The permittee may not authorize the introduction of new pollutants until the permittee receives DEP's written approval.

b. Increased Loading of Approved Pollutants (25 Pa. Code § 92a.24(a))

Approved pollutants are defined as parameters that meet one or more of the following criteria:

- (i) Were detected in the facilities' influent waste stream as reported in the permittee's permit application; or
- (ii) Have been approved to be included in the permittee's influent waste stream by DEP in writing; or
- (iii) Have an effluent limitation or monitoring requirement in this permit.

The permittee shall provide notification of the introduction of increased influent loading (lbs/day) of approved pollutants in accordance with paragraph 2 above when (1) the cumulative increase in influent loading (lbs/day) exceeds 20% of the maximum loading reported in the permit application, or a loading previously approved by DEP, or (2) may cause an exceedance in the effluent of Effluent Limitation Guidelines (ELGs) or limitations in Part A of this permit, or (3) may cause interference or pass through at the facility, or (4) may cause exceedances of the applicable water quality standards in the receiving stream. Unless specified otherwise in this permit, if DEP does not respond to the notification within 30 days of its receipt, the permittee may proceed with the increase in loading. The acceptance of increased loading of approved pollutants may not result in an exceedance of ELGs or effluent limitations and may not cause exceedances of the applicable water quality standards in the receiving stream.

3. Reporting Requirements for Hauled-In Wastes

a. Receipt of Residual Waste

- (i) The permittee shall document the receipt of all hauled-in residual wastes (including but not limited to wastewater from oil and gas wells, food processing waste, and landfill leachate), as defined at 25 Pa. Code § 287.1, that are received for processing at the treatment facility. The permittee shall report hauled-in residual wastes on a monthly basis to DEP on the "Hauled In Residual Wastes" Supplemental Report (3800-FM-BPNPSM0450) as an attachment to the DMR. If no residual wastes were received during a month, submission of the Supplemental Report is not required.

The following information is required by the Supplemental Report. The information used to develop the Report shall be retained by the permittee for five years from the date of receipt and must be made available to DEP or EPA upon request.

- (1) The dates that residual wastes were received.
- (2) The volume (gallons) of wastes received.
- (3) The license plate number of the vehicle transporting the waste to the treatment facility.
- (4) The permit number(s) of the well(s) where residual wastes were generated, if applicable.
- (5) The name and address of the generator of the residual wastes.

- (6) The type of wastewater.

The transporter of residual waste must maintain these and other records as part of the daily operational record (25 Pa. Code § 299.219). If the transporter is unable to provide this information or the permittee has not otherwise received the information from the generator, the residual wastes shall not be accepted by the permittee until such time as the permittee receives such information from the transporter or generator.

- (ii) The following conditions apply to the characterization of residual wastes received by the permittee:
- (1) If the generator is required to complete a chemical analysis of residual wastes in accordance with 25 Pa. Code § 287.51, the permittee must receive and maintain on file a chemical analysis of the residual wastes it receives. The chemical analysis must conform to the Bureau of Waste Management's Form 26R except as noted in paragraph (2), below. Each load of residual waste received must be covered by a chemical analysis if the generator is required to complete it.
 - (2) For wastewater generated from hydraulic fracturing operations ("frac wastewater") within the first 30 production days of a well site, the chemical analysis may be a general frac wastewater characterization approved by DEP. Thereafter, the chemical analysis must be waste-specific and be reported on the Form 26R.

b. Receipt of Municipal Waste

- (i) The permittee shall document the receipt of all hauled-in municipal wastes (including but not limited to septage and liquid sewage sludge), as defined at 25 Pa. Code § 271.1, that are received for processing at the treatment facility. The permittee shall report hauled-in municipal wastes on a monthly basis to DEP on the "Hauled In Municipal Wastes" Supplemental Report (3800-FM-BPNPSM0437) as an attachment to the DMR. If no municipal wastes were received during a month, submission of the Supplemental Report is not required.

The following information is required by the Supplemental Report:

- (1) The dates that municipal wastes were received.
 - (2) The volume (gallons) of wastes received.
 - (3) The BOD₅ concentration (mg/l) and load (lbs) for the wastes received.
 - (4) The location(s) where wastes were disposed of within the treatment facility.
- (ii) Sampling and analysis of hauled-in municipal wastes must be completed to characterize the organic strength of the wastes, unless composite sampling of influent wastewater is performed at a location downstream of the point of entry for the wastes.

4. Unanticipated Noncompliance or Potential Pollution Reporting

- a. Immediate Reporting - The permittee shall immediately report any incident causing or threatening pollution in accordance with the requirements of 25 Pa. Code §§ 91.33 and 92a.41(b).
- (i) If, because of an accident, other activity or incident a toxic substance or another substance which would endanger users downstream from the discharge, or would otherwise result in pollution or create a danger of pollution or would damage property, the permittee shall immediately notify DEP by telephone of the location and nature of the danger. Oral notification to the Department is required as soon as possible, but no later than 4 hours after the permittee becomes aware of the incident causing or threatening pollution.

- (ii) If reasonably possible to do so, the permittee shall immediately notify downstream users of the waters of the Commonwealth to which the substance was discharged. Such notice shall include the location and nature of the danger.
 - (iii) The permittee shall immediately take or cause to be taken steps necessary to prevent injury to property and downstream users of the waters from pollution or a danger of pollution and, in addition, within 15 days from the incident, shall remove the residual substances contained thereon or therein from the ground and from the affected waters of this Commonwealth to the extent required by applicable law.
- b. The permittee shall report any noncompliance which may endanger health or the environment in accordance with the requirements of 40 CFR 122.41(l)(6). These requirements include the following obligations:
 - (i) 24 Hour Reporting - The permittee shall orally report any noncompliance with this permit which may endanger health or the environment within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which must be reported within 24 hours under this paragraph:
 - (1) Any unanticipated bypass which exceeds any effluent limitation in the permit;
 - (2) Any upset which exceeds any effluent limitation in the permit; and
 - (3) Violation of the maximum daily discharge limitation for any of the pollutants listed in the permit as being subject to the 24-hour reporting requirement. (40 CFR 122.44(g))
 - (ii) Written Report - A written submission shall also be provided within 5 days of the time the permittee becomes aware of any noncompliance which may endanger health or the environment. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
 - (iii) Waiver of Written Report - DEP may waive the written report on a case-by-case basis if the associated oral report has been received within 24 hours from the time the permittee becomes aware of the circumstances which may endanger health or the environment. Unless such a waiver is expressly granted by DEP, the permittee shall submit a written report in accordance with this paragraph. (40 CFR 122.41(l)(6)(iii))

5. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under paragraph C.4 of this section or specific requirements of compliance schedules, at the time DMRs are submitted, on the Non-Compliance Reporting Form (3800-FM-BPNPSM0440). The reports shall contain the information listed in paragraph C.4.b.(ii) of this section. (40 CFR 122.41(l)(7))

- D. Specific Toxic Pollutant Notification Levels (for Manufacturing, Commercial, Mining, and Silvicultural Direct Dischargers) - The permittee shall notify DEP as soon as it knows or has reason to believe the following: (40 CFR 122.42(a))
 - 1. That any activity has occurred, or will occur, which would result in the discharge of any toxic pollutant which is not limited in this permit, if that discharge on a routine or frequent basis will exceed the highest of the following "notification levels": (40 CFR 122.42(a)(1))
 - a. One hundred micrograms per liter.
 - b. Two hundred micrograms per liter for acrolein and acrylonitrile.

- c. Five hundred micrograms per liter for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol.
 - d. One milligram per liter for antimony.
 - e. Five times the maximum concentration value reported for that pollutant in this permit application.
 - f. Any other notification level established by DEP.
2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following "notification levels": (40 CFR 122.42(a)(2))
- a. Five hundred micrograms per liter.
 - b. One milligram per liter for antimony.
 - c. Ten times the maximum concentration value reported for that pollutant in the permit application.
 - d. Any other notification level established by DEP.

PART B

I. MANAGEMENT REQUIREMENTS

A. Compliance

1. The permittee shall comply with all conditions of this permit. If a compliance schedule has been established in this permit, the permittee shall achieve compliance with the terms and conditions of this permit within the time frames specified in this permit. (40 CFR 122.41(a)(1))
2. The permittee shall submit reports of compliance or noncompliance, or progress reports as applicable, for any interim and final requirements contained in this permit. Such reports shall be submitted no later than 14 days following the applicable schedule date or compliance deadline. (25 Pa. Code § 92a.51(c), 40 CFR 122.47(a)(4))

B. Permit Modification, Termination, or Revocation and Reissuance

1. This permit may be modified, terminated, or revoked and reissued during its term in accordance with Title 25 Pa. Code § 92a.72 and 40 CFR 122.41(f).
2. 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. (40 CFR 122.41(f))
3. In the absence of DEP action to modify or revoke and reissue this permit, the permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time specified in the regulations that establish those standards or prohibitions. (40 CFR 122.41(a)(1))

C. Duty to Provide Information

1. The permittee shall furnish to DEP, within a reasonable time, any information which DEP may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. (40 CFR 122.41(h))
2. The permittee shall furnish to DEP, upon request, copies of records required to be kept by this permit. (40 CFR 122.41(h))
3. Other Information - Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to DEP, it shall promptly submit the correct and complete facts or information. (40 CFR 122.41(l)(8))

D. 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 terms and conditions of this permit. Proper operation and maintenance includes, but is not limited to, adequate laboratory controls including appropriate quality assurance procedures. This provision also includes the operation of backup or auxiliary facilities or similar systems that are installed by the permittee, only when necessary to achieve compliance with the terms and conditions of this permit. (40 CFR 122.41(e))

E. Duty to Mitigate

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

F. Bypassing

1. Bypassing Not Exceeding Permit Limitations - The permittee may allow a bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions in paragraphs two, three and four of this section. (40 CFR 122.41(m)(2))
2. Other Bypassing - In all other situations, bypassing is prohibited and DEP may take enforcement action against the permittee for bypass unless:
 - a. A bypass is unavoidable to prevent loss of life, personal injury or "severe property damage." (40 CFR 122.41(m)(4)(i)(A))
 - b. There are 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 backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance. (40 CFR 122.41(m)(4)(i)(B))
 - c. The permittee submitted the necessary notice required in F.4.a. and b. below. (40 CFR 122.41(m)(4)(i)(C))
3. DEP may approve an anticipated bypass, after considering its adverse effects, if DEP determines that it will meet the conditions listed in F.2. above. (40 CFR 122.41(m)(4)(ii))
4. Notice
 - a. Anticipated Bypass – If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least 10 days before the bypass. (40 CFR 122.41(m)(3)(i))
 - b. Unanticipated Bypass – The permittee shall submit oral notice of any other unanticipated bypass within 24 hours, regardless of whether the bypass may endanger health or the environment or whether the bypass exceeds effluent limitations. The notice shall be in accordance with Part A III.C.4.b.

II. PENALTIES AND LIABILITY

A. Violations of Permit Conditions

Any person violating Sections 301, 302, 306, 307, 308, 318 or 405 of the Clean Water Act or any permit condition or limitation implementing such sections in a permit issued under Section 402 of the Act is subject to civil, administrative and/or criminal penalties as set forth in 40 CFR 122.41(a)(2).

Any person or municipality, who violates any provision of this permit; any rule, regulation or order of DEP; or any condition or limitation of any permit issued pursuant to the Clean Streams Law, is subject to criminal and/or civil penalties as set forth in Sections 602, 603 and 605 of the Clean Streams Law.

B. Falsifying Information

Any person who does any of the following:

- Falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit, or
- 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 and/or imprisonment as set forth in 18 Pa.C.S.A § 4904 and 40 CFR 122.41(j)(5) and (k)(2).

C. Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance pursuant to Section 309 of the Clean Water Act or Sections 602, 603 or 605 of the Clean Streams Law.

Nothing in this permit shall be construed to preclude the institution of any legal action or to relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject to under the Clean Water Act and the Clean Streams Law.

D. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for the 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. (40 CFR 122.41(c))

III. OTHER RESPONSIBILITIES

A. Right of Entry

Pursuant to Sections 5(b) and 305 of Pennsylvania's Clean Streams Law, and Title 25 Pa. Code Chapter 92a and 40 CFR 122.41(i), the permittee shall allow authorized representatives of DEP and EPA, upon the presentation of credentials and other documents as may be required by law:

1. To enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit; (40 CFR 122.41(i)(1))
2. To have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit; (40 CFR 122.41(i)(2))
3. To inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and (40 CFR 122.41(i)(3))
4. To sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act or the Clean Streams Law, any substances or parameters at any location. (40 CFR 122.41(i)(4))

B. Transfer of Permits

1. Transfers by modification. Except as provided in paragraph 2 of this section, a permit may be transferred by the permittee to a new owner or operator only if this permit has been modified or revoked and reissued, or a minor modification made to identify the new permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (40 CFR 122.61(a))
2. Automatic transfers. As an alternative to transfers under paragraph 1 of this section, any NPDES permit may be automatically transferred to a new permittee if:
 - a. The current permittee notifies DEP at least 30 days in advance of the proposed transfer date in paragraph 2.b. of this section; (40 CFR 122.61(b)(1))
 - b. The notice includes the appropriate DEP transfer form signed by the existing and new permittees containing a specific date for transfer of permit responsibility, coverage and liability between them; (40 CFR 122.61(b)(2))

- c. DEP does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue this permit, the transfer is effective on the date specified in the agreement mentioned in paragraph 2.b. of this section; and (40 CFR 122.61(b)(3))
 - d. The new permittee is in compliance with existing DEP issued permits, regulations, orders and schedules of compliance, or has demonstrated that any noncompliance with the existing permits has been resolved by an appropriate compliance action or by the terms and conditions of the permit (including compliance schedules set forth in the permit), consistent with 25 Pa. Code § 92a.51 (relating to schedules of compliance) and other appropriate DEP regulations. (25 Pa. Code § 92a.71)
3. In the event DEP does not approve transfer of this permit, the new owner or operator must submit a new permit application.

C. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege. (40 CFR 122.41(g))

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 must apply for a new permit. (40 CFR 122.41(b))

E. Other Laws

The issuance of this permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

IV. ANNUAL FEES

Permittees shall pay an annual fee in accordance with 25 Pa. Code § 92a.62. Annual fee amounts are specified in the following schedule and are due on each anniversary of the effective date of the most recent new or reissued permit. All flows identified in the schedule are annual average design flows. (25 Pa. Code 92a.62)

Minor IW Facility without ELG (Effluent Limitation Guideline)	\$500
Minor IW Facility with ELG	\$1,500
Major IW Facility < 250 MGD (million gallons per day)	\$5,000
Major IW Facility ≥ 250 MGD	\$25,000
IW Stormwater Individual Permit	\$1,000
CAAP (Concentrated Aquatic Animal Production Facility)	\$0

As of the effective date of this permit, the facility covered by the permit is classified in the following fee category: **Minor IW Facility without ELG.**

Invoices for annual fees will be mailed to permittees approximately three months prior to the due date. In the event that an invoice is not received, the permittee is nonetheless responsible for payment. Throughout a five year permit term, permittees will pay four annual fees followed by a permit renewal application fee in the last year of permit coverage. Permittees may contact the DEP at 717-787-6744 with questions related to annual fees. The fees identified above are subject to change in accordance with 25 Pa. Code § 92a.62(e).

Payment for annual fees shall be remitted to DEP at the address below by the anniversary date. Checks should be made payable to the Commonwealth of Pennsylvania.

PA Department of Environmental Protection
Bureau of Point and Non-Point Source Management
Re: Chapter 92a Annual Fee
P.O. Box 8466
Harrisburg, PA 17105-8466

PART C

I. CHESAPEAKE BAY NUTRIENT REQUIREMENTS

- A. The Annual Net Total Nitrogen (TN) and Annual Net Total Phosphorus (TP) Mass Load effluent limitations ("Cap Loads") in Part A of this permit are required in order to meet the downstream water quality standards of the State of Maryland, as required by 25 Pa. Code Chapter 92a, the federal Clean Water Act, and implementing regulations.

B. Definitions

Annual Net Mass Load (lbs): The sum of Monthly Total Mass Loads for one year beginning October 1st and ending September 30th, adjusted for credits sold and applied and offsets applied. Annual Net Mass Loads are compared to Cap Loads to determine compliance.

Cap Load (lbs): The mass load of a pollutant authorized by an NPDES permit. Cap Loads for TN and TP are implemented in NPDES permits by the establishment of Annual Net Mass Load limits. The term "Net" is used to recognize that Credits and Offsets may be used to comply with the limits. The Annual Net Mass Load must be less than or equal to the Cap Load to achieve compliance.

Certification: Written approval by DEP of a proposed pollutant reduction activity to generate credits before the credits are verified and registered to be used to comply with NPDES permit effluent limitations.

Compliance Year: The year-long period starting October 1st and ending September 30th. The Compliance Year will be named for the year in which it ends. For example, the period of October 1, 2015 through September 30, 2016 is compliance year 2016.

Credit: The tradable unit of compliance that corresponds with a unit of reduction of a pollutant as recognized by DEP which, when certified, verified and registered, may be used to comply with NPDES permit effluent limitations.

Delivery Ratio: A ratio that compensates for the natural attenuation of a pollutant as it travels in water before it reaches a defined compliance point.

Offset: The pollutant load reduction measured in pounds (lbs) that is created by an action, activity or technology which when approved by DEP may be used to comply with NPDES permit effluent limitations, conditions and stipulations under 25 Pa. Code Chapter 92a (relating to NPDES permitting, monitoring and compliance.) The offset may only be used by the NPDES permittee that DEP determines is associated with the load reduction achieved by the action, activity or technology.

Registration: An accounting mechanism used by DEP to track certified and verified credits before they may be used to comply with NPDES permit effluent limitations.

Total Mass Load (lbs):

Monthly Total Mass Load = The sum of the actual daily discharge loads for TN and TP (lbs/day) divided by the number of samples per month, multiplied by the number of days in the month in which there was a discharge. The daily discharge load for TN and TP (lbs/day) equals the average daily flow (MGD) on the day of sampling, multiplied by that day's sample concentration for TN and TP (mg/l), multiplied by 8.34.

Annual Total Mass Load = The sum of the Monthly Total Mass Loads for one year beginning October 1st and ending September 30th.

Total Nitrogen: For concentration and load, Total Nitrogen is the sum of Total Kjeldahl-N (TKN) plus Nitrite-Nitrate as N (NO₂+NO₃-N), where TKN and NO₂+NO₃-N are measured in the same sample.

Truing Period: The time provided following each Compliance Year for a permittee to comply with Cap Loads through the application of Credits and Offsets. The Truing Period will start on October 1st and end on November 28th of the same calendar year, unless DEP extends this period. During this period, compliance for the specified year may be achieved by using registered Credits that were generated during that Compliance Year. For example, Credits that are used to achieve compliance in Compliance Year 2016 must have been generated during Compliance Year 2016. Approved Offsets that have been generated may also be applied during the Truing Period.

Verification: Assurance that the verification plan contained in a certification, permit or other approval issued by DEP has been implemented. Verification is required prior to registration of the credits for use in an NPDES permit to comply with NPDES permit effluent limitations.

C. Nutrient Credits

1. Credits may be used for compliance with the Cap Loads when authorized under 25 Pa. Code § 96.8 (Use of offsets and tradable credits from pollution reduction activities in the Chesapeake Bay Watershed), including amendments, updates and revisions thereto; in accordance with DEP's Phase 2 WIP Wastewater Supplement (see www.depweb.state.pa.us/npdes-bay); and in accordance with DEP's Phase 2 WIP Nutrient Trading Supplement (see www.depweb.state.pa.us/nutrient_trading).
2. Where effluent limitations for TN and/or TP are established in Part A of the permit for reasons other than the Cap Load assigned for protection of the Chesapeake Bay ("local nutrient limits"), the permittee may purchase and apply credits for compliance with the Cap Load(s) only when the permittee has demonstrated that local nutrient limits have been achieved.
3. Where local nutrient limits are established in Part A of the permit, the permittee may sell any credits generated only after the permittee has demonstrated that local nutrient limits have been achieved and those credits have been verified in accordance with the procedures established in the Phase 2 WIP Nutrient Trading Supplement.

D. Use of Offsets for Compliance

1. Offsets can only be used by the permittee to comply with its Cap Loads. Offsets are not eligible for use as Credits.
2. Offsets must be approved by DEP in writing before they may be applied for compliance with Cap Loads.
3. Offsets that are approved under this permit are listed in Part A, Footnotes. These Offsets may be applied each Compliance Year toward compliance with the Cap Loads. The application of these Offsets must be reported on an annual basis. Additional Offsets may be approved throughout the permit term.
4. Offsets may be approved for the transfer of load between facilities owned by the same entity if (1) the facility receiving Offsets does not discharge to waters classified as impaired for nutrients and (2) the Delivery Ratios approved by DEP for TN or TP, as applicable, are the same. Delivery ratios for the facility authorized to discharge under this permit are listed in DEP's Phase 2 Watershed Implementation Plan (WIP) Wastewater Supplement, available at the following website:

www.depweb.state.pa.us/npdes-bay

Such Offsets may only be applied in the Compliance Year in which the transfer occurred, and are not cumulative.

5. Industrial facilities that withdraw water from the same stream or water body to which they discharge, and which have intake monitoring requirements in Part A of this permit, may claim Offsets for background nutrient loads of TN and/or TP if the Cap Loads do not include a deduction for background

loads. To utilize the Offsets, the permittee must sample the intake and effluent on the same day, and determine mass loading using the actual flow data for intake and effluent on that day. No Offsets shall be granted for intake nutrients associated with groundwater withdrawals.

E. Reporting Requirements

1. eDMR System – The permittee shall utilize DEP's electronic Discharge Monitoring Report (eDMR) system to submit DMR data and Supplemental DMR forms. Unless the permittee is already using the eDMR system, within 30 days of permit issuance, the permittee shall submit the necessary Registration and Trading Partner Agreement forms to participate in eDMR, and begin using eDMR for submission of DMR data and Supplemental DMR forms when DEP notifies the permittee to begin doing so. The eDMR website is <http://www.dep.state.pa.us/edmr>. Use of eDMR shall continue unless the requirements of Part A III.B.3 are met.
2. DMRs – If a DMR is attached to this permit to report Monthly Total Mass Loads for nutrients, the permittee shall submit the DMR through the eDMR system on a monthly basis by the 28th day following the end of a month. In addition, the permittee shall submit Annual DMRs through the eDMR system to report Annual Total Mass Loads and Annual Net Mass Loads for nutrients by November 28th following each Compliance Year, unless DEP extends the Truing Period to a later date.
3. Supplemental Reports – The permittee shall utilize DEP's Annual Chesapeake Bay Spreadsheet ("Spreadsheet"), available at www.depweb.state.pa.us/npdes-bay, to record all nutrient concentrations and loads throughout the Compliance Year. The permittee shall also use the Spreadsheet to document all Credits sold and purchased and Offsets applied in order to calculate the facility's Annual Net Mass Loads for TN and TP. The permittee shall submit the Spreadsheet through the eDMR system at the time the Annual DMR is submitted.

II. OTHER REQUIREMENTS

- A. The approval herein given is specifically made contingent upon the permittee acquiring all necessary property rights by easement or otherwise, providing for the satisfactory construction, operation, maintenance or replacement of all structures associated with the herein approved discharge in, along, or across private property, with full rights of ingress, egress and regress.
- B. Collected screenings, slurries, sludges, and other solids shall be handled, recycled and/or disposed of in compliance with the Solid Waste Management Act (35 P.S. §§ 6018.101 – 6018.1003), 25 Pa. Code Chapters 287, 288, 289, 291, 295, 297, and 299 (relating to requirements for landfilling, impoundments, land application, composting, processing, and storage of residual waste), Chapters 261a, 262a, 263a, and 270a (related to identification of hazardous waste, requirements for generators and transporters, and hazardous waste, requirements for generators and transporters, and hazardous waste permit programs), federal regulation 40 CFR Part 257, The Clean Streams Law, and the Federal Clean Water Act and its amendments. Screenings collected at intake structures shall be collected and managed and not be returned to the receiving waters.

The permittee is responsible to obtain or assure that contracted agents have all necessary permits and approvals for the handling, storage, transport and disposal of solid waste materials generated as a result of wastewater treatment.

- C. The terms and conditions of Water Quality Management (WQM) permits that may have been issued to the permittee relating to discharge requirements are superseded by this NPDES permit unless otherwise stated herein.
- D. If the applicable standard or effluent guideline limitation relating to the application for Best Available Technology (BAT) Economically Achievable or to Best Conventional Technology (BCT) is developed by DEP or EPA for this type of industry, and if such standard or limitation is more stringent than the corresponding limitations of this permit (or if it controls pollutants not covered by this permit), DEP may modify or revoke and reissue the permit to conform with that standard or limitation.

III. REQUIREMENT TO USE EDMR SYSTEM

- A. Within 30 days of the Permit Issuance Date, the permittee shall submit the necessary forms to register for the Department's Electronic Discharge Monitoring Report (eDMR) system for the submission of DMRs and Supplemental DMRs. The eDMR system, registration materials and instructions can be accessed at www.dep.state.pa.us/edmr.
- B. The registration materials shall be submitted to the DEP's Central Office for processing at the following address:

PA DEP
Bureau of Point and Non-Point Source Management
Rachel Carson State Office Building
P.O. Box 8466
Harrisburg, PA 17105-8466
- C. Upon notification from DEP that the permittee and its users are registered to use eDMR, the permittee shall begin using the eDMR system to submit its DMR(s) for the reporting period(s) identified in the DEP's notification. The permittee shall continue to use eDMR for all subsequent reporting periods unless DEP grants written approval to discontinue its use and issues an amendment to this permit.

IV. CHEMICAL ADDITIVES

- A. Approved Chemical Additives List
 - 1. The permittee is authorized to use chemical additives that are published on DEP's Approved Chemical Additives List (Approved List) (see www.depweb.state.pa.us/chemicaladditives) subject to paragraphs A.2 and A.3, below.
 - 2. The permittee may not discharge a chemical additive at a concentration that is greater than the water quality-based effluent limitation (WQBEL) for the chemical additive or, if applicable, a technology-based effluent limitation. If effluent limitations are not specified in Part A of this permit for the chemical additive, the permittee is responsible for determining the WQBEL and ensuring the WQBEL is not exceeded by restricting usage to an amount that will not cause an excursion above in-stream water quality standards.
 - 3. If the permittee decides to use a chemical additive that is on DEP's Approved List and the use would either (1) constitute an increase in the usage rate specified in the NPDES permit application or previous notification to DEP or (2) constitute a new use, not identified in the NPDES permit application or otherwise no previous notification occurred, the permittee shall complete and submit the "Chemical Additives Notification Form" (3800-FM-BPNPSM0487) to the DEP regional office that issued the permit. The permittee may proceed to use the chemical additive as reported on the Form upon receipt by the DEP regional office.
- B. New Chemical Additives, Not on Approved Chemical Additives List
 - 1. In the event the permittee wishes to use a chemical additive that is not listed on DEP's Approved List, the permittee shall submit the "New Chemical Additives Request Form" (3800-FM-BPNPSM0486) to DEP's Central Office, Bureau of Point and Non-Point Source Management (BPNPSM), Division of Planning and Permitting, Rachel Carson State Office Building, PO Box 8774, Harrisburg, PA 17105-8774, prior to use. A copy shall be submitted to the DEP regional office that issued the permit. The form must be completed in whole in order for BPNPSM to approve the chemical additive, and a Material Safety Data Sheet (MSDS) that meets the minimum requirements of 29 CFR 1910.1200(g) must be attached.

2. Following placement of the chemical additive on the Approved List, the permittee may submit the Chemical Additive Notification Form in accordance with paragraph A.3, above, to notify DEP of the intent to use the approved chemical additive. The permittee may proceed with usage when the new chemical has been identified on DEP's Approved List and following DEP's receipt of the Chemical Additives Notification Form.
3. The permittee shall restrict usage of chemical additives to the maximum usage rates determined and reported to DEP on Chemical Additives Notification Forms.

C. Chemical Additives Usage Reporting Requirements

The "Chemical Additives Usage Form" (3800-FM-BPNPSM0439) shall be used to report the usage of chemical additives and shall be submitted as an attachment to the Discharge Monitoring Report (DMR) at the time the DMR is submitted.

- D. DEP may amend this permit to include WQBELs or otherwise control usage rates of chemical additives if there is evidence that usage is adversely affecting receiving waters, producing Whole Effluent Toxicity test failures, or is causing excursions of in-stream water quality standards.

V. REQUIREMENTS APPLICABLE TO STORMWATER OUTFALLS

- A. The permittee is authorized to discharge non-polluting stormwater from its site through the following outfalls:

Outfall No.	Area Drained (ft ²)	Latitude	Longitude	Description
002	240,000	40°39'42"	76°41'43"	Parking, Tractor Trailer Staging
003	217,500	40°39'36"	76°42'06"	Parking, Tractor Trailer Staging
004	266,875	40°39'36"	76°41'42"	Parking, Township Road, Driveway

Monitoring requirements and effluent limitations for these outfalls are specified in Part A of this permit, if applicable.

B. Preparedness, Prevention and Contingency (PPC) Plan

The permittee must develop and implement a PPC Plan in accordance with 25 Pa. Code § 91.34 following the guidance contained in DEP's "Guidelines for the Development and Implementation of Environmental Emergency Response Plans" (DEP ID 400-2200-001), its NPDES-specific addendum and the minimum requirements below. For existing facilities, the PPC Plan must be developed prior to permit issuance. For new facilities, the PPC Plan must be submitted to DEP no later than prior to startup of facility operation.

1. The PPC Plan must identify all potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the facility.
2. The PPC Plan must describe preventative measures and best management practices (BMPs) that will be implemented to reduce or eliminate pollutants from coming into contact with stormwater resulting from routine site activities and spills.
3. The PPC Plan must address actions that will be taken in response to on-site spills or other pollution incidents.
4. The PPC Plan must identify areas which, due to topography or other factors, have a high potential for soil erosion, and identify measures to limit erosion. Where necessary, erosion and sediment control measures must be developed and implemented in accordance with 25 Pa. Code Chapter 102 and DEP's "Erosion and Sediment Pollution Control Manual" (DEP ID 363-2134-008).

5. The PPC Plan must address security measures to prevent accidental or intentional entry which could result in an unintentional discharge of pollutants.
6. The PPC Plan must include a plan for training employees and contractors on pollution prevention, BMPs, and emergency response measures.
7. If the facility is subject to SARA Title III, Section 313, the PPC Plan must identify releases of "Water Priority Chemicals" within the previous three years. Water Priority Chemicals are those identified in EPA's "Guidance for the Determination of Appropriate Methods for the Detection of Section 313 Water Priority Chemicals" (EPA 833-B-94-001, April 1994). The Plan must include an evaluation of all activities that may result in the stormwater discharge of Water Priority Chemicals.
8. Spill Prevention Control and Countermeasure (SPCC) plans may be used to meet the requirements of this section if the minimum requirements are addressed.
9. The PPC Plan shall be evaluated and if necessary updated on an annual basis, at a minimum, and when one or more of the following occur:
 - a. The Plan fails in an emergency;
 - b. There is a change in design, industrial process, operation, maintenance, or other circumstances, in a manner that materially increases the potential for fires, explosions or releases of toxic or hazardous constituents; or which changes the response necessary in an emergency;
 - c. The list of emergency coordinators or equipment changes; or
 - d. When notified in writing by DEP.

All updates must be kept on-site and be made available to DEP upon request.

C. Minimum Required BMPs

In addition to BMPs identified in the PPC Plan, the permittee shall implement the following minimum BMPs relating to stormwater pollution prevention:

1. If applicable, post-construction stormwater BMPs that are required under 25 Pa. Code Chapter 102 must be maintained.
2. For industrial facilities, the BMPs in the applicable Appendix to the NPDES PAG-03 General Permit for Discharges of Stormwater Associated with Industrial Activities that is currently in effect.

D. BMPs applicable to facilities with SIC Codes 2011, 2013, 2015:

1. Store all dry raw materials, additives and products in enclosed/covered areas; install dust collection and control system for silos, holding bins, etc.
2. Store liquids in tanks with secondary containment and leak detection, where appropriate.
3. Minimize raw water usage for washing products and raw materials; recycle wash water to the maximum extent practicable.
4. Practice good housekeeping to limit spillage/leakage of residue and provide for prompt clean-up; dispose of rotting fruit and produce promptly.
5. Manage inventories to ensure only short-term supplies of raw materials and products are stored on-site.
6. Limit use of pesticides, insecticides and rodenticides to the maximum extent possible; apply during dry conditions; investigate non (or least) hazardous alternatives.

7. Wherever possible, enclose/cover animal holding areas; install run-on controls and collect and treat run-off, as appropriate.
8. Practice good housekeeping by containing and promptly removing and managing animal manure.

E. Annual Inspection and Compliance Evaluation

1. The permittee shall conduct an annual inspection of each outfall identified in paragraph A and record the results on the "Annual Inspection Form for NPDES Permits for Discharges of Stormwater Associated with Industrial Activities" (3800-PM-WSFR0083v). The permittee shall submit a copy of the completed and signed Annual Inspection Form to DEP at the address provided in Part A III.B.3 of this permit by January 28 of each year.
2. Areas contributing to a stormwater discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. BMPs in the PPC Plan and required by this permit shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of this permit or whether additional control measures are needed.

F. Stormwater Sampling Requirements

If stormwater sampling is required in Part A of this permit, the following requirements apply:

1. The permittee shall record stormwater sampling event information on the "Additional Information for the Reporting of Stormwater Discharge Monitoring" form (3800-PM-WSFR0083t) and submit the form as an attachment to the DMR.
2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The 72-hour storm interval is waived when the preceding storm did not yield a measurable discharge, or if the permittee is able to document that a less than 72-hour interval is representative for local storm events during the sample period.
3. Grab samples shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is not possible, a grab sample can be taken during the first hour of the discharge, in which case the discharger shall provide an explanation of why a grab sample during the first 30 minutes was not possible.