Permit No. ID-000061-2
Application No.: ID-000061-2

U.S. Environmental Protection Agency (EPA), Region 10
1200 Sixth Avenue
Seattle, Washington 98101
(206) 553-1214

AUTHORIZATION TO DISCHARGE UNDER THE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

Ore-Ida Foods, Inc.
(Burley Factory)

is authorized to discharge from a facility located **in Burley, Idaho**, to receiving waters named Snake River between River Miles 648.8 and 649.2, in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective October 31, 1994

This permit and the authorization to discharge shall expire at midnight, November 1, 1999.

Signed this 30th day of September, 1994

for Director, Water Division, Region 10
U.S. Environmental Protection Agency

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I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Specific Limitations and Monitoring Requirements.

1. During the period beginning on the effective date of this permit, and lasting through the expiration date, the permittee is authorized to discharge from Outfall 001 in accordance with the effluent limitations and monitoring requirements as specified below:

Effluent Characteristics	Average River Flow	Effluent Limitations Monthly Avg. (lbs/day)	Effluent Limitations Daily Max. (lbs/day)	Monitoring Requirements Measurement Frequency	Monitoring Requirements Sample Type
Biochemical Oxygen Demand, 5-day (BOD_5)	1100 cfs or greater	4100	8200	2 per week	24-hr. composite
	Between 500 cfs and 1100 cfs	2050	4100	2 per week	24-hr. composite
	Less than 500 cfs	1500	3000	2 per week	24-hr. composite
Total Suspended Solids (TSS)	----	4100	8200	2 per week	24-hr. composite
Ammonia (as N)					
For the period from Oct. 1 to Nov. 30, with river flows:					
	1100 cfs or greater	1600	2700	2 per week	24-hr. composite
	Less than 1100 cfs	1300	1700	2 per week	24-hr. composite
For the period from Dec. 1 to April 30, with river flows:					
	1100 cfs or greater	1380	2760	2 per week	24-hr. composite
	Between 750 cfs and 1100 cfs	900	1800	2 per week	24-hr. composite
	Less than 750 cfs with:				
	pH $\leq$ 8.35	850	1500	2 per week	24-hr. composite
	pH > 8.35	560	1500	2 per week	24-hr. composite
For the period from May 1 to September 30:		----	----	2 per week	24-hr. composite
Temperature	----	----	32°	Daily	Grab

Effluent Characteristics	Average River Flow	Effluent Limitations Monthly Avg. (lbs/day)	Effluent Limitations Daily Max. (lbs/day)	Monitoring Requirements Measurement Frequency	Monitoring Requirements Sample Type
pH	----	Not less than 6.0 standard units nor greater than 9.0 standard units		Daily	Grab
Fecal Coliform Bacteria (Number/100 ml)[1/]	----	----	----	2/Month	Grab
Total Phosphorus (as P)	----	----	----	Weekly	24-hour composite
Dissolved Orthophosphate (as P)	----	----	----	Weekly	24-hour composite
Nitrate-Nitrite Nitrogen (as N)	----	----	----	Weekly	24-hour composite
Total Kjeldahl Nitrogen (as N)	----	----	----	Weekly	24-hour composite
Effluent Flow (mgd)	----	----	----	Daily	continuously
River Flow (cfs)	----	----	----	2 per week (See Part I.A.1.c and I.E.1)	

a. There shall be no discharge of floating solids or visible foam in other than trace amounts.

b. Samples taken in compliance with the monitoring requirements specified above shall be taken in the outfall line below all treatment units but prior to actual discharge.

c. When flow in the Snake River, as measured at the Minidoka gage, is less than 750 cfs, one pH measurement shall be taken daily at noon in the Snake River, 400 yards downstream of Outfall 001.

1/ If after monitoring of the effluent for a period of one year from the permit issuance date is demonstrated that no fecal coliform bacteria are present in the treated effluent, the permittee may request that bacteria monitoring be discontinued for the remaining duration of the permit; and EPA will grant the request if it is supported by the monitoring results.

2. During the period beginning on the effective date of this permit, and lasting through the expiration date, the permittee is authorized to discharge from Outfalls 002 and 004, in accordance with the monitoring requirements as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS Measurement Frequency*	Sample Type
Flow, mgd	daily	measurement
Temperature, °C	daily	grab
BOD_5	1/week	grab
TSS	1/week	grab
Oil and Grease	1/week	grab

*Whenever there is a discharge.

3. During the period beginning on the effective date of this permit, and lasting until Outfalls SR-1 and SR-2 are eliminated, the permittee is authorized to discharge from Outfalls SR-1 and SR-2 in accordance with the monitoring requirements as specified below. Sampling and monitoring of Outfalls SR-1 and/or SR-2 is required only if there is sufficient rainfall or snow melt runoff during the three month period to cause a discharge to the river through either and/or both of the outfalls.

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS Measurement Frequency	Sample Type
Settleable Solids	once per 3 months	grab*
Oil and Grease	once per 3 months	grab*

*The grab samples shall be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the permittee shall submit with the discharge monitoring report a description of why a grab sample during the first thirty minutes was impracticable.

In addition to the parameters listed above, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff, and an estimate of the total volume (in gallons) of the discharge sampled.

Note: The permittee shall eliminate Outfalls SR-1 and SR-2 and all stormwater discharge within one year of the permit issuance date.

B. Biomonitoring Program Requirements.

1. Biomonitoring testing on the Outfall 001 effluent shall be initiated within 30 days of the permit issuance date. Biomonitoring results shall be submitted the month after testing along with the monthly DMRs.

2. The permittee shall conduct chronic tests for effluent toxicity using protocols contained in Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms (EPA/600/4-89/001). Such testing will determine if the effluent affects the survival or growth of the test organisms. The tests conducted shall be the 7-day fathead minnow, *Pimephales promelas*, test and the 7-day *Ceriodaphnia dubia* test. All tests shall be conducted on split samples from the same 24-hour composite samples of effluent. If, in any test, more than 10% of the control organisms die within 96 hours or more than 20% of the control organisms die during the duration of the test, that test shall be repeated.

   Toxic effects will be demonstrated if there is a statistically significant difference in response between the control and test organisms for either of the two tests. The permittee shall conduct the two tests four times a year, during January, April, August, and November throughout the term of this permit.

3. The chronic tests shall identify the no observable effect concentration (NOEC) for each of the two species. The tests shall include a series of dilutions using a dilution factor of 0.32 starting with 100% Effluent (100, 32, 10, 3, 1, and 0.3). The NOEC shall be determined to be the effluent concentration (expressed as % Effluent) in control water at which there is no statistically significant difference in response between the control and test organisms in either of the two tests.

   If chronic (NOEC) toxicity is found in either toxicity test (for the two species) at a dilution at or below 3.1% Effluent during the period of October 1 through April 30, or 0.3% Effluent during the period of May 1 through September 30, then six more weekly chronic tests will be required using the most sensitive species.

   If toxicity as defined above is not indicated in any of the subsequent tests, then the toxicity testing will start over (revert to Part I.B.2.) for the following testing period.

   If the results of the six accelerated tests (for the two species) give NOECs at or below 3.1% Effluent during the period of October 1 through April 30, or 0.3% Effluent during the period of May 1 through September 30 in any one of the tests, the permittee shall develop a toxicity control plan as outlined in Part I.B.4.

4. If any of the results from the six accelerated tests (for the two species) outlined in Part I.B.3. above give NOECs at or below 3.1% Effluent during the period of October 1 through April 30, or 0.3% Effluent during the period of May 1 through September 30, the permittee shall immediately notify the Director and initiate a toxicity control plan according to the following schedule.

   a. Task: Take all reasonable measures necessary to immediately reduce toxicity, where the source is known.

      Deadline: Within 24 hours of receipt of toxicity test results showing that toxicity has occurred.

   b. Where the source of toxicity is known but compliance with the above toxicity limitations cannot be achieved within 24 hours;

      1. Task: Submit a toxicity control plan and implementation schedule for attaining continued compliance with the toxicity limits as soon as possible, but not later than 6 months.

         Deadline: Within 30 days of receipt of toxicity test results showing that toxicity has occurred.

      2. Task: Initiate the toxicity control plan and achieve compliance with the toxicity limits.

         Deadline: Within 6 months of receipt of toxicity test results showing that toxicity has occurred.

   c. Where the source of toxicity is unknown and the toxicity cannot be immediately controlled through operational changes or other means;

      1. Task: Submit a Toxicity Reduction Evaluation (TRE) study plan detailing the toxicity reduction procedures that will be employed. EPA's TRE Procedures: Phase I (EPA/600/6-91/005F and EPA/600/6-91/003), Phase 2 (EPA/600/3-88/035), and Phase 3 (EPA/600/R-92/081) shall be the basis for this plan.

         Deadline: Within 45 days of receipt of toxicity test results showing that toxicity has occurred.

2. Task: Initiate the TRE plan

   Deadline: Within 45 days of receipt of toxicity test results showing that toxicity has occurred.

3. Task: Submit a TRE progress report.

   Deadline: Four months after receipt of toxicity test results showing that toxicity has occurred.

4. Task: Complete the TRE and submit the results in a final report which also includes an implementation schedule for putting the selected TRE controls into operation.

   Deadline: Within eight months of receipt of toxicity test results showing that toxicity has occurred.

5. Task: Start implementing or constructing the selected TRE controls.

   Deadline: Within nine months of receipt of toxicity test results showing that toxicity has occurred.

6. Task: Complete TRE implementation and toxicity control plan to achieve compliance with toxicity limits and conditions.

   Deadline: Within 16 months of receipt of toxicity test results showing that toxicity has occurred.

Once the toxicity control plan has been implemented, periodic biological monitoring will be required, as outlined in the control plan, to assure continued control of toxicity.

5. All quality assurance criteria used shall be in accordance with Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms, (Fourth Edition), (EPA/600/4-90/027), September 1991, Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, EPA/600/4-89/001, Quality Assurance Guidelines for Biological Testing, EPA/600/4-78-043, Quality Assurance Bibliography, EPA/600/4-80-009, and other EPA Region 10 approved protocols. All test organisms and procedures used shall be in accordance with the protocols in EPA/600/4-90/027 and EPA/600/4-89/001. The selection of an appropriate control water for the toxicity tests shall be submitted to EPA for review and approval prior to use.

C. Ambient Receiving Water Quality Monitoring Requirements.

To document the impact, if any, of the permitted discharges on receiving water quality, and to verify on a continuing basis that the discharges are not resulting in exceedance of the applicable Idaho Water Quality Standards criteria for dissolved oxygen, total ammonia, and other criteria, the permittee shall conduct the following ambient monitoring program each year throughout the duration of the permit.

The monitoring program may be conducted jointly with J.R. Simplot Company which has identical ambient monitoring requirements in NPDES permit No. ID-000066-3. If both permittees agree to conduct the monitoring program jointly, documentation attesting to the agreement must be signed by both permittees in accordance with the signatory requirements of Part IV.H., and provided to the Director at the time of submittal of results of the first monitoring.

1. Monitoring stations shall include the following locations:

   a. Snake River, Highway 30 Bridge, River Mile 653.8.
   b. Snake River, Highway 27 Bridge, below J.R. Simplot discharge, River Mile 651.8.
   c. Snake River, above Ore-Ida Foods discharge, River Mile 649.5.
   d. Snake River, below Ore-Ida Foods discharge, River Mile 647.3.
   e. Snake River, one half mile above Milner Dam, River Mile 639.6.
   f. Main Drain near its confluence with the Snake River below Station d.

2. As a minimum, receiving water sampling shall be conducted once during each of the following months: August and November. And the samples shall be collected at the following points: (1) Stations I.C.1.a., b., c., d., and f. at mid-channel and 1 meter depth, and (2) Station I.C.e. at the right quarter point and depths of 1,5, and 9 meters.

3. Water quality parameters to be sampled and analyzed shall include the following: temperature, pH, specific conductance, alkalinity, nitrate-nitrite (as N), dissolved oxygen, biochemical oxygen demand (5-day), total suspended solids, total phosphorus (as P), dissolved orthophosphate (as P), total ammonia (as N), and total kjeldahl nitrogen (as N) at all monitoring stations; and fecal coliform bacteria at Stations I.D.1.a., b., c., and d.

4. Receiving water sampling shall be selected to coincide with days that outfall discharge sampling is being conducted on the discharges.

5. Receiving water and discharge sampling results shall be submitted the month after testing with the monthly DMR.

6. The scheduled sample collection dates may be adjusted when inclement weather conditions endanger the safety of the person collecting the samples.

D. Definitions.

1. The "average river flow" for any date shall mean the arithmetic average of flows recorded by the USGS gage at Minidoka, Idaho during the 30 days immediately prior to that date. The permittee shall record and report the average and maximum river flows.

2. With respect to limitations which do not vary with average river flow, the "Monthly Average" ("Monthly Avg.") shall mean the total units discharged during a monitoring month divided by the number of days in that period that the production or commercial facility was operating. Where less than daily sampling is required by this permit, this average shall be determined by the summation of the measured daily discharges divided by the number of days during the monitoring month when the measurements were made.

3. With respect to limitations which vary with average river flow, the "Monthly Average" shall mean the total discharge by weight on all days of a given calendar month that the average river flow is within a specific range, divided by the number of such days in that month.

4. "Daily Maximum" ("Daily Max.") shall mean the maximum value attained on any day in a given monitoring month.

5. "Monitoring Month" shall mean the period consisting of the calendar weeks which end in a given calendar month.

6. A "24-hour composite" sample shall mean a flow-proportioned mixture of not less than 8 discrete aliquots. Each aliquot shall be a grab sample of not less than 100 ml and shall be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.

7. A "Grab" sample is a single sample or measurement taken at a specific time or over as short a period of time as is feasible.

8. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by

operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

9. "Bypass" means the intentional diversion of waste from any portion of a treatment facility.

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

A. Representative Sampling. Samples taken in compliance with the monitoring requirements established under Part I shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

B. Monitoring Procedures. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

C. Reporting of Monitoring Results. Monitoring results shall be summarized each month on the Discharge Monitoring Report (DMR) form (EPA No. 3320-1). The reports shall be submitted monthly and are to be postmarked by the 10th day of the following month. Legible copies of these, and all other reports, shall be signed and certified in accordance with the requirements of Part IV.H. Signatory Requirements, and submitted to the Director, Water Division and the State agency at the following addresses:

original to: United State Environmental Protection Agency
(EPA) Region 10
1200 Sixth Avenue, WD-135
Seattle, Washington 98101

copy to: Idaho Department of Health and Welfare (IDHW-DEQ)
Division of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

D. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculations and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

E. Records Contents. Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) anlyses were performed;
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

F. Retention of Records. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for contiuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time. Data collected on-site, copies of Dishcarge Monitoring Reports, and a copy of this NPDES permit must be maintained on-site during the duration of activity at the permitted location.

G. Twenty-four Hour Notice of Noncompliance Reporting.

1. The following occurrencs of noncompliance shall be reported by telephone within 24 hours from the time the permittee becomes aware of the circumstances:

   a. Any noncompliance which may endanger health or the environment;

   b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part III.G., Bypass of Treatment Facilities.);

   c. Any upset which exceeds any effluent limitation in the permit (See Part III.H., Upset Conditions.);

   d. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

2. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:

   a. A description of the noncompliance and its causes;

   b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected; and

d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

3. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by phone, (206) 553-1256.

4. Reports shall be submitted to the addresses in Part II.C., Reporting of Monitoring results.

H. Other Noncompliance Reporting. Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part II.C. are submitted. The reports shall contain the information listed in Part II.G.2.

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

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

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

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

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

J. Compliance Schedules. Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any Compliance Schedule of this permit (Part I) shall be submitted no later than 10 days following each schedule date.

III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions.

1. Civil penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed $25,000 per day for each violation.

2. Criminal Penalties:

a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

d. False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under

this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

Except as provided in permit conditions in Part III.G., Bypass of Treatment Facilities and Part III.H., Upset Conditions, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

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

E. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similr systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

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

G. Bypass of Treatment Facilities:

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this section.

2. 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 date of the bypass.

   b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.G., Twenty-four Hour Notice of Noncompliance Reporting.

3. Prohibition of bypass.

   a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass, unless:

      (1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

      (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

      (3) The permittee submitted notices as required under paragraph 2 of this section.

   b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a. of this section.

H. Upset Conditions.

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 2 of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

   a. An upset occurred and that the permittee can identify the cause(s) of the upset;

   b. The permitted facility was at the time being properly operated;

   c. The permittee submitted notice of the upset as required under Part II.G., Twenty-four Hour Notice of Noncompliance Reporting; and

   d. The permittee complied with any remedial measures required under Part III.D., Duty to Mitigate.

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

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

IV. GENERAL REQUIREMENTS

A. Changes in Discharge of Toxic Substances. Notification shall be provided to the Director as soon as the permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

   a. One hundred micrograms per liter (100 ug/l);

   b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2, 4-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

   c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 ug/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

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

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Part IV.A.1.

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

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

E. Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.

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

G. Other Information. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director, it shall promptly submit such facts or information.

H. Signatory Requirements. All applications, reports or information submitted to the Director shall be signed and certified.

1. All permit applications shall be signed as follows:
   a. For a corporation: by a responsible corporate officer.

   b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

   c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility of activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to the authorization. If an authorization under paragraph IV.H.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph

IV.H.2. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

I. Availability of Reports. Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Director. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

J. Oil and Hazardous Substance Liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from ny responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

K. Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion ofpersonal rights, nor any infringement of federal, state, or local laws or regulations.

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

M. Transfers.

1. The Permittee may request automatic transfer of this permit, including all responsibilities, duties, and other rights attached to it, to a new permittee, effective on the date specified in the agreement mentioned in Part IV.M.1.b. (below) if:

   a. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date; and

   b. The notice includes a written agreement between both the existing permittee and the proposed transferee, signed by both parties, that contains the proposed date of transfer of the permit and an acknowledgement that the transferee accepts all rights, duties, responsibilities, and other liabilities attached to the permit.

2. If notification to the Director of a request for permit transfer is not received at least 30 days in advance of the proposed transfer date:

   a. Change in ownership or operational control of a facility will be processed as minor modifications of the permit as outlined by 40 CFR § 122.63(d); and

   b. The effective date of the transfer of the permit to the transferee whall be the date of receipt by the Director of the request for transfer. In order for a transfer request to be sufficient, it must contain a written agreement signed by both parties, stating that the current permit holder agrees to transfer all rights and liabilities in the existing permit to the transferee.

3. Neither category of transfer request (Part IV.M. paragraphs 1 or 2) shall be considered if the Director notifies the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit under Part IV.D.

N. State Laws. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

V. OTHER CONDITIONS

A. Reopener Clause. EPA may reopen this permit on the basis of monitoring results, other reported information, or other causes consistent with federal regulations, to modify and/or establish specific monitoring requirements, effluent limitations, or other permit conditions. In addition, at such time that wasteload allocations and/or an approved nutrient management plan is developed for the Snake River, this permit may be reopened to incorporate any applicable effluent limitations and conditions.