

ADEQ

ARKANSAS
Department of Environmental Quality

June 15, 2011

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7006 3450 0003 4065 6955)

Craig Jackson, Manager
Sebastian Mining, LLC - Sebastian Mine
6451 Happy Valley Road
Hartford, AR 72938

RE: Discharge Permit Number AR0051853, AFIN 66-00662

Dear Mr. Jackson:

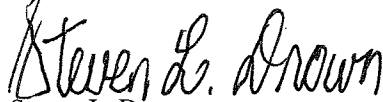
Enclosed is the public notice, a copy of the draft permit and Statement of Basis which the Arkansas Department of Environmental Quality (ADEQ) has prepared and mailed to you on above date under the authority of the National Pollutant Discharge Elimination System (NPDES) and the Arkansas Water and Air Pollution Control Act. A copy of the final permit will be mailed to you when the Department has made a final permitting decision.

In accordance with Reg. 8.207, the enclosed public notice will be or has been published by ADEQ in a newspaper of general circulation of your facility for one (1) day only. An invoice for the cost of publishing the public notice and proof of publication will be sent to you by the advertising newspaper. The permittee must send proof of publication and proof of payment to the address at the bottom of this letter as soon as possible but no later than 30 days from the above date. Until this Department receives proof of publication of the public notice and payment of all permit fees, no further action will be taken on the issuance of your discharge permit.

Comments must be received at ADEQ prior to the close of the public comment period as described in the enclosed public notice. Once a final permit is issued by the Director and becomes effective, the permittee must comply with all terms and conditions of the permit, or be subject to enforcement actions for any instances of noncompliance during the duration of the permit, usually five (5) years. Consequently, it is imperative that you, as the applicant, thoroughly review the enclosed documentation for accuracy, applicability, and your ability to comply with all conditions therein.

Should you have any questions concerning any part of the draft permit, please contact Loretta Reiber, P.E. at (501) 682-0612.

Sincerely,



Steven L. Drown
Chief, Water Division

SD:lr

Enclosure

PUBLIC NOTICE OF DRAFT DISCHARGE PERMIT
PERMIT NUMBER AR0051853, AFIN 66-00662

This is to give notice that the Permits Branch of the Water Division of the Arkansas Department of Environmental Quality (ADEQ), 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317 at telephone number (501) 682-0622, proposes a draft issuance of the permit for which an application was received on 9/3/2010 with all additional information received by 4/1/2011 for the following applicant under the National Pollutant Discharge Elimination System (NPDES) and the Arkansas Water and Air Pollution Control Act.

Applicant: Sebastian Mining, LLC - Sebastian Mine, 6451 Happy Valley Road, Hartford, AR 72938. Location: Latitude: 35° 00' 36.09"; Longitude: 94° 22' 05.31" in Sebastian County, Arkansas. The discharge of stormwater runoff and mine dewatering is into an unnamed tributary of West Creek, thence to West Creek, thence to James Fork in Segment 3I of the Arkansas River Basin.

ADEQ's contact person for submitting written comments, requesting information regarding the draft permit, or obtaining a copy of the permit and the Statement of Basis is Loretta Reiber, P.E., at the above address and telephone number or by email at Water-Draft-Permit-Comment@adeq.state.ar.us. For those with Internet access, a copy of the proposed draft permit as well as the publication date may be found on the ADEQ's website at: http://www.adeq.state.ar.us/water/branch_permits/individual_permits/pn_permits/pnpermits.asp.

The last day of the comment period is 30 days after the publication date. If the last day of the comment period is a Saturday, Sunday or legal holiday, the public comment period shall expire on the next day that is not a Saturday, Sunday or legal holiday. For information regarding the actual publication date along with the actual date and time the comment period will end, please contact Loretta Reiber, P.E. at the above address and telephone number or by email at Water-Draft-Permit-Comment@adeq.state.ar.us. The permit will become effective approximately two weeks after the close of the comment period unless comments are received and/or a public hearing is requested prior to the close of the comment period requiring a delay of the effective date. Comments and public hearing procedures may be found at 40 CFR Parts 124.10 through 124.12 and APCEC Regulation No. 8. All persons, including the permittee, who wish to comment on ADEQ's draft permitting decision, must submit written comments to ADEQ, along with their name and mailing address. After the public comment period, and public hearing, if one is held, ADEQ will issue a final permitting decision. A Public Hearing will be held when ADEQ finds a significant degree of public interest. ADEQ will notify the applicant and each person who has submitted written comments or requested notice of the final permitting decision. Any interested person who has submitted comments may appeal a final decision by ADEQ in accordance with the APCEC Regulation No. 8 (Administrative Procedures).

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Statement of Basis

This Statement of Basis is for information and justification of the permit limits only. Please note that it is not enforceable. This draft permitting decision is for issuance of the discharge Permit Number AR0051853 with Arkansas Department of Environmental Quality (ADEQ) Facility Identification Number (AFIN) 66-00662 to discharge to Waters of the State.

1. PERMITTING AUTHORITY.

The issuing office is:

Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317

2. APPLICANT.

The applicant's mailing address and physical location is:

Shriram Sebastian, LLC - Sebastian Mine
6451 Happy Valley Road
Hartford, AR 72938

3. PREPARED BY.

The permit was prepared by:

Loretta Reiber, P.E.
Staff Engineer
Discharge Permits Section, Water Division
(501) 682-0612
E-mail: reiber@adeq.state.ar.us

4. PERMIT ACTIVITY.

Previous Permit Effective Date: 01/01/2006
Previous Permit Expiration Date: 12/31/2010

The discharges from this facility were previously covered under the general permit for discharges from Coal Mining and Coal Exploration Facilities - ARG040000. The Department made the decision to not renew the general permit. The facility has therefore applied for an individual discharge permit so that they can continue to operate.

Three outfalls were covered by the general permit. The permittee is proposing to add six additional outfalls to this facility with the issuance of this individual permit. Each new

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outfall will be located at a different sedimentation pond. Construction of the new sedimentation ponds is expected to begin within the next couple of years. Therefore, the ponds and their associated outfalls have been included in this permit. The permittee will be required to obtain a State Construction Permit for each pond. The facility will be required to obtain a modification of its NPDES permit if the outfall of any of the ponds is more than 100 feet from the coordinates contained in the permit or if it is necessary to use pH adjustment at any of the ponds.

40 CFR 434.11(j)(1): Notwithstanding any other provision of this Chapter, subject to paragraph (j)(2) of this section the term “new source coal mine” means a coal mine (excluding coal preparation plants and coal preparation plant associated areas) including an abandoned mine which is being re-mined.

- (i) The construction of which is commenced after May 4, 1984; or
- (ii) Which is determined by the EPA Regional Administrator to constitute a “major alteration”. In making this determination, the Regional Administrator shall take into account whether one or more of the following events resulting in a new, altered or increased discharge of pollutants has occurred after May 4, 1984 in connection with the mine for which the NPDES permit is being considered:
 - (A) Extraction of a coal seam not previously extracted by that mine;
 - (B) Discharge into a drainage area not previously affected by wastewater discharge from the mine;
 - (C) Extensive new surface disruption at the mining operation;
 - (D) A construction of a new shaft, slope, or drift; and
 - (E) Such other factors as the Regional Administrator deems relevant.

The ponds which will be associated with Outfalls 004, 005, 006, 007, 008, and 009 will receive mine drainage from a significant portion of the permittee’s property which is not currently being mined. This is considered to be a major alteration which is resulting in a new discharge of pollutants. The area will therefore be considered a new source. The NSPS provisions of 40 CFR Part 434 will apply to the new outfalls.

The permittee submitted a permit application on 9/3/2010 with all additional information received by 4/1/2011. It is proposed that the draft discharge permit be issued for a 5-year term in accordance with regulations promulgated at 40 CFR Part 122.46(a).

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DOCUMENT ABBREVIATIONS

In the document that follows, various abbreviations are used. They are as follows:

BAT - best available technology economically achievable
BCT - best conventional pollutant control technology
BMP - best management plan
BOD₅ - five-day biochemical oxygen demand
BPJ - best professional judgment
BPT - best practicable control technology currently available
CBOD₅ - carbonaceous biochemical oxygen demand
CD - critical dilution
CFR - Code of Federal Regulations
cfs - cubic feet per second
COD - chemical oxygen demand
COE - United States Corp of Engineers
CPP - continuing planning process
CWA - Clean Water Act
DMR - discharge monitoring report
DO - dissolved oxygen
ELG - effluent limitation guidelines
EPA - United States Environmental Protection Agency
ESA - Endangered Species Act
FCB - fecal coliform bacteria
gpm - gallons per minute
MGD - million gallons per day
MQL - minimum quantification level
NAICS - North American Industry Classification System
NH₃-N - ammonia nitrogen
NO₃ + NO₂-N - nitrate + nitrite nitrogen
NPDES - National Pollutant Discharge Elimination System
O&G - oil and grease
Reg. 2 - APCEC Regulation No. 2
Reg. 6 - APCEC Regulation No. 6
Reg. 8 - APCEC Regulation No. 8
Reg. 9 - APCEC Regulation No. 9
RP - reasonable potential
SIC - standard industrial classification
TDS - total dissolved solids
TMDL - total maximum daily load
TP - total phosphorus
TRC - total residual chlorine
TSS - total suspended solids

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UAA - use attainability analysis
USFWS - United States Fish and Wildlife Service
WET - Whole effluent toxicity
WQMP - water quality management plan
WQS - Water Quality standards
WWTP - wastewater treatment plant

DMR Review:

The Discharge Monitoring Reports (DMRs) for 10/2007 through 9/2010 were reviewed during the permit renewal process. No exceedances were reported during the specified time frame. No permit action will be taken.

Legal Order Review:

There are currently no active Consent Administrative Orders (CAOs) or Notice of Violations (NOVs) for this facility.

5. **FINANCIAL ASSURANCE**

This facility is not required to obtain financial assurance for this NPDES permit because it does not operate a sanitary sewer discharge permit.

6. **SIGNIFICANT CHANGES FROM THE PREVIOUSLY ISSUED PERMIT.**

This is the first individual permit for this facility whose discharges were previously covered under ARG040018. All applicable portions of the general permit have been continued in this individual permit.

7. **RECEIVING STREAM SEGMENT AND DISCHARGE LOCATION.**

The outfalls are located at the following coordinates based on the permit application and confirmed with Google Earth using WGS84:

Outfall 001: Latitude: 35° 00' 28.4" Longitude: 94° 21' 34.4"
Outfall 002: Latitude: 35° 00' 35.9" Longitude: 94° 21' 35.9"
Outfall 003: Latitude: 35° 00' 24.5" Longitude: 94° 21' 50.6"
Outfall 004: Latitude: 35° 00' 24.1" Longitude: 94° 21' 44.0"
Outfall 005: Latitude: 35° 00' 26.2" Longitude: 94° 21' 23.4"
Outfall 006: Latitude: 35° 00' 13.0" Longitude: 94° 21' 37.8"
Outfall 007: Latitude: 35° 00' 21.0" Longitude: 94° 21' 08.6"
Outfall 008: Latitude: 35° 00' 12.6" Longitude: 94° 21' 08.3"

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Outfall 009: Latitude: 35° 00' 15.5" Longitude: 94° 20' 44.2"

The receiving waters named:

unnamed tributary of West Creek, thence to West Creek, thence to James Fork in Segment 3I of the Arkansas River Basin. The receiving stream with USGS Hydrologic Unit Code (H.U.C) of 11110105 and reach #033 (of James Fork) is a Water of the State classified for secondary contact recreation, raw water source for domestic (public and private), industrial, and agricultural water supplies, propagation of desirable species of fish and other aquatic life, and other compatible uses.

The Department recognizes that the permittee is located in close proximity to the State of Oklahoma. However, the effluent will travel over 20 stream miles before reaching the state line. Therefore, the effluent is not expected to affect waters in Oklahoma.

8. **303(d) LIST, ENDANGERED SPECIES, AND ANTI-DEGRADATION CONSIDERATIONS.**

A. **303(d) List:**

The receiving stream is not listed on the 2008 303(d) list. Therefore no permit action is needed.

B. **Endangered Species:**

No comments on the application were received from the U.S. Fish and Wildlife Service (USF&WS). The draft permit and Statement of Basis will be sent to the USF&WS for their review.

C. **Anti-Degradation:**

The limitations and requirements set forth in this permit for discharge into waters of the State are consistent with the Antidegradation Policy and all other applicable water quality standards found in APC&EC Regulation No. 2.

9. **OUTFALL, TREATMENT PROCESS DESCRIPTION, AND FACILITY CONSTRUCTION.**

The following is a description of the facility described in the application:

A. Design Flow: variable MGD

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- B. Type of Treatment:
Outfalls 001, 002, & 003 - pH adjustment (as necessary) & sedimentation
Outfalls 004, 005, 006, 007, 008, and 009 - sedimentation
- C. Discharge Description:
Outfalls 001 & 002 – acid mine drainage & underground coal mine water
Outfall 003 – acid mine drainage & coal wash water
Outfall 004, 005, 006, 007, 008, and 009 – alkaline mine drainage
- D. Facility Status: This facility was evaluated using the NPDES Permit Rating Worksheet (MRAT) to determine the correct permitting status. Since the facility's MRAT score is of 50 less than 80, this facility is classified as a minor industrial.
- E. Facility Construction: This permit does not authorize or approve the construction or modification of any part of the treatment system or facilities. Approval for such construction must be by permit issued under Reg. 6.202.

10. ACTIVITY.

Under the Standard Industrial Classification (SIC) code of 1241 or North American Industry Classification System (NAICS) code of 212111, the applicant's activities are the operation of a coal mining facility.

11. SOLIDS PRACTICES.

Solids are left in the ponds. The permittee is responsible for removing solids as necessary in order to maintain sufficient capacity in the ponds to treat wastewater and stormwater.

12. PERMIT CONDITIONS.

The Arkansas Department of Environmental Quality has made a determination to issue a draft permit for the discharge described in the application. Permit requirements are based on federal regulations (40 CFR Parts 122, 124, and Subchapter N), the National Pretreatment Regulation in 40 CFR Part 403 and regulations promulgated pursuant to the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended, Ark. Code Ann. 8-4-101 et. seq.).

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A. Effluent Limitations

Outfalls 001 and 002 – acid mine drainage, stormwater runoff, and underground coal mine water

1. **Conventional and/or Toxic Pollutants**

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>				<u>Monitoring Requirements</u>	
	Mass (lbs/day, unless otherwise specified)		Concentration (mg/l, unless otherwise specified)		Frequency	Sample Type
	Monthly Avg.	Daily Max	Monthly Avg.	Daily Max		
Flow	N/A	N/A	Report, MGD	Report, MGD	once/day	instantaneous
Total Iron ¹	N/A	N/A	3.5	7.0	two/month	grab
Total Manganese ¹	N/A	N/A	2.0	4.0	two/month	grab
Total Suspended Solids ¹	N/A	N/A	35.0	70.0	two/month	grab
pH	N/A	N/A	<u>Minimum</u> 6.0 s.u.	<u>Maximum</u> 9.0 s.u.	two/month	grab

1. In accordance with 40 CFR 434.63(d)(2), any discharge caused by a rain event greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following requirements. All other requirements, with the exception of TSS, in the above table will still be applicable.

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>	
	Concentration (mg/l, unless otherwise specified)	
	Monthly Avg.	Daily Max
Total Iron	Report	Report
Total Manganese	Report	Report
Total Suspended Solids (TSS)	Report	Report

2. **Solids, Foam, and Free Oil:** There shall be no discharge of distinctly visible solids, scum, or foam of a persistent nature, nor shall there be any formation of slime, bottom deposits, or sludge banks. There shall be no visible sheen due to the presence of oil (Sheen means an iridescent appearance on the surface of the water).

B. Effluent Limitations

Outfall 003 – acid mine drainage, stormwater runoff, and coal wash water

1. Conventional and/or Toxic Pollutants

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>				<u>Monitoring Requirements</u>	
	Mass (lbs/day, unless otherwise specified)		Concentration (mg/l, unless otherwise specified)		Frequency	Sample Type
	Monthly Avg.	Daily Max	Monthly Avg.	Daily Max		
Flow	N/A	N/A	Report, MGD	Report, MGD	once/day	instantaneous
Total Iron ^{1,2,3}	N/A	N/A	3.5	7.0	two/month	grab
Total Manganese ^{1,2,3}	N/A	N/A	2.0	4.0	two/month	grab
Total Suspended Solids ^{1,2,3}	N/A	N/A	35.0	70.0	two/month	grab
pH	N/A	N/A	<u>Minimum</u> 6.0 s.u.	<u>Maximum</u> 9.0 s.u.	two/month	grab

- In accordance with 40 CFR 434.63(c)(1), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 2-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following requirements. All other requirements, with the exception of TSS, will still be applicable.

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>	
	Concentration (mg/l, unless otherwise specified)	
	Monthly Avg.	Daily Max
Total Iron	Report	7.0
Total Manganese	Report	Report
Settleable Solids	Report	0.5 ml/l

- In accordance with 40 CFR 434.63(c)(2), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than or the 2-year, 24-hour precipitation event but less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following requirements. All other requirements, with the exception of TSS, in the first table of Item #12.B of this Statement of Basis will still be applicable.

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<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>	
	Concentration (mg/l, unless otherwise specified)	
	Monthly Avg.	Daily Max
Total Iron	Report	Report
Total Manganese	Report	Report
Settleable Solids	Report	0.5 ml/l

3. In accordance with 40 CFR 434.63(d)(2), any wet weather discharge caused by a rain event greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following requirements. All other requirements in the first table in Item #12.B of the Statement of Basis will still be applicable.

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>	
	Concentration (mg/l, unless otherwise specified)	
	Monthly Avg.	Daily Max
Total Iron	Report	Report
Total Manganese	Report	Report
Total Suspended Solids (TSS)	Report	Report

2. **Solids, Foam, and Free Oil:** There shall be no discharge of distinctly visible solids, scum, or foam of a persistent nature, nor shall there be any formation of slime, bottom deposits, or sludge banks. There shall be no visible sheen due to the presence of oil (Sheen means an iridescent appearance on the surface of the water).

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C. Effluent Limitations

Outfalls 004, 005, 006, 007, 008, and 009 – alkaline mine drainage

1. Conventional and/or Toxic Pollutants

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>				<u>Monitoring Requirements</u>	
	Mass (lbs/day, unless otherwise specified)		Concentration (mg/l, unless otherwise specified)		Frequency	Sample Type
	Monthly Avg.	Daily Max	Monthly Avg.	Daily Max		
Flow	N/A	N/A	Report, MGD	Report, MGD	once/day	instantaneous
Total Iron ^{1,2}	N/A	N/A	3.0	6.0	two/month	grab
Total Suspended Solids ^{1,2}	N/A	N/A	35.0	70.0	two/month	grab
pH	N/A	N/A	<u>Minimum</u> 6.0 s.u.	<u>Maximum</u> 9.0 s.u.	two/month	grab

- In accordance with 40 CFR 434.63(a)(2), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following requirements. All other requirements, with the exception of TSS, in the first table of Item #12.C of this Statement of Basis will still be applicable.

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>	
	Concentration (mg/l, unless otherwise specified)	
	Monthly Avg.	Daily Max
Total Iron	Report	Report
Settleable Solids	Report	0.5 ml/l

- In accordance with 40 CFR 434.63(d)(2), any wet weather discharge caused by a rain event greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following requirements. All other requirements in the first table of Item #12.C of this Statement of Basis will still be applicable.

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>	
	Concentration (mg/l, unless otherwise specified)	
	Monthly Avg.	Daily Max
Total Iron	Report	Report
Total Suspended Solids (TSS)	Report	Report

2. **Solids, Foam, and Free Oil:** There shall be no discharge of distinctly visible solids, scum, or foam of a persistent nature, nor shall there be any formation of slime, bottom deposits, or sludge banks. There shall be no visible sheen due to the presence of oil (Sheen means an iridescent appearance on the surface of the water).

13. BASIS FOR PERMIT CONDITIONS.

The following is an explanation of the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons suggesting the decisions as required under 40 CFR Part 124.7.

Technology-Based Versus Water Quality-Based Effluent Limitations and Conditions

Following regulations promulgated at 40 CFR Part 122.44, the draft permit limits are based on either technology-based effluent limits pursuant to 40 CFR Part 122.44 (a) or on State water quality standards and requirements pursuant to 40 CFR Part 122.44 (d), whichever are more stringent as follows.

Parameter	Water Quality-Based		Technology-Based		Draft Permit	
	Monthly Avg. mg/l	Daily Max. mg/l	Monthly Avg. mg/l	Daily Max. mg/l	Monthly Avg. mg/l	Daily Max. mg/l
Outfalls 001, 002, and 003						
Total Iron	N/A	N/A	3.5	7.0	3.5	7.0
Total Manganese*	N/A	N/A	2.0	4.0	2.0	4.0
TSS	N/A	N/A	35.0	70.0	35.0	70.0
pH	6.0 - 9.0 s.u.		6.0 - 9.0 s.u.		6.0 - 9.0 s.u.	
Outfalls 004, 005, 006, 007, 008, and 009						
Total Iron	N/A	N/A	3.0	6.0	3.0	6.0
TSS	N/A	N/A	35.0	70.0	35.0	70.0
pH	6.0 - 9.0 s.u.		6.0 - 9.0 s.u.		6.0 - 9.0 s.u.	

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A. Justification for Limitations and Conditions of the Draft Permit:

Parameter	Water Quality or Technology	Justification
Outfalls 001 and 002 – acid mine drainage and underground coal mine water		
Total Iron	Technology	40 CFR 434.33
Total Manganese	Technology	40 CFR 434.33
TSS	Technology	40 CFR 434.32
pH	Water Quality	Reg. 2.504
Outfall 003 – acid mine drainage and coal wash water		
Total Iron	Technology	40 CFR 434.23(a)
Total Manganese	Technology	40 CFR 434.23(a)
TSS	Technology	40 CFR 434.22(a)
pH	Water Quality	Reg. 2.504
Outfalls 004, 005, 006, 007, 008, and 009 – alkaline mine drainage		
Total Iron	Technology	40 CFR 434.45
TSS	Technology	40 CFR 434.45
pH	Water Quality	Reg. 2.504

The parameters listed in the above table were determined to be the parameters of concern when 40 CFR 434 was issued. The limits contained in this permit are based upon the requirements of 40 CFR 434.

The discharges from Outfalls 001 and 002 are only eligible for the alternate limits contained in 40 CFR 434.63(d)(2) because underground mine water is discharged through those outfalls.

The discharges from Outfall 003 are eligible for the alternate limits in 40 CFR 434.63(a)(2), (c), and (d)(2). In accordance with 40 CFR 434.61, “When waste streams from any facility covered by this part are combined for treatment or discharge with waste streams from another facility covered by this part, the concentration of each pollutant in the combined discharge may not exceed the most stringent limitations for that pollutant applicable to any component waste stream of the discharge.”

The discharges from Outfalls 004, 005, 006, 007, 008, and 009 are considered to be alkaline mine drainage because those waters are expected to have a pH above 6.0 s.u. and a Total Iron level less than 10 mg/l before any treatment. (See 40 CFR 434.11(c).) These outfalls are eligible for the alternate limits outlined in 40 CFR 434.63(a)(2) and (d)(2).

B. Anti-backsliding

The draft permit is consistent with the requirements to meet Anti-backsliding provisions of the Clean Water Act (CWA), Section 402(o) [40 CFR 122.44(l)]. The final effluent limitations for reissuance permits must be as stringent as those in the previous permit, unless the less stringent limitations can be justified using exceptions listed in 40 CFR 122.44 (l)(2)(i).

The draft permit maintains the requirements of the previous permit ARG040018.

C. Limits Calculations

1. Mass limits:

Mass limits have not been included in this permit. The effluent limitations guidelines only specify concentration limits and are not based on production. Discharges from this facility are expected to occur mainly in response to rain events. This expectation is supported by the fact that few discharges have been reported during the most recent term of the general permit.

2. Daily Maximum Limits:

The daily maximum limits are based on the applicable subparts of 40 CFR Part 434.

3. Applicable Effluent Limitations Guidelines

Discharges from facilities of this type are covered by Federal effluent limitations guidelines promulgated under 40 CFR Part 434 Coal Mining Point Source Category, Subpart B – Coal Preparation Plants and Coal Preparation Plant Associated Areas, Subpart C – Acid or Ferruginous Mine Drainage, and Subpart F – Miscellaneous Provisions.

Subpart B is applicable only at Outfall 003. Subpart C is applicable to the discharges from Outfalls 001, 002, 004, 005, 006, and 007. Subpart F is applicable to all discharges made under this NPDES permit.

These subparts place specified concentration limits on the discharges for parameters such as Total Iron, Total Manganese, Total Suspended Solids, Settleable Solids, and pH. These limits may be found in Item #12 of this Statement of Basis.

4. Stormwater Runoff

Stormwater runoff discharges are addressed in 40 CFR Part 434, Subparts B, C, and F. Any stormwater runoff discharges not covered by 40 CFR Part 434 or this NPDES permit must be permitted under the general permit for stormwater runoff associated with industrial activity.

14. SAMPLE TYPE AND FREQUENCY.

Requirements for sample type and sampling frequency have been based on the requirements contained in ARG040000. These requirements are applicable to all outfalls at this facility.

Parameter	ARG040000		Draft Permit	
	Frequency of Sample	Sample Type	Frequency of Sample	Sample Type
Outfalls 001, 002, and 003				
Flow	once/day	instantaneous	once/day	instantaneous
Total Iron	two/month	grab	two/month	grab
Total Manganese	two/month	grab	two/month	grab
TSS	two/month	grab	two/month	grab
pH	two/month	grab	two/month	grab
Outfalls 004, 005, 006, 007, 008, and 009				
Flow	once/day	instantaneous	once/day	instantaneous
Total Iron	two/month	grab	two/month	grab
TSS	two/month	grab	two/month	grab
pH	two/month	grab	two/month	grab

15. PERMIT COMPLIANCE.

A Schedule of Compliance has not been included in this permit. Compliance with all permit requirements is required on the effective date of the permit.

16. MONITORING AND REPORTING.

The applicant is at all times required to monitor the discharge on a regular basis and report the results monthly. The monitoring results will be available to the public.

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17. SOURCES.

The following sources were used to draft the permit:

- A. Application No. AR0051853 received 9/3/2010 with all additional information received by 4/1/2011.
- B. APCEC Regulation No. 2.
- C. APCEC Regulation No. 3.
- D. APCEC Regulation No. 6.
- E. 40 CFR Parts 122, 125, and 434.
- F. Discharge permit file ARG040018.
- G. Discharge Monitoring Reports (DMRs).
- H. "Arkansas Water Quality Inventory Report 2010 (305(b))", ADEQ.
- I. "Identification and Classification of Perennial Streams of Arkansas", Arkansas Geological Commission.
- J. Continuing Planning Process (CPP).
- K. Technical Support Document For Water Quality-based Toxic Control.

18. PUBLIC NOTICE.

The public notice describes the procedures for the formulation of final determinations and shall provide for a public comment period of 30 days. During this period, any interested persons may submit written comments on the permit and may request a public hearing to clarify issues involved in the permitting decision. A request for a public hearing shall be in writing and shall state the nature of the issue(s) proposed to be raised in the hearing.

A copy of the permit and public notice will be sent via email to the Corps of Engineers, the Regional Director of the U.S. Fish and Wildlife Service, the Department of Arkansas Heritage, the EPA, and the Arkansas Department of Health.

19. POINT OF CONTACT.

For additional information, contact:

Loretta Reiber, P.E.
Permits Branch, Water Division
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317
Telephone: (501) 682-0612

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AUTHORIZATION TO DISCHARGE WASTEWATER UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE ARKANSAS WATER AND AIR POLLUTION CONTROL ACT

In accordance with the provisions of the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended, Ark. Code Ann. 8-4-101 et seq.), and the Clean Water Act (33 U.S.C. § 1251 et seq.),

The applicant's mailing address and physical location is:

Sebastian Mining, LLC - Sebastian Mine
6451 Happy Valley Road
Hartford, AR 72938

is authorized to discharge stormwater runoff from a facility located as follows: in Sebastian County, Arkansas.

Latitude: 35° 00' 36.09"; Longitude: 94° 22' 05.31"

to receiving waters (for all outfalls) named:

unnamed tributary of West Creek, thence to West Creek, thence to James Fork in Segment 3I of the Arkansas River Basin.

The outfalls are located at the following coordinates:

Outfall 001: Latitude: 35° 00' 28.4" Longitude: 94° 21' 34.4"
Outfall 002: Latitude: 35° 00' 35.9" Longitude: 94° 21' 35.9"
Outfall 003: Latitude: 35° 00' 24.5" Longitude: 94° 21' 50.6"
Outfall 004: Latitude: 35° 00' 24.1" Longitude: 94° 21' 44.0"
Outfall 005: Latitude: 35° 00' 26.2" Longitude: 94° 21' 23.4"
Outfall 006: Latitude: 35° 00' 13.0" Longitude: 94° 21' 37.8"
Outfall 007: Latitude: 35° 00' 21.0" Longitude: 94° 21' 08.6"
Outfall 008: Latitude: 35° 00' 12.6" Longitude: 94° 21' 08.3"
Outfall 009: Latitude: 35° 00' 15.5" Longitude: 94° 20' 44.2"

Discharge shall be in accordance with effluent limitations, monitoring requirements, and other conditions set forth in this permit. Per Part III.D.10, the permittee must re-apply on or before 180 days prior to the expiration of the permit for permit coverage past the expiration date.

Effective Date:

Expiration Date:

Steven L. Drown
Chief, Water Division
Arkansas Department of Environmental Quality

Issue Date

PART I PERMIT REQUIREMENTS

SECTION A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS: OUTFALLS 001 and 002 – acid mine drainage and underground coal mine water.

During the period beginning on the effective date and lasting until the date of expiration, the permittee is authorized to discharge from Outfalls 001 and 002. Such discharges shall be limited and monitored by the permittee as specified below from a treatment system consisting of a sedimentation pond and pH adjustment as necessary with a variable flow.

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>				<u>Monitoring Requirements</u>	
	Mass (lbs/day, unless otherwise specified)		Concentration (mg/l, unless otherwise specified)		Frequency	Sample Type
	Monthly Avg.	Daily Max	Monthly Avg.	Daily Max		
Flow	N/A	N/A	Report, MGD	Report, MGD	once/day	instantaneous
Total Iron ¹	N/A	N/A	3.5	7.0	two/month	grab
Total Manganese ¹	N/A	N/A	2.0	4.0	two/month	grab
Total Suspended Solids (TSS) ¹	N/A	N/A	35.0	70.0	two/month	grab
pH	N/A	N/A	<u>Minimum</u> 6.0 s.u.	<u>Maximum</u> 9.0 s.u.	two/month	grab

- In accordance with 40 CFR 434.63(d)(2), any discharge caused by a rain event greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following requirements. All other requirements in the above table will still be applicable.

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>	
	Concentration (mg/l, unless otherwise specified)	
	Monthly Avg.	Daily Max
Total Iron	Report	Report
Total Manganese	Report	Report
Total Suspended Solids (TSS)	Report	Report

There shall be no discharge of distinctly visible solids, scum, or foam of a persistent nature, nor shall there be any formation of slime, bottom deposits, or sludge banks. There shall be no visible sheen as defined in Part IV of this permit.

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge during the entire monitoring period. Samples shall be taken after final treatment at the following monitoring coordinates: Outfall 001: Latitude: 35° 00' 28.4" Longitude: 94° 21' 34.4" and Outfall 002: Latitude: 35° 00' 35.9" Longitude: 94° 21' 35.9".

PART I PERMIT REQUIREMENTS

SECTION A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS: OUTFALL 003 – acid mine drainage and coal wash water.

During the period beginning on the effective date and lasting until the date of expiration, the permittee is authorized to discharge from Outfall 003. Such discharges shall be limited and monitored by the permittee as specified below from a treatment system consisting of a sedimentation pond and pH adjustment with a variable flow.

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>				<u>Monitoring Requirements</u>	
	Mass (lbs/day, unless otherwise specified)		Concentration (mg/l, unless otherwise specified)		Frequency	Sample Type
	Monthly Avg.	Daily Max	Monthly Avg.	Daily Max		
Flow	N/A	N/A	Report, MGD	Report, MGD	once/day	instantaneous
Total Iron ^{1, 2, 3}	N/A	N/A	3.5	7.0	two/month	grab
Total Manganese ^{1, 2, 3}	N/A	N/A	2.0	4.0	two/month	grab
Total Suspended Solids (TSS) ^{1, 2, 3}	N/A	N/A	35.0	70.0	two/month	grab
pH	N/A	N/A	<u>Minimum</u> 6.0 s.u.	<u>Maximum</u> 9.0 s.u.	two/month	grab

- In accordance with 40 CFR 434.63(c)(1), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 2-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following requirements. All other requirements, with the exception of TSS, will still be applicable.

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>	
	Concentration (mg/l, unless otherwise specified)	
	Monthly Avg.	Daily Max
Total Iron	Report	7.0
Total Manganese	Report	Report
Settleable Solids	Report	0.5 ml/l

- In accordance with 40 CFR 434.63(c)(2), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than or the 2-year, 24-hour precipitation event but less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following requirements. All other requirements, with the exception of TSS, in the first table on page 2 of Part IA will still be applicable.

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>	
	Concentration (mg/l, unless otherwise specified)	
	Monthly Avg.	Daily Max
Total Iron	Report	Report
Total Manganese	Report	Report
Settleable Solids	Report	0.5 ml/l

3. In accordance with 40 CFR 434.63(d)(2), any wet weather discharge caused by a rain event greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following requirements. All other requirements in the first table on page 2 of Part IA will still be applicable.

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>	
	Concentration (mg/l, unless otherwise specified)	
	Monthly Avg.	Daily Max
Total Iron	Report	Report
Total Manganese	Report	Report
Total Suspended Solids (TSS)	Report	Report

There shall be no discharge of distinctly visible solids, scum, or foam of a persistent nature, nor shall there be any formation of slime, bottom deposits, or sludge banks. There shall be no visible sheen as defined in Part IV of this permit.

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge during the entire monitoring period. Samples shall be taken after final treatment at the following monitoring coordinates: Outfall 003: Latitude: 35° 00' 24.5" Longitude: 94° 21' 50.6".

PART I PERMIT REQUIREMENTS

SECTION A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS: OUTFALLS 004, 005, 006, 007, 008, and 009 – alkaline mine drainage.

During the period beginning on the effective date and lasting until the date of expiration, the permittee is authorized to discharge from Outfalls 004, 005, 006, 007, 008, and 009. Such discharges shall be limited and monitored by the permittee as specified below from a treatment system consisting of a sedimentation pond with a variable flow.

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>				<u>Monitoring Requirements</u>	
	Mass (lbs/day, unless otherwise specified)		Concentration (mg/l, unless otherwise specified)		Frequency	Sample Type
	Monthly Avg.	Daily Max	Monthly Avg.	Daily Max		
Flow	N/A	N/A	Report, MGD	Report, MGD	once/day	instantaneous
Total Iron ^{1,2}	N/A	N/A	3.0	6.0	two/month	grab
Total Suspended Solids (TSS) ^{1,2}	N/A	N/A	35.0	70.0	two/month	grab
pH	N/A	N/A	<u>Minimum</u> 6.0 s.u.	<u>Maximum</u> 9.0 s.u.	two/month	grab

- In accordance with 40 CFR 434.63(a)(2), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following requirements. All other requirements, with the exception of TSS, in the first table on page 4 of Part IA will still be applicable.

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>	
	Concentration (mg/l, unless otherwise specified)	
	Monthly Avg.	Daily Max
Total Iron	Report	Report
Settleable Solids	Report	0.5 ml/l

- In accordance with 40 CFR 434.63(d)(2), any wet weather discharge caused by a rain event greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following requirements. All other requirements in the first table on page 4 of Part IA will still be applicable.

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>	
	Concentration (mg/l, unless otherwise specified)	
	Monthly Avg.	Daily Max
Total Iron	Report	Report
Total Suspended Solids (TSS)	Report	Report

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There shall be no discharge of distinctly visible solids, scum, or foam of a persistent nature, nor shall there be any formation of slime, bottom deposits, or sludge banks. There shall be no visible sheen as defined in Part IV of this permit.

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge during the entire monitoring period. Samples shall be taken after final treatment at the following monitoring coordinates: Outfall 004: Latitude: 35° 00' 24.1" Longitude: 94° 21' 44.0"; Outfall 005: Latitude: 35° 00' 26.2" Longitude: 94° 21' 23.4"; Outfall 006: Latitude: 35° 00' 13.0" Longitude: 94° 21' 37.8"; Outfall 007: Latitude: 35° 00' 21.0" Longitude: 94° 21' 08.6"; Outfall 008: Latitude: 35° 00' 12.6" Longitude: 94° 21' 08.3"; and Outfall 009: Latitude: 35° 00' 15.5" Longitude: 94° 20' 44.2".

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SECTION B. PERMIT COMPLIANCE

The permittee shall achieve compliance with the effluent limitations specified for discharges in accordance with the following schedule:

Compliance is required on the effective date of the permit.

PART II OTHER CONDITIONS

1. The operator of this wastewater treatment facility shall hold a Basic Industrial license from the State of Arkansas in accordance with Act 1103 of 1991, Act 556 of 1993, Act 211 of 1971, and Regulation No. 3, as amended.
2. In accordance with 40 CFR Parts 122.62 (a)(2) and 124.5, this permit may be reopened for modification or revocation and/or reissuance to require additional monitoring and/or effluent limitations when new information is received that actual or potential exceedance of State water quality criteria and/or narrative criteria are determined to be the result of the permittee's discharge(s) to a relevant water body or a Total Maximum Daily Load (TMDL) is established or revised for the water body that was not available at the time of the permit issuance that would have justified the application of different permit conditions at the time of permit issuance.
3. Other Specified Monitoring Requirements

The permittee may use alternative appropriate monitoring methods and analytical instruments other than as specified in Part I Section A of the permit without a major permit modification under the following conditions:

- The monitoring and analytical instruments are consistent with accepted scientific practices;
- The requests shall be submitted in writing to the Permits Section of the Water Division of the ADEQ for use of the alternate method or instrument.
- The method and/or instrument is in compliance with 40 CFR Part 136 or acceptable to the Director; and
- All associated devices are installed, calibrated, and maintained to insure the accuracy of the measurements and are consistent with the accepted capability of that type of device. The calibration and maintenance shall be performed as part of the permittee's laboratory Quality Control/Quality Assurance program.

Upon written approval of the alternative monitoring method and/or analytical instruments, these methods or instruments must be consistently utilized throughout the monitoring period. ADEQ must be notified in writing and the permittee must receive written approval from ADEQ if the permittee decides to return to the original permit monitoring requirements.

4. In accordance with 40 CFR 434.11(n), the terms "1-year, 2-year, and 10-year, 24-hour precipitation events" mean the maximum 24-hour precipitation event with a probable recurrence of once in one, two, and ten years, respectively, as defined by the National

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Weather Service and Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, or equivalent regional or rainfall probability information developed therefrom.

5. In accordance with 40 CFR 434.3(e), the operator shall have the burden of proof that the discharges eligible for the alternate limits contained in Part IA of the permit were caused by a 1-year, 2-year, or 10-year, 24-hour precipitation event.
6. The permittee shall install a rain gauge on site near the office building. This gauge must be read at least once per day during rain events. The permittee is not required to read the gauge on days when there is no rain. The permittee must maintain the rainfall records on site and make them available to Department personnel upon request. The permittee must submit rainfall records for those months in which discharges eligible for alternate limits have occurred.

PART III STANDARD CONDITIONS

SECTION A – GENERAL CONDITIONS

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the federal Clean Water Act and the Arkansas Water and Air Pollution Control Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; and/or for denial of a permit renewal application. **Any values reported in the required Discharge Monitoring Report (DMR) which are in excess of an effluent limitation specified in Part I shall constitute evidence of violation of such effluent limitation and of this permit.**

2. Penalties for Violations of Permit Conditions

The Arkansas Water and Air Pollution Control Act provides that any person who violates any provisions of a permit issued under the Act shall be guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment for not more than one (1) year, or a fine of not more than twenty-five thousand dollars (\$25,000) or by both such fine and imprisonment for each day of such violation. Any person who violates any provision of a permit issued under the Act may also be subject to civil penalty in such amount as the court shall find appropriate, not to exceed ten thousand dollars (\$10,000) for each day of such violation. The fact that any such violation may constitute a misdemeanor shall not be a bar to the maintenance of such civil action.

3. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause including, but not limited to the following:

- A. Violation of any terms or conditions of this permit; or
- B. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
- C. A change in any conditions that requires either a temporary or permanent reduction or elimination of the authorized discharge; or
- D. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.
- E. Failure of the permittee to comply with the provisions of APCEC Regulation No. 9 (Permit fees) as required by Part III.A.10. herein.

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.

4. Toxic Pollutants

Notwithstanding Part III.A.3., if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under APCEC Regulation No. 2, as amended, or Section 307(a) of the Clean Water Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitations on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standards or prohibition and the permittee so notified.

The permittee shall comply with effluent standards, narrative criteria, or prohibitions established under APCEC Regulation No. 2, as amended, or Section 307 (a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Civil and Criminal Liability

Except as provided in permit conditions on “Bypassing” (Part III.B.4.a.), and “Upsets” (Part III.B.5.b), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of this permit or applicable state and federal statutes or regulations which defeats the regulatory purposes of the permit may subject the permittee to criminal enforcement pursuant to the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended).

6. Oil and Hazardous Substance Liability

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

7. 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 Clean Water Act.

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8. 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 exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

9. Severability

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

10. Applicable Federal, State or Local Requirements

Permittees are responsible for compliance with all applicable terms and conditions of this permit. Receipt of this permit does not relieve any operator of the responsibility to comply with any other applicable federal such as endangered species, state or local statute, ordinance or regulation.

11. Permit Fees

The permittee shall comply with all applicable permit fee requirements for wastewater discharge permits as described in APCEC Regulation No. 9 (Regulation for the Fee System for Environmental Permits). Failure to promptly remit all required fees shall be grounds for the Director to initiate action to terminate this permit under the provisions of 40 CFR Parts 122.64 and 124.5 (d), as adopted in APCEC Regulation No. 6 and the provisions of APCEC Regulation No. 8.

SECTION B – OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

A. 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 backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

- B. The permittee shall provide an adequate operating staff which is duly qualified to carryout operation, maintenance, and testing functions required to insure compliance with the conditions of this permit.

2. **Need to Halt or Reduce 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. Upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production or discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power for the treatment facility is reduced, is lost, or alternate power supply fails.

3. **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 or the water receiving the discharge.

4. **Bypass of Treatment Facilities**

A. Bypass not exceeding limitation

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 Parts III.B.4.b. and 4.c.

B. Notice

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III.D.6. (24-hour notice).

C. Prohibition of bypass

1. Bypass is prohibited and the Director may take enforcement action against a permittee for bypass, unless:
 - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

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- (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal or preventive maintenance; and
 - (c) The permittee submitted notices as required by Part III.B.4.b.
2. 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 Part III.B.4.c.(1).

5. Upset Conditions

- A. 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 Part III.B.5.b. 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, is final administrative action subject to judicial review.
- B. Conditions necessary for 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:
 - 1. An upset occurred and that the permittee can identify the specific cause(s) of the upset;
 - 2. The permitted facility was at the time being properly operated.
 - 3. The permittee submitted notice of the upset as required by Part III.D.6.; and
 - 4. The permittee complied with any remedial measures required by Part III.B.3.
- C. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of waste waters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering the waters of the State. Written approval must be obtained from the ADEQ prior to removal of substances. Additionally, the permittee shall give at least 120 days prior notice to the Director of any change planned in the permittee's sludge disposal practice or land use applications, including types of crops grown (if applicable). Produced sludge shall be disposed of by land application only when meeting the following criteria:

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- A. Sewage sludge from treatment works treating domestic sewage (TWTDS) must meet the applicable provisions of 40 CFR Part 503; and
- B. The sewage sludge has not been classified as a hazardous waste under state or federal regulations.

7. Power Failure

The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators, or retention of inadequately treated effluent.

SECTION C – MONITORING AND RECORDS

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge during the entire monitoring period. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other waste stream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the Director. Intermittent discharges shall be monitored.

2. Flow Measurement

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to insure the accuracy of the measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than +/- 10% from true discharge rates throughout the range of expected discharge volumes and shall be installed at the monitoring point of the discharge.

Calculated Flow Measurement

For calculated flow measurements that are performed in accordance with either the permit requirements or a Department approved method (i.e., as allowed under Part II.4), the +/- 10% accuracy requirement described above is waived. This waiver is only applicable when the method used for calculation of the flow has been reviewed and approved by the Department.

3. 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. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals frequent enough to insure accuracy of measurements and shall insure that both calibration and maintenance activities will be conducted. An adequate analytical quality control program, including the analysis of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory. At a minimum, spikes and duplicate samples are to be analyzed on 10% of the samples.

4. Penalties for Tampering

The Arkansas Water and Air Pollution Control Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under the Act shall be guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment for not more than one (1) year or a fine of not more than ten thousand dollars (\$10,000) or by both such fine and imprisonment.

5. Reporting of Monitoring Results

Monitoring results must be reported on a Discharge Monitoring Report (DMR) form provided by the Department or other form/method approved in writing by the Department (e.g., electronic submittal of DMR once approved). Monitoring results obtained during the previous monitoring period shall be summarized and reported on a DMR form postmarked no later than the 25th day of the month or submitted electronically by 6:00 p.m. of the 25th (after NETDMR is approved), following the completed reporting period beginning on the effective date of the permit. When mailing the DMRs, duplicate copies of the forms signed and certified as required by Part III.D.11 and all other reports required by Part III.D, shall be submitted to the Director at the following address:

Enforcement Branch
Water Division
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317

If permittee uses outside laboratory facilities for sampling and/or analysis, the name and address of the contract laboratory shall be included on the DMR.

6. 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 Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated on the DMR.

7. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

8. Record Contents

Records and monitoring information shall include:

- A. The date, exact place, time and methods of sampling or measurements, and preservatives used, if any;
- B. The individuals(s) who performed the sampling or measurements;
- C. The date(s) and time analyses were performed;
- D. The individual(s) who performed the analyses;
- E. The analytical techniques or methods used; and
- F. The measurements and results of such analyses.

9. Inspection and Entry

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

- A. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- B. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- C. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and
- D. Sample, inspect, or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

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SECTION D – REPORTING REQUIREMENTS

1. Planned Changes

The permittee shall give notice within 180 days and provide plans and specification (if applicable) to the Director for review and approval prior to any planned physical alterations or additions to the permitted facility. In no case are any new connections, increased flows, removal of substances, or significant changes in influent quality permitted that cause violation of the effluent limitations specified herein.

2. Anticipated Noncompliance

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

3. Transfers

The permit is nontransferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act.

4. Monitoring Reports

Monitoring results shall be reported at the intervals and in the form specified in Part III.C.5. **Discharge Monitoring Reports must be submitted even when no discharge occurs during the reporting period.**

5. Compliance Schedule

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

6. Twenty-four Hour Report

A. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain the following information:

1. a description of the noncompliance and its cause;

2. 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
 3. steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
- B. The following shall be included as information which must be reported within 24 hours:
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 a maximum daily discharge limitation for any of the pollutants listed by the Director in Part I of the permit to be reported within 24 hours to the Enforcement Section of the Water Division of the ADEQ.
- C. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours to the Enforcement Section of the Water Division of the ADEQ.

7. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Parts III.D.4., 5., and 6., at the time monitoring reports are submitted. The reports shall contain the information listed at Part III.D.6.

8. Changes in Discharge of Toxic Substances for Industrial Dischargers

The permittee shall notify the Director as soon as he/she knows or has reason to believe:

- A. 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 “notification levels” described in 40 CFR Part 122.42(a)(1); or
- B. 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 “notification levels” described in 40 CFR Part 122.42(a)(2).

9. 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. Information shall be submitted in the form, manner and time frame requested by the Director.

10. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The complete application shall be submitted at least 180 days before the expiration date of this permit. The Director may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date. Continuation of expiring permits shall be governed by regulations promulgated in APCEC Regulation No. 6.

11. Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified as follows:

A. All **permit applications** shall be signed as follows:

1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - (a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
 - (b) The manager of one or more manufacturing, production, or operation facilities, provided: the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
2. For a partnership or sole proprietorship: by a general partner or proprietor, respectively; or
3. For a municipality, State, Federal, or other public agency, by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:
 - (a) The chief executive officer of the agency, or
 - (b) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

B. 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:

1. The authorization is made in writing by a person described above.

2. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
 3. The written authorization is submitted to the Director.
- C. 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.”

12. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2 and APCEC Regulation No. 6, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department of Environmental Quality. As required by the Regulations, the name and address of any permit applicant or permittee, permit applications, permits, and effluent data shall not be considered confidential.

13. Penalties for Falsification of Reports

The Arkansas Air and Water Pollution Control Act provides that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this permit shall be subject to civil penalties specified in Part III.A.2. and/or criminal penalties under the authority of the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended).

14. Applicable Federal, State or Local Requirements

Permittees are responsible for compliance with all applicable terms and conditions of this permit. Receipt of this permit does not relieve any operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, policy, or regulation.

PART IV DEFINITIONS

All definitions contained in Section 502 of the Clean Water Act and 40 CFR 122.2 shall apply to this permit and are incorporated herein by reference. Additional definitions of words or phrases used in this permit are as follows:

1. **“Act”** means the Clean Water Act, Public Law 95-217 (33.U.S.C. 1251 et seq.) as amended.
2. **“Administrator”** means the Administrator of the U.S. Environmental Protection Agency.
3. **“APCEC”** means the Arkansas Pollution Control and Ecology Commission.
4. **“Applicable effluent standards and limitations”** means all State and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.
5. **“Applicable water quality standards”** means all water quality standards to which a discharge is subject under the federal Clean Water Act and which has been (a) approved or permitted to remain in effect by the Administrator following submission to the Administrator pursuant to Section 303(a) of the Act, or (b) promulgated by the Director pursuant to Section 303(b) or 303(c) of the Act, and standards promulgated under (APCEC) Regulation No. 2, as amended.
6. **“Bypass”** As defined at 122.41(m).
7. **“Composite sample”** is a mixture of grab samples collected at the same sampling point at different times, formed either by continuous sampling or by mixing a minimum of 4 effluent portions collected at equal time intervals (but not closer than one hour apart) during operational hours, within the 24-hour period, and combined proportional to flow or a sample collected at more frequent intervals proportional to flow over the 24-hour period.
8. **“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.
 - A. **Mass Calculations:** For pollutants with limitations expressed in terms of mass, the “daily discharge” is calculated as the total mass of pollutant discharged over the sampling day.
 - B. **Concentration Calculations:** 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.
8. **“Daily Maximum”** discharge limitation means the highest allowable “daily discharge” during the calendar month. The 7-day average for Fecal Coliform Bacteria (FCB) or E-Coli is the geometric mean of the values of all effluent samples collected during the calendar week in colonies per 100 ml.
9. **“Department”** means the Arkansas Department of Environmental Quality (**ADEQ**).
10. **“Director”** means the Director of the Arkansas Department of Environmental Quality.
11. **“Dissolved oxygen limit”**, shall be defined as follows:
 - A. When limited in the permit as a minimum monthly average, shall mean the lowest acceptable monthly average value, determined by averaging all samples taken during the calendar month;

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- B. When limited in the permit as an instantaneous minimum value, shall mean that no value measured during the reporting period may fall below the stated value.
12. **“E-Coli”** a sample consists of one effluent grab portion collected during a 24-hour period at peak loads. For E-Coli, report the monthly average as a 30-day geometric mean in colonies per 100 ml.
 13. **“Fecal Coliform Bacteria (FCB)”**a sample consists of one effluent grab portion collected during a 24-hour period at peak loads. For Fecal Coliform Bacteria (FCB) report the monthly average as a 30-day geometric mean in colonies per 100 ml.
 14. **“Grab sample”** means an individual sample collected in less than 15 minutes in conjunction with an instantaneous flow measurement.
 15. **“Industrial User”** means a nondomestic discharger, as identified in 40 CFR Part 403, introducing pollutants to a POTW.
 16. **“Instantaneous Maximum”** when limited in the permit as an instantaneous maximum value, shall mean that no value measured during the reporting period may fall above the stated value.
 17. **“Instantaneous Minimum”** an instantaneous minimum value, shall mean that no value measured during the reporting period may fall below the stated value.
 18. **“Monthly average”** 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. For Fecal Coliform Bacteria (FCB) or E-Coli, report the monthly average, (see 30-day average below).
 19. **“National Pollutant Discharge Elimination System”** means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Clean Water Act.
 20. **“POTW”** means a Publicly Owned Treatment Works.
 21. **“Severe property damage”** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in products.
 22. **“Sewage sludge”** means the solids, residues, and precipitate separated from or created in sewage by the unit processes at a POTW. Sewage as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and stormwater runoff that are discharged to or otherwise enter a POTW.
 23. **“7-day average”** Also known as Average weekly. means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week.
 24. **“Treatment works”** means any devices and systems used in storage, treatment, recycling, and reclamation of municipal sewage and industrial wastes, of a liquid nature to implement section 201 of the Act, or necessary to recycle reuse water at the most economic cost over the estimated life of the works, including intercepting sewers, sewage collection systems, pumping, power and other equipment, and alterations thereof; elements essential to provide a

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reliable recycled supply such as standby treatment units and clear well facilities, and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.

25. **“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. Any upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, lack of preventive maintenance, or careless of improper operations.
26. **“Visible sheen”** means the presence of a film or sheen upon or a discoloration of the surface of the discharge. A sheen can also be from a thin glistening layer of oil on the surface of the discharge.
27. **“MGD”** shall mean million gallons per day.
28. **“mg/l”** shall mean milligrams per liter or parts per million (ppm).
29. **“µg/l”** shall mean micrograms per liter or parts per billion (ppb).
30. **“cfs”** shall mean cubic feet per second.
31. **“ppm”** shall mean parts per million.
32. **“s.u.”** shall mean standard units.
33. **“Weekday”** means Monday – Friday.
34. **Monitoring and Reporting:**

When a permit becomes effective, monitoring requirements are of the immediate period of the permit effective date. Where the monitoring requirement for an effluent characteristic is monthly or more frequently, the Discharge Monitoring Report (DMR) shall be submitted by the 25th of the month following the sampling. Where the monitoring requirement for an effluent characteristic is Quarterly, Semi-Annual, Annual, or Yearly, the DMR shall be submitted by the 25th of the month following the monitoring period end date.

A. MONTHLY:

is defined as a calendar month or any portion of a calendar month for monitoring requirement frequency of once/month or more frequently.

B. BI-MONTHLY:

is defined as two (2) calendar months or any portion of 2 calendar months for monitoring requirement frequency of once/2 months or more frequently.

C. QUARTERLY:

1. is defined as a **fixed calendar quarter** or any part of the fixed calendar quarter for a non-seasonal effluent characteristic with a measurement frequency of once/quarter. Fixed calendar quarters are: January through March, April through June, July through September, and October through December; or
2. is defined as a **fixed three month period** (or any part of the fixed three month period) of or dependent upon the seasons specified in the permit for a seasonal effluent characteristic with a monitoring requirement frequency of once/quarter that does not coincide with the fixed calendar quarter. Seasonal calendar quarters are:

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May through July, August through October, November through January, and February through April.

D. SEMI-ANNUAL:

is defined as the fixed time periods January through June, and July through December (or any portion thereof) for an effluent characteristic with a measurement frequency of once/6 months or twice/year.

E. ANNUAL or YEARLY:

is defined as a fixed calendar year or any portion of the fixed calendar year for an effluent characteristic or parameter with a measurement frequency of once/year. A calendar year is January through December, or any portion thereof.