

Permit No. UT0023540
Minor Industrial

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

AUTHORIZATION TO DISCHARGE UNDER THE
UTAH POLLUTANT DISCHARGE ELIMINATION SYSTEM
(UPDES)

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

CANYON FUEL COMPANY, LLC - SKYLINE MINE

is hereby authorized to discharge from its facility located at approximately seven (7) miles south of Scofield, Utah up Eccles Canyon, with the outfalls located at latitude 39°41'05" and longitude 111° 13' 58" for 001, latitude 39°41'05" and longitude 111°09'07" for 002, latitude 39°43'10" and longitude 111°09'15" for 003 to receiving waters named

Eccles Creek and UP Canyon Creek

in accordance with discharge points, effluent limitations, monitoring requirements and other conditions set forth herein.

This modified permit shall become effective on May 1, 2003.

This permit and the authorization to discharge shall expire at midnight, September 30, 2004.

Signed this 28th day of April, 2003.

 Authorized Permitting Official
 Executive Secretary
 Utah Water Quality Board

Mine # SKYLINE
 File Incoming
 Record # 0038
 Doc. Date 4-6-05
 Recd. Date 4-6-05

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I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Definitions.

1. The "30-day (and monthly) average" is the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.
2. The "7-day (and weekly) average" is the arithmetic average of all samples collected during a consecutive 7-day period or calendar week, whichever is applicable. The 7-day and weekly averages are applicable only to those effluent characteristics for which there are 7-day average effluent limitations. The calendar week which begins on Sunday and ends on Saturday, shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms. Weekly averages shall be calculated for all calendar weeks with Saturdays in the month. If a calendar week overlaps two months (i.e., the Sunday is in one month and the Saturday in the following month), the weekly average calculated for that calendar week shall be included in the data for the month that contains the Saturday.
3. "Daily Maximum" ("Daily Max.") is the maximum value allowable in any single sample or instantaneous measurement.
4. "Composite samples" shall be flow proportioned. The composite sample shall, as a minimum, contain at least four (4) samples collected over the composite sample period. Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six (6) hours nor more than 24 hours. Acceptable methods for preparation of composite samples are as follows:
 - a. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;
 - b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;
 - c. Constant sample volume, time interval between samples proportional to flow (i.e., sample taken every "X" gallons of flow); and,
 - d. Continuous collection of sample, with sample collection rate proportional to flow rate.
5. A "grab" sample, for monitoring requirements, is defined as a single "dip and take" sample collected at a representative point in the discharge stream.
6. An "instantaneous" measurement, for monitoring requirements, is defined as a single reading, observation, or measurement.
7. "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 preventive maintenance, or careless or improper operation.

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8. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
9. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
10. "Executive Secretary" means Executive Secretary of the Utah Water Quality Board.
11. "EPA" means the United States Environmental Protection Agency.
12. "Acute toxicity" occurs when 50 percent or more mortality is observed for either test species at any effluent concentration.
13. "Chronic toxicity" occurs when the survival, growth, or reproduction for either test species exposed to a dilution of 89 percent effluent (or lower) is significantly less (at the 95 percent confidence level) than the survival, growth or reproduction of the control specimens.
14. "Act" means the "*Utah Water Quality Act*".
15. "Best Management Practices" ("*BMPs*") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. *BMPs* also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
16. "Coal pile runoff" means the rainfall runoff from or through any coal storage pile.
17. "*CWA*" means *The Federal Water Pollution Control Act*, as amended, by *The Clean Water Act of 1987*.
18. "Point Source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agriculture storm water runoff.
19. "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.
20. "Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.
21. "10-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable reoccurrence interval of once in 10 years. This information is available in *Weather Bureau Technical Paper No. 40*, May 1961 and *NOAA Atlas 2*, 1973 for the 11 Western States, and may be obtained from the National Climatic Center of the Environmental Data Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

B. Description of Discharge Point(s).

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

<u>Outfall Number</u>	<u>Location of Discharge Point(s)</u>
001	Outfall from sedimentation pond and mine discharge to Eccles Creek. Latitude 39°41'05", Longitude 111°13'58".
002	Outfall from sedimentation pond at the load-out facility. Discharge is to Eccles Creek. Latitude 39°41'05", Longitude 111°09'07".
003	Outfall from sedimentation pond associated with the waste rock disposal site. Discharge goes to UP Canyon Creek. Latitude 39°43'10", Longitude 111°09'15".

C. Narrative Standard.

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

D. Specific Limitations and Self-monitoring Requirements.

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

<u>Effluent Characteristics</u>	<u>Discharge Limitations a/</u>			<u>Monitoring Requirements</u>	
	<u>Average</u>	<u>Daily</u>	<u>Maximum</u>	<u>Measurement</u>	<u>Sample</u>
	<u>30-Day</u>	<u>7-Day</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Type</u>
Flow, MGD	NA	NA	NA	Weekly	Measured
Total Iron, mg/L	NA	NA	1.0	2 x Monthly	Grab
Oil & Grease, mg/L <u>b/</u>	NA	NA	10	Weekly	Grab
Total Suspended Solids, mg/L	25	35	70	Weekly	Grab
Total Dissolved Solids, mg/L <u>c/</u>	500	NA	1310	2 x Monthly	Grab

The pH shall not be less than 6.5 standard units nor greater than 9.0 standard units in any sample and shall be monitored weekly by a grab sample.

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There shall be no visible sheen or floating solids or visible foam in other than trace amounts.

There shall be no discharge of sanitary wastes.

N.A. - Not Applicable.

- a/ See Definitions, *Part I.A* for definition of terms.
- b/ Oil and grease shall be sampled weekly at 001. At 002 & 003 a visual inspection for oil and grease shall be done at least twice per month. If an oil and grease sheen is observed visually a sample of that effluent shall be taken immediately thereafter and oil and grease shall not exceed 10 mg/L in concentration.
- c/ This permit requires discharge TDS concentration to remain under 500 mg/L, as a thirty day average and as a result no tonnage limits for TDS will be required. If for some reason the 30 day average concentration of TDS exceeds 500 mg/L, then the permittee cannot discharge more than 7.1 tons per day. Upon determination by the Executive Secretary that the permittee is not able to meet the 500 mg/L thirty day average and the 7.1 tons per day loading limit, the permittee is required to assess the feasibility of conducting or buying into an existing salinity offset project. This assessment shall include a compliance schedule for conducting or buying into the project.

If Skyline chooses to buy into and implement a salinity offset project, it must be approved by the Executive Secretary. The approved salinity offset project shall be appended to this permit.

The TDS tonnage limitations shall apply to the sum of tons per day from discharge points 001, 002 and 003. Monitoring for TDS shall occur on the frequency listed in the presently effective permit (twice monthly) and shall be done by grab sample.

2. Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): at the outfall prior to mixing with any receiving water.
3. Whole Effluent Testing - Acute Toxicity.

Starting on the effective date of this permit, the permittee shall quarterly, conduct acute static replacement toxicity tests on a grab sample of the final effluent. The sample shall be collected at outfall 001, alternating species each quarter.

The monitoring frequency for acute tests shall be quarterly unless a sample is found to be acutely toxic during a routine test. If that occurs, the monitoring frequency shall become weekly (See *Part I.D.5, Accelerated Testing*). Samples shall be collected on a two day progression; i.e., if the first sample is on a Monday, during the next sampling period, the sampling shall begin on a Wednesday, etc.

The replacement static acute toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms. Fourth Edition. August 1993*,

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EPA/600/4-90/027F as per *40 CFR 136.3(a) TABLE IA-LIST OF APPROVED BIOLOGICAL METHODS*, and the *Region VIII EPA NPDES Acute Test Conditions - Static Renewal Whole Effluent Toxicity Test (August, 1997)*. In the case of conflicts, the Region VIII procedures will prevail. The permittee shall conduct the 48-hour static replacement toxicity test using Ceriodaphnia dubia and the acute 96-hour static replacement toxicity test using Pimephales promelas (fathead minnow).

Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration. Mortality in the control must simultaneously be 10 percent or less for the results to be considered valid. If more than 10 percent control mortality occurs, the test shall be repeated until satisfactory control mortality is achieved. A variance to this requirement may be granted by the Executive Secretary if a mortality of less than 10 percent was observed in higher effluent dilutions.

If the permit contains a total residual chlorine limitation greater than 0.20 mg/L, the permittee may request from the Executive Secretary approval to dechlorinate the sample, or collect the sample prior to chlorination.

Quarterly test results shall be reported along with the Discharge Monitoring Report (DMR) submitted for the end of the reporting calendar quarter e.g., biomonitoring results for the calendar quarter ending March 31 shall be reported with the DMR due April 28, with the remaining biomonitoring reports submitted with DMRs due each July 28, October 28, and January 28. Monthly test results shall be reported along with the DMR submitted for that month. The format for the report shall be consistent with the latest revision of the *Region VIII Guidance for Acute Whole Effluent Reporting (August, 1997)* and shall include all chemical and physical data as specified.

If the results for one year of testing indicate no acute toxicity, the permittee may request a reduction in testing frequency and/or reduction to one species. The Executive Secretary may approve, partially approve, or deny the request based on results and other available information. If approval is given, the modification will take place without a public notice.

4. Whole Effluent Testing - Chronic Toxicity.

Starting on the effective date of this permit, the permittee shall quarterly conduct chronic short-term toxicity tests on a composite sample of the final effluent. The sample shall be collected at outfall 001. If at the end of one year of testing no chronic toxicity has been detected the permittee may petition the Executive Secretary in writing to eliminate chronic toxicity testing for the remainder of the permit period. If chronic toxicity has been detected within the first year, chronic toxicity shall continue to be tested routinely on a quarterly basis for the remainder of the permit period. It is the permittee's responsibility to petition the Executive Secretary.

The monitoring frequency shall be quarterly. Samples shall be collected on a two day progression; i.e., if the first sample is on a Monday, during the next sampling period, sampling shall be on a Wednesday. If chronic toxicity is detected, the test shall be repeated in less than four weeks from the date the initial sample was taken. The need for any additional samples, and/or a Toxicity Reduction Evaluation (TRE, see Part I.D.8.) shall be determined by the Executive Secretary. If the second test shows no chronic toxicity, routine monitoring shall be resumed.

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The chronic toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms. Third Edition. July 1994, EPA-600-4-91-002* as per *40 CFR 136.3(a) TABLE IA-LIST OF APPROVED BIOLOGICAL METHODS*, and the *Region VIII EPA NPDES Chronic Test Conditions - Static Renewal Whole Effluent Toxicity Test (August, 1997)*. In case of conflicts, the Region VIII procedure will prevail. Test species shall consist of Ceriodaphnia dubia and Pimephales promelas (fathead minnow).

Chronic toxicity occurs when the survival, growth, or reproduction for either test species, when exposed to a dilution of 89 percent effluent or lower, is significantly less (at 95% confidence level) than that of the control specimens. Dilutions of 89 percent only will be required, plus the control. If any of the acceptable control performance criteria are not met, the test shall be considered invalid.

Quarterly test results shall be reported along with the Discharge Monitoring Report (DMR) submitted for the end of the reporting calendar month e.g., biomonitoring results for the calendar quarter ending March 31 shall be reported with the DMR due April 28, with the remaining biomonitoring reports submitted with DMRs due each July 28, October 28, and January 28). Monthly test results shall be reported along with the DMR submitted for that month. The format for the report shall be consistent with the latest revision of the *Region VIII Guidance for Chronic Whole Effluent Reporting (August, 1997)* and shall include all the physical testing as specified.

The current Utah whole effluent toxicity (WET) policy is in the process of being updated and revised to assure its consistency with the Environmental Protection Agency's national and regional WET policy. When said revised WET policy has been finalized and officially adopted, this permit will be reopened and modified to incorporate satisfactory follow-up chronic toxicity language (chronic pattern of toxicity, PTI and/or TIE/TRE, etc.) without a public notice, as warranted and appropriate.

5. Accelerated Testing.

When acute toxicity is indicated during routine biomonitoring as specified in this permit, the permittee shall notify the Executive Secretary in writing within 5 days after becoming aware of the test result. The permittee shall perform an accelerated schedule of biomonitoring to establish whether a pattern of toxicity exists. Accelerated testing will begin within seven days after the permittee becomes aware of the test result. Accelerated testing shall be conducted as specified under *Part I.D.6, Pattern of Toxicity*. If the accelerated testing demonstrates no pattern of toxicity, routine monitoring shall be resumed.

6. Pattern of Toxicity.

A pattern of toxicity is defined by the results of a series of up to five biomonitoring tests pursuant to the accelerated testing requirements using 100 percent effluent on the single species found to be more sensitive, once every week for up to five consecutive weeks.

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

A pattern of toxicity is established if one of the following occurs:

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- a. If two (2) consecutive test results (not including the scheduled quarterly or monthly test which triggered the search for a pattern of toxicity) indicate acute toxicity, this constitutes an established pattern of toxicity.
 - b. If consecutive tests continue to yield differing results each time, the permittee will be required to conduct up to a maximum of five (5) acute tests (not including the scheduled quarterly or monthly test which triggered the search for a pattern of toxicity). If three out of five test results indicate acute toxicity, this will constitute an established pattern of toxicity.
7. Preliminary Toxicity Investigation.
- a. When a pattern of toxicity is detected the permittee will notify the Executive Secretary in writing within 5 days and begin an evaluation of the possible causes of the toxicity. The permittee will have 15 working days from demonstration of the pattern of toxicity to complete a Preliminary Toxicity Investigation (PTI) and submit a written report of the results to the Executive Secretary. The PTI may include, but is not limited to, additional chemical and biological monitoring, examination of pretreatment program records, examination of discharge monitoring reports, a thorough review of the testing protocol, evaluation of treatment processes and chemical use, inspection of material storage and transfer areas to determine if a spill may have occurred, and similar procedures.
 - b. If the PTI identifies a probable toxicant and/or a probable source of toxicity, the permittee shall submit, as part of its final results, written notification of that effect to the Executive Secretary. Within thirty days of completing the PTI the permittee shall submit for approval a control program to control effluent toxicity and shall proceed to implement such plan within seven days following approval. The control program, as submitted to or revised by the Executive Secretary, may be incorporated into the permit.
 - c. If no probable explanation for toxicity is identified in the PTI, the permittee shall notify the Executive Secretary as part of its final report, along with a schedule for conducting a Phase I Toxicity Reduction Evaluation (TRE) (See *Part I.D.8, Toxicity Reduction Evaluation*).
 - d. If toxicity spontaneously disappears during the PTI, the permittee shall submit written notification to that effect to the Executive Secretary as part of the reporting requirements of paragraph 1 of this section.
8. Toxicity Reduction Evaluation (TRE).

If toxicity is detected and it is determined by the Executive Secretary that a TRE is necessary, the permittee shall be so notified and shall initiate a TRE immediately thereafter. The purpose of the TRE will be establish the cause of the toxicity, locate the source(s) of the toxicity, and control or provide treatment for the toxicity.

A TRE may include but is not limited to one, all, or a combination of the following:

- a. Phase I - Toxicity Characterization

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- b. Phase II - Toxicity Identification Procedures
- c. Phase III - Toxicity Control Procedures
- d. Any other appropriate procedures for toxicity source elimination and control

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

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

- a. Submit an alternative control program for compliance with the numerical requirements.
- b. If necessary, provide a modified biomonitoring protocol which compensates for the pollutant(s) being controlled numerically.

If acceptable to the Executive Secretary, this permit may be reopened and modified to incorporate any additional numerical limitations, a modified compliance schedule if judged necessary by the Executive Secretary, and/or a modified biomonitoring protocol.

Failure to conduct an adequate TRE, or failure to submit a plan or program as described above, or the submittal of a plan or program judged inadequate by the Executive Secretary, shall be considered a violation of this permit.

- 9. Any overflow, increase in volume of a discharge or discharge from a bypass system 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) at all surface runoff ponds (outfalls) may comply with the following limitation instead of the total suspended solids limitations contained in Part I.D.1:

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

In addition to the monitoring requirements specified under Part I.D.1, all effluent samples collected during storm water discharge events shall also be analyzed for settleable solids. Such analyses shall be conducted on either grab or composite samples.

- 10. Any overflow, increase in volume of a discharge or discharge from a bypass system caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) at all surface runoff pond outfalls may comply with the following limitations instead of the otherwise applicable limitations.

The pH shall not be less than 6.5 standard units nor greater than 9.0 standard units. However, as stated under Part I.D.9, all effluent samples collected at all surface runoff pond outfalls during storm water discharge events shall be analyzed for settleable solids and the parameters identified under Part I.D.1.

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11. The permittee/operator shall have the burden of proof that the discharge or increase in discharge was caused by the applicable precipitation event described in Parts I.D.9 and D.10. The alternate limitation in Parts I.D.9 and D.10 shall not apply to treatment systems that treat underground mine water only.

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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. Sludge samples shall be collected at a location representative of the quality of sludge immediately prior to the use-disposal practice.
- B. Monitoring Procedures. Monitoring must be conducted according to test procedures approved under *Utah Administrative Code ("UAC") R317-2-10*, unless other test procedures have been specified in this permit.
- C. Penalties for Tampering. The *Act* provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six months per violation, or by both.
- D. Reporting of Monitoring Results. Monitoring results obtained during the previous month shall be summarized for each month and reported monthly on a Discharge Monitoring Report Form (EPA No. 3320-1), post-marked no later than the 28th day of the month following the completed reporting period. The first report is due on November 28, 1999. If no discharge occurs during the reporting period, "no discharge" shall be reported. Legible copies of these, and all other reports including whole effluent toxicity (WET) test reports required herein, shall be signed and certified in accordance with the requirements of *Signatory Requirements (see Part IV.G)*, and submitted to the Director, Division of Water Quality at the following address:

original to: Department of Environmental Quality
Division of Water Quality
288 North 1460 West
PO Box 144870
Salt Lake City, Utah 84114-4870

- E. Compliance Schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any Compliance Schedule of this permit shall be submitted no later than 14 days following each schedule date.
- F. Additional Monitoring by the Permittee. If the permittee monitors any parameter more frequently than required by this permit, using test procedures approved under *UAC R317-2-10* or as otherwise specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated. Only those parameters required by the permit need to be reported.
- G. Records Contents. Records of monitoring information shall include:
- a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) and time(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and,
 - f. The results of such analyses.

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- H. 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 three years from the date of the sample, measurement, report or application. This period may be extended by request of the Executive Secretary at any time. A copy of this UPDES permit must be maintained on site during the duration of activity at the permitted location.
- I. Twenty-four Hour Notice of Noncompliance Reporting.
1. The permittee shall (orally) report any noncompliance which may seriously endanger health or environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of circumstances. The report shall be made to the Division of Water Quality, (801) 538-6146, or 24 hour answering service (801) 536-4123.
 2. The following occurrences of noncompliance shall be reported by telephone (801) 536-4123 as soon as possible but no later than 24 hours from the time the permittee becomes aware of the circumstances:
 - a. Any noncompliance which may endanger health or the environment;
 - b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See *Part III.G, Bypass of Treatment Facilities.*);
 - c. Any upset which exceeds any effluent limitation in the permit (See *Part III.H, Upset Conditions.*); or,
 - d. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit.
 3. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times;
 - c. The estimated time noncompliance is expected to continue if it has not been corrected; and,
 - d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
 - e. Steps taken, if any, to mitigate the adverse impacts on the environment and human health during the noncompliance period.
 4. The Executive Secretary may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Division of Water Quality, (801) 538-6146.

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5. Reports shall be submitted to the addresses in *Part II.D, Reporting of Monitoring Results*.
- J. 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.D* are submitted. The reports shall contain the information listed in *Part II.I.3*.
- K. Inspection and Entry. The permittee shall allow the Executive Secretary, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;
 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and,
 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.

PART III
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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 Executive Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- B. Penalties for Violations of Permit Conditions. The *Act* provides that any person who violates a permit condition implementing provisions of the *Act* is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions of the Act is subject to a fine not exceeding \$25,000 per day of violation; Any person convicted under *UCA 19-5-115(2)* a second time shall be punished by a fine not exceeding \$50,000 per day. Except as provided at *Part III.G, Bypass of Treatment Facilities* and *Part III.H, Upset Conditions*, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.
- C. Need to Halt or Reduce Activity not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- D. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
- E. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.
- F. Removed Substances. Collected screening, grit, solids, sludges, or other pollutants removed in the course of treatment shall be buried or disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard. Sludge/digester supernatant and filter backwash shall not directly enter either the final effluent or waters of the state by any other direct route.
- 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. Return of removed substances, as described in *Part III.F*, to the discharge stream shall not be considered a bypass under the provisions of this paragraph.
 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 ten (10) days before the date of the bypass.
 - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as

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required under *Part II.I, Twenty-four Hour Reporting*.

3. Prohibition of bypass.
 - a. Bypass is prohibited and the Executive Secretary 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 Executive Secretary may approve an anticipated bypass, after considering its adverse effects, if the Executive Secretary 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 technology based permit effluent limitations if the requirements of paragraph 2. of this section are met. Executive Secretary's administrative determination regarding a claim of upset cannot be judiciously challenged by the permittee until such time as an action is initiated for noncompliance.
2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required under *Part II.I, Twenty-four Hour Notice of Noncompliance Reporting*; and,
 - d. The permittee complied with any remedial measures required under *Part III.D, Duty to Mitigate*.
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of *The Water Quality Act of 1987* for toxic pollutants within the time provided in the

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regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

- J. Changes in Discharge of Toxic Substances. Notification shall be provided to the Executive Secretary as soon as the permittee knows of, or has reason to believe:
1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - a. One hundred micrograms per liter (100 ug/L);
 - b. Two hundred micrograms per liter (200 ug/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/L) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with *UAC R317-8-3.4(7)* or (10); or,
 - d. The level established by the Executive Secretary in accordance with *UAC R317-8-4.2(6)*.
 2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - a. Five hundred micrograms per liter (500 ug/L);
 - b. One milligram per liter (1 mg/L) for antimony;
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with *UAC R317-8-3.4(9)*; or,
 - d. The level established by the Executive Secretary in accordance with *UAC R317-8-4.2(6)*.
- K. Industrial Pretreatment. Any wastewaters discharged to the sanitary sewer, either as a direct discharge or as a hauled waste, are subject to Federal, State and local pretreatment regulations. Pursuant to Section 307 of *The Water Quality Act of 1987*, the permittee shall comply with all applicable federal General Pretreatment Regulations promulgated at *40 CFR 403*, the State Pretreatment Requirements at *UAC R317-8-8*, and any specific local discharge limitations developed by the Publicly Owned Treatment Works (POTW) accepting the wastewaters.

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

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IV. GENERAL REQUIREMENTS

- A. Planned Changes. The permittee shall give notice to the Executive Secretary as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit. In addition, if there are any planned substantial changes to the permittee's existing sludge facilities or their manner of operation or to current sludge management practices of storage and disposal, the permittee shall give notice to the Executive Secretary of any planned changes at least 30 days prior to their implementation.
- B. Anticipated Noncompliance. The permittee shall give advance notice to the Executive Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- C. Permit Actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- D. Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit.
- E. Duty to Provide Information. The permittee shall furnish to the Executive Secretary, within a reasonable time, any information which the Executive Secretary 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 Executive Secretary, upon request, copies of records required to be kept by this permit.
- F. Other Information. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Executive Secretary, it shall promptly submit such facts or information.
- G. Signatory Requirements. All applications, reports or information submitted to the Executive Secretary shall be signed and certified.
1. All permit applications shall be signed by either a principal executive officer or ranking elected official.
 2. All reports required by the permit and other information requested by the Executive Secretary 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 Executive Secretary, and,
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may

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thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph *IV.G.2* is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph *IV.G.2* must be submitted to the Executive Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. Certification. Any person signing a document under this section shall make the following certification:

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

- H. Penalties for Falsification of Reports. The *Act* provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than \$10,000.00 per violation, or by imprisonment for not more than six months per violation, or by both.
- I. Availability of Reports. Except for data determined to be confidential under *UAC R317-8-3.2*, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of Executive Secretary. As required by the *Act*, permit applications, permits and effluent data shall not be considered confidential.
- J. Oil and Hazardous Substance Liability. Nothing in this permit shall be construed to preclude the permittee of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under the *Act*.
- K. Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.
- L. Severability. The provisions of this permit are severable, and if any provisions of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
- M. Transfers. This permit may be automatically transferred to a new permittee if:
 1. The current permittee notifies the Executive Secretary at least 20 days in advance of the proposed transfer date;

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2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,
 3. The Executive Secretary does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2 above.
- N. State Laws. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by *UCA 19-5-117*.
- O. Water Quality-Reopener Provision. This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations and compliance schedule, if necessary, if one or more of the following events occurs:
1. Water Quality Standards for the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.
 2. A final wasteload allocation is developed and approved by the State and/or EPA for incorporation in this permit.
 3. A revision to the current Water Quality Management Plan is approved and adopted which calls for different effluent limitations than contained in this permit.
- P. Toxicity Limitation -Reopener Provision. This permit may be reopened and modified (following proper administrative procedures) to include, whole effluent toxicity (WET) limitations, a compliance date, a compliance schedule, a change in the whole effluent toxicity (biomonitoring) protocol, additional or modified numerical limitations, or any other conditions related to the control of toxicants if one or more of the following events occur;
1. Toxicity is detected, as per Part I. D.3 and/or 4 of this permit, during the duration of this permit.
 2. The TRE results indicate that compliance with the toxic limits will require an implementation schedule past the date for compliance and the Executive Secretary agrees with the conclusion.
 3. The TRE results indicate that the toxicant(s) represent pollutant(s) that may be controlled with specific numerical limits, and the Executive Secretary agrees that numerical controls are the most appropriate course of action.
 4. Following the implementation of numerical control(s) of toxicant(s), the Executive Secretary agrees that a modified biomonitoring protocol is necessary to compensate for those toxicants that are controlled numerically.
 5. The TRE reveals other unique conditions or characteristics which, in the opinion of the Executive Secretary, justify the incorporation of unanticipated special conditions in the permit.

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

AUTHORIZATION TO DISCHARGE UNDER THE
UTAH POLLUTANT DISCHARGE ELIMINATION SYSTEM
(UPDES)

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

CANYON FUEL COMPANY, LLC - SKYLINE MINE

is hereby authorized to discharge from its facility located at approximately seven (7) miles south of Scofield, Utah up Eccles Canyon, with the outfalls located at latitude 39°41'05" and longitude 111° 13' 58" for 001, latitude 39°41'05" and longitude 111°09'07" for 002, latitude 39°43'10" and longitude 111°09'15" for 003 to receiving waters named

Eccles Creek and UP Canyon Creek

in accordance with discharge points, effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective on December 1, 2004.

This permit and the authorization to discharge shall expire at midnight, November 30, 2009.

Signed this 23rd day of November 2004.

Authorized Permitting Official
Executive Secretary
Utah Water Quality Board

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I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Definitions.

1. The "30-day (and monthly) average" is the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.
2. The "7-day (and weekly) average" is the arithmetic average of all samples collected during a consecutive 7-day period or calendar week, whichever is applicable. The 7-day and weekly averages are applicable only to those effluent characteristics for which there are 7-day average effluent limitations. The calendar week which begins on Sunday and ends on Saturday, shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms. Weekly averages shall be calculated for all calendar weeks with Saturdays in the month. If a calendar week overlaps two months (i.e., the Sunday is in one month and the Saturday in the following month), the weekly average calculated for that calendar week shall be included in the data for the month that contains the Saturday.
3. "Daily Maximum" ("Daily Max.") is the maximum value allowable in any single sample or instantaneous measurement.
4. "Composite samples" shall be flow proportioned. The composite sample shall, as a minimum, contain at least four (4) samples collected over the composite sample period. Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six (6) hours nor more than 24 hours. Acceptable methods for preparation of composite samples are as follows:
 - a. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;
 - b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;
 - c. Constant sample volume, time interval between samples proportional to flow (i.e., sample taken every "X" gallons of flow); and,
 - d. Continuous collection of sample, with sample collection rate proportional to flow rate.
5. A "grab" sample, for monitoring requirements, is defined as a single "dip and take" sample collected at a representative point in the discharge stream.
6. An "instantaneous" measurement, for monitoring requirements, is defined as a single reading, observation, or measurement.
7. "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 preventive maintenance, or careless or improper operation.

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8. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
9. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
10. "Executive Secretary" means Executive Secretary of the Utah Water Quality Board.
11. "EPA" means the United States Environmental Protection Agency.
12. "Acute toxicity" occurs when 50 percent or more mortality is observed for either test species at any effluent concentration.
13. "Chronic toxicity" occurs when the survival, growth, or reproduction for either test species exposed to a dilution of 89 percent effluent (or lower) is significantly less (at the 95 percent confidence level) than the survival, growth or reproduction of the control specimens.
14. "Act" means the "*Utah Water Quality Act*".
15. "Best Management Practices" ("*BMPs*") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. *BMPs* also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
16. "Coal pile runoff" means the rainfall runoff from or through any coal storage pile.
17. "*CWA*" means *The Federal Water Pollution Control Act*, as amended, by *The Clean Water Act of 1987*.
18. "Point Source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agriculture storm water runoff.
19. "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.
20. "Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.
21. "10-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable reoccurrence interval of once in 10 years. This information is available in *Weather Bureau Technical Paper No. 40*, May 1961 and *NOAA Atlas 2*, 1973 for the 11 Western States, and may be obtained from the National Climatic Center of the Environmental Data Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

B. Description of Discharge Point(s).

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

<u>Outfall Number</u>	<u>Location of Discharge Point(s)</u>
001	Outfall from sedimentation pond and mine discharges to Eccles Creek. Latitude 39°41'05", Longitude 111°13'58".
002	Outfall from sedimentation pond at the load-out facility. Discharge is to Eccles Creek. Latitude 39°41'05", Longitude 111°09'07".
003	Outfall from sedimentation pond associated with the waste rock disposal site. Discharge goes to UP Canyon Creek. Latitude 39°43'10", Longitude 111°09'15".

C. Narrative Standard.

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

D. Specific Limitations and Self-monitoring Requirements.

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

<u>Effluent Characteristics</u>	<u>Discharge Limitations a/</u>			<u>Monitoring Requirements</u>	
	<u>Average</u>	<u>Daily</u>	<u>Maximum</u>	<u>Measurement</u>	<u>Sample</u>
	<u>30-Day</u>	<u>7-Day</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Type</u>
Flow, MGD	NA	NA	NA	Weekly	Measured
Total Iron, mg/L	NA	NA	1.0	2 x Monthly	Grab
Oil & Grease, mg/L <u>b/</u>	NA	NA	10	Weekly	Grab
Total Suspended Solids, mg/L	25	35	70	Weekly	Grab
Total Dissolved Solids, mg/L <u>c/</u>	500	NA	1310	2 x Monthly	Grab
Total Phosphorous, mg/L <u>d/</u>	NA	NA	NA	Monthly	Grab

The pH shall not be less than 6.5 standard units nor greater than 9.0 standard units in any sample and shall be monitored weekly by a grab sample.

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There shall be no visible sheen or floating solids or visible foam in other than trace amounts.

There shall be no discharge of sanitary wastes.

N.A. - Not Applicable.

- a/ See Definitions, *Part I.A* for definition of terms.
- b/ Oil and grease shall be sampled weekly at 001. At 002 & 003 a visual inspection for oil and grease shall be done at least twice per month. If an oil and grease sheen is observed visually a sample of that effluent shall be taken immediately thereafter and oil and grease shall not exceed 10 mg/L in concentration.
- c/ The TDS concentration from each of the outfalls shall not exceed 1310 mg/L as a daily maximum limit. No tons per day loading limit will be applied if the concentration of TDS in the discharge is equal to or less than 500 mg/L as a thirty-day average. However, if the 30-day average concentration exceeds 500 mg/L, then the permittee cannot discharge more than 7.1 tons per day as a sum from all discharge points. Upon determination by the Executive Secretary that the permittee is not able to meet the 500 mg/L 30-day average or the 7.1 tons per day loading limit, the permittee is required to participate in and/or fund a salinity offset project to include TDS offset credits, within six (6) months of the effective date of this permit.

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

If the permittee will be participating in the construction and implementation of a salinity offset project, then a project description and implementation schedule shall be submitted to the Executive Secretary within six (6) months of the effective date of the permit, which will then be reviewed for approval. The salinity offset project description and implementation schedule must be approved by the Executive Secretary and shall be appended to this permit.

If the permittee is funding a salinity offset project through third parties, the permittee shall provide satisfactory evidence to the Executive Secretary that the required funds have been deposited to the third party within six (6) months of the effective date of the permit. A monitoring and adjustment plan to track the TDS credits shall also be submitted to the Executive Secretary within six (6) months of the effective date of the permit, which will then be reviewed for approval. The monitoring and adjustment plan must be approved by the Executive Secretary and shall be appended to this permit.

- d/ Monthly TP sampling is required for the first year after the effective date of this permit. If after a year of monthly sampling the TP concentrations do not significantly change, the frequency of sampling may be reduced to quarterly events for the remainder of the permit period, pending the permittee petitioning the Executive Secretary to do so. It is the permittee's responsibility to petition the

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Executive Secretary, who may then approve, partially approve, or deny the request based on results and other available information. If approval is given, the modification will take place without a public notice.

2. Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): at the outfall prior to mixing with any receiving water.
3. Whole Effluent Testing - Acute Toxicity.

Starting on the effective date of this permit, the permittee is not required to conduct acute toxicity testing. If the permittee does however conduct the acute toxicity testing, then the permittee shall quarterly, conduct acute static replacement toxicity tests on a grab sample of the final effluent and follow the requirements set forth herein.

The sample shall be collected at outfall 001, alternating species each quarter. The monitoring frequency for acute tests shall be quarterly unless a sample is found to be acutely toxic during a routine test. If that occurs, the monitoring frequency shall become weekly (See *Part I.D.5, Accelerated Testing*). Samples shall be collected on a two day progression; i.e., if the first sample is on a Monday, during the next sampling period, the sampling shall begin on a Wednesday, etc.

The replacement static acute toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms. Fourth Edition. August 1993, EPA/600/4-90/027F* as per *40 CFR 136.3(a) TABLE IA-LIST OF APPROVED BIOLOGICAL METHODS*, and the *Region VIII EPA NPDES Acute Test Conditions - Static Renewal Whole Effluent Toxicity Test (August, 1997)*. In the case of conflicts, the Region VIII procedures will prevail. The permittee shall conduct the 48-hour static replacement toxicity test using Ceriodaphnia dubia and the acute 96-hour static replacement toxicity test using Pimephales promelas (fathead minnow).

Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration. Mortality in the control must simultaneously be 10 percent or less for the results to be considered valid. If more than 10 percent control mortality occurs, the test shall be repeated until satisfactory control mortality is achieved. A variance to this requirement may be granted by the Executive Secretary if a mortality of less than 10 percent was observed in higher effluent dilutions.

If the permit contains a total residual chlorine limitation greater than 0.20 mg/L, the permittee may request from the Executive Secretary approval to dechlorinate the sample, or collect the sample prior to chlorination.

Quarterly test results shall be reported along with the Discharge Monitoring Report (DMR) submitted for the end of the reporting calendar quarter e.g., biomonitoring results for the calendar quarter ending March 31 shall be reported with the DMR due April 28, with the remaining biomonitoring reports submitted with DMRs due each July 28, October 28, and January 28. Monthly test results shall be reported along with the DMR submitted for that month. The format for the report shall be consistent with the latest revision of the *Region VIII Guidance for Acute Whole Effluent Reporting (August, 1997)* and shall include all chemical and physical data as specified.

4. Whole Effluent Testing - Chronic Toxicity.

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Starting on the effective date of this permit, the permittee shall quarterly, conduct chronic short-term toxicity tests for both species on a composite sample of the final effluent for the duration of this permit. The sample shall be collected at outfall 001. If at the end of one year of testing no chronic toxicity has been detected, the permittee may petition the Executive Secretary in writing to reduce testing frequency and/or a reduction to one species for the remainder of the permit period. If chronic toxicity has been detected within the first year, chronic toxicity shall continue to be tested routinely on a quarterly basis for the remainder of the permit period. It is the permittee's responsibility to petition the Executive Secretary. The Executive Secretary may approve, partially approve, or deny the request based on results and other available information. If approval is given, the modification will take place without a public notice.

The monitoring frequency shall be quarterly. Samples shall be collected on a two-day progression; i.e., if the first sample is on a Monday, during the next sampling period, sampling shall be on a Wednesday. If chronic toxicity is detected, the test shall be repeated in less than four weeks from the date the initial sample was taken. The need for any additional samples, and/or a Toxicity Reduction Evaluation (TRE, see Part I.D.8.) shall be determined by the Executive Secretary. If the second test shows no chronic toxicity, routine monitoring shall be resumed.

The chronic toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms. Third Edition. July 1994, EPA-600-4-91-002* as per *40 CFR 136.3(a) TABLE IA-LIST OF APPROVED BIOLOGICAL METHODS*, and the *Region VIII EPA NPDES Chronic Test Conditions - Static Renewal Whole Effluent Toxicity Test (August, 1997)*. In case of conflicts, the Region VIII procedure will prevail. Test species shall consist of Ceriodaphnia dubia and Pimephales promelas (fathead minnow).

Chronic toxicity occurs when the survival, growth, or reproduction for either test species, when exposed to a dilution of 89 percent effluent or lower, is significantly less (at 95% confidence level) than that of the control specimens. Dilutions of 89 percent only will be required, plus the control. If any of the acceptable control performance criteria are not met, the test shall be considered invalid.

Quarterly test results shall be reported along with the Discharge Monitoring Report (DMR) submitted for the end of the reporting calendar month e.g., biomonitoring results for the calendar quarter ending March 31 shall be reported with the DMR due April 28, with the remaining biomonitoring reports submitted with DMRs due each July 28, October 28, and January 28). Monthly test results shall be reported along with the DMR submitted for that month. The format for the report shall be consistent with the latest revision of the *Region VIII Guidance for Chronic Whole Effluent Reporting (August, 1997)* and shall include all the physical testing as specified.

The current Utah whole effluent toxicity (WET) policy is in the process of being updated and revised to assure its consistency with the Environmental Protection Agency's national and regional WET policy. When said revised WET policy has been finalized and officially adopted, this permit will be reopened and modified to incorporate satisfactory follow-up chronic toxicity language (chronic pattern of toxicity, PTI and/or TIE/TRE, etc.) without a public notice, as warranted and appropriate.

5. Accelerated Testing.

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When acute toxicity is indicated during routine biomonitoring as specified in this permit, the permittee shall notify the Executive Secretary in writing within 5 days after becoming aware of the test result. The permittee shall perform an accelerated schedule of biomonitoring to establish whether a pattern of toxicity exists. Accelerated testing will begin within seven days after the permittee becomes aware of the test result. Accelerated testing shall be conducted as specified under *Part I.D.6, Pattern of Toxicity*. If the accelerated testing demonstrates no pattern of toxicity, routine monitoring shall be resumed.

6. Pattern of Toxicity.

A pattern of toxicity is defined by the results of a series of up to five biomonitoring tests pursuant to the accelerated testing requirements using 100 percent effluent on the single species found to be more sensitive, once every week for up to five consecutive weeks.

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

A pattern of toxicity is established if one of the following occurs:

- a. If two (2) consecutive test results (not including the scheduled quarterly or monthly test which triggered the search for a pattern of toxicity) indicate acute toxicity, this constitutes an established pattern of toxicity.
- b. If consecutive tests continue to yield differing results each time, the permittee will be required to conduct up to a maximum of five (5) acute tests (not including the scheduled quarterly or monthly test which triggered the search for a pattern of toxicity). If three out of five test results indicate acute toxicity, this will constitute an established pattern of toxicity.

7. Preliminary Toxicity Investigation.

- a. When a pattern of toxicity is detected the permittee will notify the Executive Secretary in writing within 5 days and begin an evaluation of the possible causes of the toxicity. The permittee will have 15 working days from demonstration of the pattern of toxicity to complete a Preliminary Toxicity Investigation (PTI) and submit a written report of the results to the Executive Secretary. The PTI may include, but is not limited to, additional chemical and biological monitoring, examination of pretreatment program records, examination of discharge monitoring reports, a thorough review of the testing protocol, evaluation of treatment processes and chemical use, inspection of material storage and transfer areas to determine if a spill may have occurred, and similar procedures.
- b. If the PTI identifies a probable toxicant and/or a probable source of toxicity, the permittee shall submit, as part of its final results, written notification of that effect to the Executive Secretary. Within thirty days of completing the PTI the permittee shall submit for approval a control program to control effluent toxicity and shall proceed to implement such plan within seven days following approval. The control program, as submitted to or revised by the Executive Secretary, may be incorporated into the permit.
- c. If no probable explanation for toxicity is identified in the PTI, the permittee shall notify

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the Executive Secretary as part of its final report, along with a schedule for conducting a Phase I Toxicity Reduction Evaluation (TRE) (See *Part I.D.8, Toxicity Reduction Evaluation*).

- d. If toxicity spontaneously disappears during the PTI, the permittee shall submit written notification to that effect to the Executive Secretary as part of the reporting requirements of paragraph 1 of this section.
8. Toxicity Reduction Evaluation (TRE).

If toxicity is detected and it is determined by the Executive Secretary that a TRE is necessary, the permittee shall be so notified and shall initiate a TRE immediately thereafter. The purpose of the TRE will be establish the cause of the toxicity, locate the source(s) of the toxicity, and control or provide treatment for the toxicity.

A TRE may include but is not limited to one, all, or a combination of the following:

- a. Phase I - Toxicity Characterization
- b. Phase II - Toxicity Identification Procedures
- c. Phase III - Toxicity Control Procedures
- d. Any other appropriate procedures for toxicity source elimination and control

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

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

- a. Submit an alternative control program for compliance with the numerical requirements.
- b. If necessary, provide a modified biomonitoring protocol which compensates for the pollutant(s) being controlled numerically.

If acceptable to the Executive Secretary, this permit may be reopened and modified to incorporate any additional numerical limitations, a modified compliance schedule if judged necessary by the Executive Secretary, and/or a modified biomonitoring protocol.

Failure to conduct an adequate TRE, or failure to submit a plan or program as described above, or the submittal of a plan or program judged inadequate by the Executive Secretary, shall be considered a violation of this permit.

- 9. Any overflow, increase in volume of a discharge or discharge from a bypass system 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) at all surface runoff ponds (outfalls) may comply with the following limitation instead of the total suspended solids limitations contained in Part I.D.1:

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Effluent Characteristics

Daily Maximum

Settleable Solids

0.5 mL/L

In addition to the monitoring requirements specified under Part I.D.1, all effluent samples collected during storm water discharge events shall also be analyzed for settleable solids. Such analyses shall be conducted on either grab or composite samples.

10. Any overflow, increase in volume of a discharge or discharge from a bypass system caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) at all surface runoff pond outfalls my comply with the following limitations instead of the otherwise applicable limitations.

The pH shall not be less than 6.5 standard units nor greater than 9.0 standard units. However, as stated under Part I.D.9, all effluent samples collected at all surface runoff pond outfalls during storm water discharge events shall be analyzed for settleable solids and the parameters identified under Part I.D.1.

11. The permittee/operator shall have the burden of proof that the discharge or increase in discharge was caused by the applicable precipitation event described in Parts I.D.9 and D.10. The alternate limitation in Parts I.D.9 and D.10 shall not apply to treatment systems that treat underground mine water only.

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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. Sludge samples shall be collected at a location representative of the quality of sludge immediately prior to the use-disposal practice.
- B. Monitoring Procedures. Monitoring must be conducted according to test procedures approved under *Utah Administrative Code ("UAC") R317-2-10*, unless other test procedures have been specified in this permit.
- C. Penalties for Tampering. The *Act* provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six months per violation, or by both.
- D. Reporting of Monitoring Results. Monitoring results obtained during the previous month shall be summarized for each month and reported monthly on a Discharge Monitoring Report Form (EPA No. 3320-1), post-marked no later than the 28th day of the month following the completed reporting period. The first report is due on November 28, 2004. If no discharge occurs during the reporting period, "no discharge" shall be reported. Legible copies of these, and all other reports including whole effluent toxicity (WET) test reports required herein, shall be signed and certified in accordance with the requirements of *Signatory Requirements (see Part IV.G)*, and submitted to the Director, Division of Water Quality at the following address:
- original to: Department of Environmental Quality
Division of Water Quality
288 North 1460 West
PO Box 144870
Salt Lake City, Utah 84114-4870
- E. Compliance Schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any Compliance Schedule of this permit shall be submitted no later than 14 days following each schedule date.
- F. Additional Monitoring by the Permittee. If the permittee monitors any parameter more frequently than required by this permit, using test procedures approved under *UAC R317-2-10* or as otherwise specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated. Only those parameters required by the permit need to be reported.
- G. Records Contents. Records of monitoring information shall include:
- a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) and time(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and,
 - f. The results of such analyses.

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- H. 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 three years from the date of the sample, measurement, report or application. This period may be extended by request of the Executive Secretary at any time. A copy of this UPDES permit must be maintained on site during the duration of activity at the permitted location.
- I. Twenty-four Hour Notice of Noncompliance Reporting.
1. The permittee shall (orally) report any noncompliance which may seriously endanger health or environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of circumstances. The report shall be made to the Division of Water Quality, (801) 538-6146, or 24 hour answering service (801) 536-4123.
 2. The following occurrences of noncompliance shall be reported by telephone (801) 536-4123 as soon as possible but no later than 24 hours from the time the permittee becomes aware of the circumstances:
 - a. Any noncompliance which may endanger health or the environment;
 - b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See *Part III.G, Bypass of Treatment Facilities.*);
 - c. Any upset which exceeds any effluent limitation in the permit (See *Part III.H, Upset Conditions.*); or,
 - d. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit.
 3. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times;
 - c. The estimated time noncompliance is expected to continue if it has not been corrected; and,
 - d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
 - e. Steps taken, if any, to mitigate the adverse impacts on the environment and human health during the noncompliance period.
 4. The Executive Secretary may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Division of Water Quality, (801) 538-6146.

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5. Reports shall be submitted to the addresses in *Part II.D, Reporting of Monitoring Results*.
- J. 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.D* are submitted. The reports shall contain the information listed in *Part II.I.3*.
- K. Inspection and Entry. The permittee shall allow the Executive Secretary, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;
 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and,
 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.

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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 Executive Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- B. Penalties for Violations of Permit Conditions. The *Act* provides that any person who violates a permit condition implementing provisions of the *Act* is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions of the Act is subject to a fine not exceeding \$25,000 per day of violation; Any person convicted under *UCA 19-5-115(2)* a second time shall be punished by a fine not exceeding \$50,000 per day. Except as provided at *Part III.G, Bypass of Treatment Facilities* and *Part III.H, Upset Conditions*, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.
- C. Need to Halt or Reduce Activity not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- D. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
- E. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.
- F. Removed Substances. Collected screening, grit, solids, sludges, or other pollutants removed in the course of treatment shall be buried or disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard. Sludge/digester supernatant and filter backwash shall not directly enter either the final effluent or waters of the state by any other direct route.
- 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. Return of removed substances, as described in *Part III.F*, to the discharge stream shall not be considered a bypass under the provisions of this paragraph.
 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 ten (10) days before the date of the bypass.
 - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as

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required under *Part II.I, Twenty-four Hour Reporting*.

3. Prohibition of bypass.
 - a. Bypass is prohibited and the Executive Secretary 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 Executive Secretary may approve an anticipated bypass, after considering its adverse effects, if the Executive Secretary 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 technology based permit effluent limitations if the requirements of paragraph 2. of this section are met. Executive Secretary's administrative determination regarding a claim of upset cannot be judiciously challenged by the permittee until such time as an action is initiated for noncompliance.
2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required under *Part II.I, Twenty-four Hour Notice of Noncompliance Reporting*; and,
 - d. The permittee complied with any remedial measures required under *Part III.D, Duty to Mitigate*.
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of *The Water Quality Act of 1987* for toxic pollutants within the time provided in the

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regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

- J. Changes in Discharge of Toxic Substances. Notification shall be provided to the Executive Secretary as soon as the permittee knows of, or has reason to believe:
1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - a. One hundred micrograms per liter (100 ug/L);
 - b. Two hundred micrograms per liter (200 ug/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/L) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with *UAC R317-8-3.4(7)* or (10); or,
 - d. The level established by the Executive Secretary in accordance with *UAC R317-8-4.2(6)*.
 2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - a. Five hundred micrograms per liter (500 ug/L);
 - b. One milligram per liter (1 mg/L) for antimony;
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with *UAC R317-8-3.4(9)*; or,
 - d. The level established by the Executive Secretary in accordance with *UAC R317-8-4.2(6)*.
- K. Industrial Pretreatment. Any wastewaters discharged to the sanitary sewer, either as a direct discharge or as a hauled waste, are subject to Federal, State and local pretreatment regulations. Pursuant to Section 307 of *The Water Quality Act of 1987*, the permittee shall comply with all applicable federal General Pretreatment Regulations promulgated at *40 CFR 403*, the State Pretreatment Requirements at *UAC R317-8-8*, and any specific local discharge limitations developed by the Publicly Owned Treatment Works (POTW) accepting the wastewaters.

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

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IV. GENERAL REQUIREMENTS

- A. Planned Changes. The permittee shall give notice to the Executive Secretary as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit. In addition, if there are any planned substantial changes to the permittee's existing sludge facilities or their manner of operation or to current sludge management practices of storage and disposal, the permittee shall give notice to the Executive Secretary of any planned changes at least 30 days prior to their implementation.
- B. Anticipated Noncompliance. The permittee shall give advance notice to the Executive Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- C. Permit Actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- D. Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit.
- E. Duty to Provide Information. The permittee shall furnish to the Executive Secretary, within a reasonable time, any information which the Executive Secretary 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 Executive Secretary, upon request, copies of records required to be kept by this permit.
- F. Other Information. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Executive Secretary, it shall promptly submit such facts or information.
- G. Signatory Requirements. All applications, reports or information submitted to the Executive Secretary shall be signed and certified.
1. All permit applications shall be signed by either a principal executive officer or ranking elected official.
 2. All reports required by the permit and other information requested by the Executive Secretary 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 Executive Secretary, and,
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may

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thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph *IV.G.2* is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph *IV.G.2* must be submitted to the Executive Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. Certification. Any person signing a document under this section shall make the following certification:

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

- H. Penalties for Falsification of Reports. The *Act* provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than \$10,000.00 per violation, or by imprisonment for not more than six months per violation, or by both.
- I. Availability of Reports. Except for data determined to be confidential under *UAC R317-8-3.2*, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of Executive Secretary. As required by the *Act*, permit applications, permits and effluent data shall not be considered confidential.
- J. Oil and Hazardous Substance Liability. Nothing in this permit shall be construed to preclude the permittee of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under the *Act*.
- K. Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.
- L. Severability. The provisions of this permit are severable, and if any provisions of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
- M. Transfers. This permit may be automatically transferred to a new permittee if:
 1. The current permittee notifies the Executive Secretary at least 20 days in advance of the proposed transfer date;

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2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,
 3. The Executive Secretary does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2 above.
- N. State Laws. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by *UCA 19-5-117*.
- O. Water Quality-Reopener Provision. This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations and compliance schedule, if necessary, if one or more of the following events occurs:
1. Water Quality Standards for the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.
 2. A final wasteload allocation is developed and approved by the State and/or EPA for incorporation in this permit.
 3. A revision to the current Water Quality Management Plan is approved and adopted which calls for different effluent limitations than contained in this permit.
- P. Toxicity Limitation -Reopener Provision. This permit may be reopened and modified (following proper administrative procedures) to include, whole effluent toxicity (WET) limitations, a compliance date, a compliance schedule, a change in the whole effluent toxicity (biomonitoring) protocol, additional or modified numerical limitations, or any other conditions related to the control of toxicants if one or more of the following events occur;
1. Toxicity is detected, as per Part I. D.3 and/or 4 of this permit, during the duration of this permit.
 2. The TRE results indicate that compliance with the toxic limits will require an implementation schedule past the date for compliance and the Executive Secretary agrees with the conclusion.
 3. The TRE results indicate that the toxicant(s) represent pollutant(s) that may be controlled with specific numerical limits, and the Executive Secretary agrees that numerical controls are the most appropriate course of action.
 4. Following the implementation of numerical control(s) of toxicant(s), the Executive Secretary agrees that a modified biomonitoring protocol is necessary to compensate for those toxicants that are controlled numerically.
 5. The TRE reveals other unique conditions or characteristics which, in the opinion of the Executive Secretary, justify the incorporation of unanticipated special conditions in the permit.

Colorado River Salinity Offset Program Participation Plan

Canyon Fuel Company, LLC
Skyline and Dugout Canyon Mines

Introduction

Canyon Fuel Company, LLC (CFC) Skyline Mine and Dugout Canyon Mine currently hold Utah Pollutant Discharge Elimination System (UPDES) permits issued by the Utah Department of Environmental Quality, Division of Water Quality (DWQ). The permit number for Skyline is UT0023540 and the Permit number for Dugout is UT0025593. Skyline mine has three approved discharge points: Point 001 which is the outfall from the mine site and sediment pond, Point 002 which is the outfall from the Rail Loadout Sediment Pond, and Point 003 which is the outfall from the Waste Rock Sediment Pond. Mine water discharges from Point 001 on a daily basis while Point 002 seldom has discharge and Point 003 has not had a discharge since construction of the pond. All of the mine discharge points report to either Eccles Creek or Mud Creek, both are tributary to the Price River drainage.

Dugout Canyon Mine has four discharge locations: Point 001 is the mine discharge to the Left Fork of Dugout Creek, Point 002 is the outfall of the mine site sediment pond, Point 003 is the outfall at the mine water storage tank which discharges to the Left Fork of Dugout Creek, and Point 004 is the outfall of the waste rock sediment pond. Mine water discharge at Point 001 is nearly continuous while Points 002 and 003 only discharge periodically. The waste rock sediment pond is a large pond and is not expected to discharge except in unusual circumstances. No discharge has occurred from this point since it was permitted.

Both Skyline Mine and Dugout Mine have had difficulties recently meeting the TDS (salt) loading limits set forth in their respective UPDES permits. A meeting was requested with the appropriate DWQ staff to discuss a plan for the CFC mines to participate in a salinity-offset program consistent with permit requirements. This meeting was held on September 30, 2004 at the DWQ offices. A general plan was verbally presented to the DWQ staff members in attendance with a written copy of the plan sent to DWQ shortly thereafter. Several of the suggestions made by the DWQ staff were included in this plan. A second meeting was held with the DWQ staff and a representative of the Utah Department of Agriculture and Food (UDAF) on November 17, 2004 to clarify the costs associated with the salinity offset program CFC would be participating in and how the monies would be paid. The plan presented in this document includes all of the original plan points, changes discussed in the November 17th meeting, and adjustments to the total plan cost as determined by the UDAF on December 30, 2004. This document discusses the mines' participation in a salinity offset program and includes this Introduction, Discharge History, Plan Elements, Plan Monitoring Schedule, and the Salinity Offset Program Costs and Payment Schedule.

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History

Skyline Mine

Skyline Mine typically discharged only a few hundred gallons per minute of water at discharge Point 001 from the time mining operations began in 1983 and until March 1999. However, in March 1999, mining operations started intercepting large volumes of ground water that required an increase in the rate of mine water discharge. As mining progressed down dip to the west and southwest of the portals, mine water discharge increased until it reached a maximum monthly average of 9,846 gpm in March 2003. When the discharge rate increased from the mine, it became progressively more difficult to comply with the UPDES permit limit of 7.1 tons/day of TDS, even though the TDS concentration of the water discharged was typically less than 500 mg/L. The mine requested and received a modification to its UPDES permit that would allow the discharge of large volumes of high quality water so long as the TDS concentration was less than 500 mg/L. This modification was granted in April 2003. The new permit required Skyline Mine to discharge water with a "...TDS concentration to remain under 500 mg/L, as a thirty day average and as a result no tonnage limits TDS will be required. If for some reason the 30-day average concentration of TDS exceeds 500 mg/L, then the permittee cannot discharge more than 7.1 tons per day. Upon determination by the Executive Secretary that the permittee is not able to meet the 500 mg/L thirty day average and the 7.1 tons per day loading limit, the permittee is required to assess the feasibility of conducting or buying into an existing salinity offset project. This assessment shall include a compliance schedule for conducting or buying into the project." (Skyline Mine UPDES Permit UT0023540, Part D, c/.)

Between March 2003 and September 2004, the average discharge rate of water from Skyline Mine decreased to as low as 850 gpm. On or about September 4, 2004, Skyline Mine began discharging water at a flow rate and TDS concentration that caused the mine to exceed the above referenced limit of tons/day of TDS. The TDS concentrations rose to between 850 and 950 mg/L while the discharge rate averaged about 3,500 gpm. The DWQ was notified of the exceedance and the probability the water discharged from the mine would have similar quality characteristics for the foreseeable future. CFC projects the flow rates and TDS concentrations are likely to remain the same for some period of time. Accordingly, CFC has prepared this plan for Skyline to participate in a salinity offset program in compliance with the permit. As proposed, the plan, when approved, will have an effective date of September 4, 2004 and will apply retroactively to the Skyline Mine discharges.

Dugout Mine

Dugout Mine began to periodically discharge mine water shortly after longwall coal production began in 2001. The rate of discharge increased in 2002 to between 60 and 100 gpm when the mine drained the abandoned east Gilson seam workings to maintain safe working conditions for mine personnel. The steady inflow of ground water to the abandoned Gilson workings and Dugout longwall gob required continuous discharge of water at a rate that caused the mine to exceed its UPDES permit tons/day TDS limit. The DWQ was notified of the exceedance in the appropriate time frame as put forth in the permit. As a result of the steady inflow of groundwater, Dugout produces between 1.0 and 3.5 tons/day of TDS. CFC determined the mine would need to obtain an

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Individual permit with water quality parameter limits that were better suited to the mine discharge and receiving waters rather than continue to operate under a General discharge permit. A tentative agreement between CFC and DWQ was reached on a one ton/day limit of TDS provided the mine was able to participate in a salinity offset project. The new Individual permit for Dugout was issued on December 1, 2004. The Individual permit has similar requirements as the Skyline Mine UPDES permit for participating in a salinity offset program if the daily TDS tonnage limit is exceeded.

Plan Elements

The CFC Skyline and Dugout Mines will participate in the proposed salinity offset program to remain in compliance with their respective UPDES permits. To institute the program, CFC will contribute monies through the DWQ to a fund to be established by the Colorado River Basin Salinity Control Forum for the purpose of defraying the costs of construction and operation of specific salinity offset projects within the Colorado River Basin. The funds will be dispersed to offset projects approved by both the DWQ and the Colorado River Basin Salinity Control Forum. The mines will have no control over the distribution of the funds or involvement in the offset projects.

The amount of the contribution to the proposed salinity offset program fund is based on the concept of offsetting the net discharge of TDS (salt) from the Skyline and Dugout mines (total number of tons of TDS (salt) minus the permitted TDS tons Skyline and Dugout Mines anticipate discharging on a daily basis) against a "bank" of tons of TDS (salt) determined by the cost of removal of a similar number of tons of TDS (salt) from the Colorado River system. DWQ, UDAF and Utah's Colorado River Basin Salinity Control Forum representatives have determined and agreed the cost per ton allocated to the bank will be based on the cost of removing a ton of salt from the Price River Drainage through the construction and implementation of improved irrigation and irrigation water delivery systems. CFC money will fund salinity-offset projects with a 15-year life expectancy and will be credited with the equivalent number of TDS (salt) tons assigned to the investment in the projects.

CFC will contribute sufficient funds to cover the cost of removing approximately 18 tons of TDS/day from the Colorado River system for a period not to exceed 15 years. This number of tons is based on the assumption that Skyline Mine could produce for the next 15 years an average of 20 tons of TDS/day, 12.9 tons over its permitted ton/day limit of 7.1 tons and Dugout Mine could produce approximately six tons of TDS/day, five tons over its permitted ton/day limit of one ton. CFC will offset the excess discharged TDS against credit/tons in a "bank account" of tons of TDS (salt) depleted over a period not exceeding 15 years. The rate of depletion will depend upon the 30-day average daily rate of discharge of tons/day of TDS (salt) from Skyline and Dugout Mines to their receiving streams.

In addition to the anticipated approximate 13 tons/day of TDS (salt) that Skyline may produce above its permitted limit over a multi-year period, the mine will produce an additional 13 tons/day for approximately 3 to 4 months beginning in January 2005. This additional production of TDS (salt) tons/day will result from the mine removing water from the abandoned Winter Quarters Mine and flooded portions of the Skyline Mine. Removing the water from these areas is necessary to ensure safe working conditions for mine personnel as they perform their work duties. The 13 tons/day of TDS (salt) discharged for 3 to 4 months will be included in the calculation of the salinity offset fund.

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Because the two mines are owned and operated by CFC, a contribution to the salinity offset fund in an amount covering the anticipated combined discharge of salt from both mines is both efficient and desirable. This will allow the mines to "trade" tons between operations if needed but still maintain compliance.

Plan Monitoring Schedule

The effectiveness of this plan is dependant upon the close monitoring of the monthly average of daily tons of TDS discharged from Skyline Mine to Eccles and Mud Creeks and Dugout Mine to Dugout Creek. CFC will continue to monitor TDS concentrations in its mine discharge waters at the scheduled rate specified in the UPDES permits. The mines will continue to monitor the discharge water for compliance with TDS concentration limits set forth in the individual UPDES permits. The monthly average tons will be reported on each mine's UPDES Discharge Monitoring Reports (DMR) that are submitted monthly to the DWQ. CFC will also submit a form that illustrates the number of tons discharged versus the number of tons present in the salinity offset "bank account" of TDS (salt) tons. The total tons of salt remaining in the "account" will be listed as a daily total of tons remaining. Table 1, included at the end of this plan, illustrates an example of a proposed spreadsheet to be used and submitted to DWQ to monitor tons of TDS produced and the status of the funded salinity offset tons. Please note the spreadsheet tracks tons for both the CFC Skyline and the Dugout Canyon Mines. The initial number of tons in the fund "bank" is based on the assumption that Skyline and Dugout Mines combined will produce an average of 18 tons/day of TDS above their combined permitted tonnage limits for a period not to exceed 15 years.

DWQ and CFC personnel will evaluate the depletion of the tons of TDS (salt) "account" on an annual basis. In the event additional discharge ton credits are required beyond those initially funded, additional contributions to the account may be necessary. The contribution will be determined on the basis of cost data current at the time of the increase.

The amount of tons of TDS discharged to the Colorado River system by CFC is based on assumptions of the volume of water each mine will be discharging. Unforeseen circumstances may result in higher volumes of water discharged from the mining operations than were originally anticipated. The UPDES permits for both mines currently allow or will allow each operation to discharge higher than presently anticipated volumes of water that may result in increased tons of TDS discharged to their respective receiving streams. These discharges will not violate the mines' UPDES permits provided the concentration of all water quality parameters remain within the permit limits and sufficient funds are placed in the TDS (salt) "bank account" to fund the removal of the additional tons of TDS.

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Salinity Offset Program Costs and Payment Schedule

The cost and payment schedule of the salinity offset program presented by the UDAF during the November 17, 2004 meeting between CFC, DWQ, and UDAF personnel and amended by UDAF on December 30, 2004 is as follows:

1. The cost of the salinity offset program as outlined herein for ton credits in the bank of 71,175 TDS tons is \$1,148,055.00 for Skyline Mine and \$441,658.00 for Dugout Canyon Mine or 27,375 TDS tons.

2. The draining of Mine #3 and the abandoned Winter Quarters Mine will add an additional 1,100 tons of salt over a 110 day period. The cost of the program for ton credits in the bank of 1,100 TDS tons as calculated by CFC is \$17,743.

3. The total costs of the salinity offset program for ton credits in the bank of 99,650 TDS tons is \$1,607,456.

4. The salinity offset program TDS tons credits will be available to CFC for a period not to exceed 15 years. Credits funded after the end of the 15-year period will be funded based on revised calculations agreed upon between CFC and UDAF.

5. CFC will deposit the funds with the DWQ for the initial 99,650 TDS tons credits pursuant to a mutually acceptable agreement between CFC and DWQ (Fund Agreement). The Fund Agreement will set forth the type and location of the account, the payment schedule into the account, the process to disperse funds from the account, the purpose of the funds and account, and will contain such standard contract terms as approved by both parties counsel. CFC will fund the account in three equal payments of \$535,818.67, with each payment being due in the first quarter of 2005, 2006 and 2007.

6. The effective date of the salinity offset program implemented at Skyline Mine will be September 4, 2004 and implementation at Dugout Mine will be the date of approval of the mine's Individual UPDES permit.

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TABLE 1
EXAMPLE ONLY
FUNDS TRACKING CHART

Month/Year	Daily Average Tons of TDS Skyline Mine	UPDES Daily Limit of Tons of TDS w/o Salinity Reduction Plan Participation Skyline Mine	Daily Average Tons of TDS Minus UPDES Daily Limit Skyline Mine	Daily Average Tons of TDS Dugout Canyon Mine	UPDES Daily Limit of Tons of TDS w/o Salinity Reduction Plan Participation Dugout Canyon Mine	Daily Average Tons of TDS Minus UPDES Daily Limit Dugout Canyon Mine	Total CFC Tons of TDS Produced and Subtracted from Fund on Monthly Basis	Tons Remaining in Fund (Initial 99,650 tons)	Percentage of Fund Remaining
Sep-04	17.6*	7.1	10.5	***	***	***	315	99,335	99.7%
Oct-04	20.2*	7.1	13.1	***	***	***	406	99,244	99.6%
Nov-04	18**	7.1	10.9	***	***	***	327	99,323	99.7%
Dec-04	21**	7.1	13.9	4**	1.0	3**	524	99,126	99.5%
Jan-05	23**	7.1	15.9	4**	1.0	3**	586	99,064	99.4%
Feb-05	19**	7.1	11.9	3**	1.0	2**	389	99,261	99.6%

*Actual tonnage of TDS discharged from Skyline Mine

**Hypothetical numbers used for example calculation purposes only

*** Dugout Canyon Mine UPDES Permit did not allow for participation in Salinity Reduction Program until December 2004.