

KPDES



**KENTUCKY POLLUTANT
DISCHARGE ELIMINATION
SYSTEM**

PERMIT

**AUTHORIZATION TO DISCHARGE UNDER THE
KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM**

PERMIT NO.: KYG990000

AGENCY INTEREST NO.: 35050

Pursuant to Authority in KRS 224,

All facilities applying pesticides to surface waters or non-agricultural land applications where contact with surface waters are unavoidable

are authorized to discharge from a facility located

within any of the 120 counties of the Commonwealth of Kentucky

to receiving waters named

those water bodies of the Commonwealth that comprise the Mississippi and Ohio River basins and sub-basins within the political and geographic boundaries of Kentucky

in accordance with effluent limitations, monitoring requirements and other conditions set forth in this permit.

This permit shall become effective on February 1, 2018.

This permit and the authorization to discharge shall expire at midnight, January 31, 2023.

December 6, 2017

Date Signed

A handwritten signature in black ink, appearing to read "Peter T. Goodman".

**Peter T. Goodman, Director
Division of Water**

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SECTION 1

COVERAGE

1 COVERAGE

1.1 Covered Facilities

Any facility with an eligible discharge shall have automatic coverage under this general permit. All eligible discharges are authorized upon the effective date of this permit. All facilities with an eligible discharge shall abide by the terms and conditions of this permit upon the effective date. Facilities with ineligible discharges shall obtain an individual KPDES permit.

1.2 Eligibility

Facilities eligible for coverage under this general permit include all discharges created by applying liquid pesticides directly to surface water and all non-agricultural land applications where pesticide contact with surface water is either intentional or unavoidable, except those excluded discharges.

1.3 Exclusions

Discharges created by applying pesticides to agricultural land are excluded from coverage under this permit. However, this permit makes no judgment as to whether a KPDES permit may actually be required by the Clean Water Act (CWA).

The following discharges are excluded from coverage under this permit and must be authorized by an individual permit:

- (1) Facilities discharging directly into a surface water designated as a Cold Water Aquatic Habitat (CAH) or as an Outstanding State Resource Water (OSRW) as listed in 401 KAR 10:026, Section 5.
- (2) Facilities discharging directly into a surface water categorized as an Outstanding National Resource Water (ONRW) or as an Exceptional Water (EW) as listed in 401 KAR 10:030, Section 1.
- (3) Facilities discharging directly into a surface water listed in the most recent Integrated Report to Congress on Water Quality in Kentucky (303(d) and 305(b) report) as impaired for the specific pesticide being used, or any of its constituents. For instance, applying the pesticide copper sulfate to surface water impaired for either copper or sulfate would not be eligible because copper sulfate can degrade into these two substances.
- (4) Facilities that the Division of Water (Division or DOW) determines have a discharge that is more appropriately addressed by an individual permit.

1.4 Receiving Waters

This permit authorizes discharges to surface waters:

- (1) Classified as Warmwater Aquatic Habitat (WAH), Primary/Secondary Contact Recreation (PCR/SCR), and Domestic Water Supply (DWS) as listed in 401 KAR 10:026, Section 5.
- (2) Listed in the most recent Integrated Report to Congress on Water Quality in Kentucky (303(d) and 305(b) report) as impaired, if the impairment is not for the specific pesticide that is being applied, or any of its constituents.
- (3) Categorized as High Quality (HQ) as described in 401 KAR 10:030, Section 1, provided the discharge complies with the additional controls as specified in this permit.

SECTION 2

TECHNOLOGY-BASED EFFLUENT LIMITATIONS

2 TECHNOLOGY BASED EFFLUENT LIMITATIONS

2.1 Minimizing Pesticide Discharges

The following control measures shall be used to minimize pesticide discharges.

- (1) The permittee shall use no more than the necessary amount of pesticide, no more frequently than necessary to control the target pest, and shall apply the pesticide in suitable weather conditions, in accordance with the label.
- (2) The permittee shall keep application equipment in proper operating condition by calibrating, cleaning, and performing maintenance on a regular basis and by making repairs when necessary.

Before making the first pesticide application covered by this permit and once per calendar year afterwards (before making the first pesticide application for that calendar year) the permittee shall:

- (1) Determine the basis of the pest problem, such as impeded land or water uses like fishing and recreation, increased health risks and the propagation of disease or utility interference.
- (2) Analyze surveillance data from the previous year to help identify the cause of the problem, to determine if the problem is reoccurring or if there are new sources that are contributing to the problem. If data from the previous year for the specific pest management area is not available, older data or data from a similar location may be used.
- (3) Establish pest size or population density to serve as an action threshold.
- (4) Identify the current pest distribution and estimate the distribution potential without the use of pesticides.
- (5) Identify specific pest species to target and develop species-specific management strategies based on species development and behavior.
- (6) If applicable, identify flying insect breeding sites so that larva control programs can be implemented.
- (7) If applicable, identify factors causing or contributing to weed or algae problems such as excessive nutrients.
- (8) If applicable, identify factors causing or contributing to aquatic animal problems such as accidental introduction of exotic species.

Before making every pesticide application covered by this permit, the permittee shall:

- (1) Conduct surveillance to determine if the action threshold has been met.
- (2) Determine if the current climate would be able to support populations beyond the threshold and evaluate the method and timing of applying pesticides to reduce any possible effects on the environment and on non-target organisms.
- (3) Evaluate using pesticides against the most susceptible stage of pest development.

2.2 Water Quality Related Adverse Incident Reporting

The permittee shall provide a written account of a water quality related adverse incident caused by a liquid pesticide discharge to the appropriate DOW Regional Office within thirty (30) days of the incident. This requirement is in addition to the reporting requirements of FIFRA, Section 6(a)(2) and 40 CFR Part 159.

The report must contain the following information:

- (1) The name of the surface water affected and any changes in appearance such as color, sheen, or clarity.
- (2) The name of the affected species and an estimate of the amount and size of any dead or distressed organisms.
- (3) The size of the affected area, such as stream distance, lake area, or terrestrial acreage.

- (4) The name of the pesticide, application rate, application method, active ingredient, and EPA registration number.
- (5) A habitat description and the circumstances under which the incident occurred.
- (6) An identification of what actions will be taken to correct, remedy, cleanup, or otherwise address the incident and prevent the incident from reoccurring.
- (7) How and when the incident was discovered.
- (8) If biological tests or water sampling were conducted, provide a summary of the test results within thirty (30) days of the results becoming available.

2.3 Visual Inspections

The permittee shall:

- (1) Conduct visual inspections while applying pesticides for immediate and observable water quality related adverse incidents. This requirement only applies when visual inspections are possible. For instance, visual inspections may not be possible during nighttime applications or when the treatment area is inaccessible.
- (2) Conduct post-application visual inspections in and around the treatment area for observable water quality related adverse incidents. This requirement only applies if the operator performs surveillance or effectiveness checks as part of their normal pest management program.

2.4 Corrective Actions

If any of the following situations occur, the permittee shall take specific actions to correct the situation and to prevent reoccurrence.

- (1) Failure to meet the technology-based effluent limitations.
- (2) Pesticide applications are causing or contributing to an excursion of a narrative water quality standard.
- (3) Pesticide applications cause a water quality related adverse incident

Corrective action shall be taken as soon as possible, but no later than before the next pesticide application. The permittee shall document any event that triggers a corrective action within five (5) days of the event. The documentation must include a description of the event, the date the event took place, the date the permittee learned of the event, and how the event was discovered. The permittee shall summarize any corrective actions taken, including date begun, date complete, or the anticipated completion date. The permittee shall document what measures are taken to prevent a reoccurrence of the event. The permittee shall maintain a copy of corrective actions at the operator's business address and shall make the records available upon request to Cabinet personnel.

2.5 Recordkeeping

The permittee shall keep a record of those items identified in (a) through (j) of the recordkeeping requirements for agricultural pest control within the Kentucky Department of Agriculture administrative regulation, 302 KAR 27:020, Section 1(3). The permittee shall maintain a copy of records at the operator's business address and shall make the records available upon request to Cabinet personnel.

2.6 Activity Summary

Permittees shall prepare a summary of activity for each calendar year. The summary shall contain the permittee name and the applicator name(s). The common name of any pesticide used during the year must be included, with the registration number(s), application method, and quantity applied. The summary shall include a brief outline of any water quality related adverse incidents that occurred during the year and any corrective actions taken. The summary shall be completed by February 15 of each year.

The permittee shall maintain a copy of the summary at the operator's business address and shall make the summary available upon request to Cabinet personnel.

SECTION 3

WATER QUALITY-BASED EFFLUENT LIMITATIONS

3 WATER QUALITY-BASED EFFLUENT LIMITATIONS

3.1 Applicable Water Quality Standards

Surface waters shall not be aesthetically or otherwise degraded by substances that:

- (1) Settle to form objectionable deposits
- (2) Float as debris, scum, oil, or other matter to form a nuisance
- (3) Produce objectionable color, odor, taste, or turbidity
- (4) Injure, are chronically or acutely toxic to, or produce adverse physiological or behavioral responses in humans, animals, fish, and other aquatic life
- (5) Produce undesirable aquatic life or result in the dominance of nuisance species
- (6) Cause fish flesh tainting

Any discharge that causes or contributes to an excursion of a narrative water quality standard is prohibited and is a violation of this permit.

3.2 Antidegradation

Operators of permitted facilities with a direct discharge to surface water categorized as high quality water shall investigate the possibility of using the following alternative methods of pest control instead of using pesticides:

- (1) **Mechanical Removal Method**
This option involves physically removing the pest from the area. Examples include pulling, mowing, cutting, burning and trapping. Appropriate best management practices have to be used to minimize any environmental disturbances caused by using this method.
- (2) **Habitat Alteration Method**
This procedure consists of increasing pest mortality by altering the pest habitat to make it less suitable to produce and sustain the pest species. Alterations may include eliminating standing water to control mosquito breeding grounds or using pond dyes to inhibit algae growth.
- (3) **Biological Control Method**
This technique makes use of organisms such as herbivores, predators, parasites, and pathogens to combat pests. The mosquito fish (*Gambusia affinis*) feeds on mosquito larvae and is an example of using biological control as an alternative to using pesticides.

The permittee shall evaluate these options prior to each pesticide application covered by this permit, considering their impact on water quality, impact to non-target organisms, effectiveness and feasibility verses those of applying a pesticide. If practical, one or more of these alternatives shall be used instead of applying pesticides that lead to a discharge to high quality water. If an alternative method is successful in eradicating a pest, the permittee shall consider taking steps to prevent the pest species from being reintroduced into the pest management area. The implementation of these requirements shall be documented by the permittee in the Pesticide Discharge Management Plan (PDMP) and are in addition to the standard PDMP requirements that apply. If the permittee is not required to develop a PDMP, then the implementation of any alternative methods of pest control shall be documented and kept on file with the other records as required by the recordkeeping section of this permit.

If DOW determines that additional controls or requirements beyond those contained in this permit are necessary to meet antidegradation requirements, then the operator shall be required to obtain an individual permit.

SECTION 4

PESTICIDE DISCHARGE MANAGEMENT PLAN (PDMP)

4 PESTICIDE DISCHARGE MANAGEMENT PLAN (PDMP)

4.1 PDMP for Large Operators

The permittee shall develop and implement a PDMP for their facilities covered by this permit. The plan shall be complete at the time pesticide application commences. The permittee shall maintain a copy of the PDMP at the operator's business address and shall make the plan available upon request to Cabinet personnel. The plan may incorporate by reference any other documents that may also be used to comply with the requirements of this permit.

The plan shall include the following items:

(1) Pesticide Discharge Management Team

The plan shall list a qualified discharge management team, including the members' names, responsibilities, and contact information. The list must include the name of a person who performs each of the following specific tasks: making pest management decisions, making pesticide applications, performing visual inspections, taking corrective actions, detecting or responding to a leak or spill, and developing the PDMP. The team may include as many or as few members as necessary to fulfill the requirements of this permit.

If the pesticide applicator is unknown when the team is established, indicate when the applicator can be identified. Any written agreements between the permittee and another operator or pesticide applicator that specify the separation of responsibilities regarding the provisions of this permit must be included.

(2) Pest Management Area Description

The plan shall describe the management area in detail, including an explanation of the pest problem, an identification of the target pest, an explanation of the action thresholds and how they were determined and the probable cause of the pest problem. If surveillance data from the previous year was not used to identify the cause of the pest problem, then include an explanation of how the cause was determined. If data from another location is used, as allowed by this permit, then explain how that data is relevant.

(3) Pest Management Area Map

The plan shall include a map (topographical, city, county or other appropriate map) of the management area and treatment area(s).

(4) Discharge Control Measures Description

The plan shall describe what control measures are being used to minimize pesticide discharges in accordance with permit requirements. The plan shall list the pesticide application frequency and rate, and how they were determined. An evaluation of the affect the pesticide's active ingredients will have on the environment shall also be included. The plan must describe how weather data such as temperature, wind speed, and rainfall are gathered, including an explanation of how that information is evaluated to determine if conditions are favorable for applying pesticides.

(5) Water Quality Related Adverse Incident Procedures

The plan shall contain procedures for identifying, documenting, and responding to a water quality related adverse incident, including protocols for notifying the appropriate personnel, emergency response organizations and regulatory agencies.

(6) Visual Inspection Scheduling and Procedures

The plan shall include a schedule for when visual inspections will be conducted, including an explanation of the inspection procedures and protocols.

(7) **Spill Response Procedures**

The plan shall contain procedures for stopping, containing and cleaning up leaks or spills, including protocols for notifying the appropriate personnel, emergency response organizations, and regulatory agencies. Individuals that may cause, detect, or respond to a leak or spill must be trained in the correct spill response procedures and must have the necessary spill response equipment available to them.

(8) **PDMP Modifications**

The PDMP shall be modified when a change in the facility significantly alters the type, frequency, or volume of pesticides discharged, or anytime the permittee takes corrective action. Modifications must be made within 90 days of the change or the corrective action.

(9) **Implementation of Antidegradation Requirements**

If alternative pest control methods are used because of the antidegradation requirements of this permit, then the plan shall contain a description of those methods.

4.2 PDMP for Small Operators

Small facilities and any facility making an application exclusively in response to a Declared Pest Emergency Situation are not required to develop a PDMP.

SECTION 5

STANDARD CONDITIONS

5 STANDARD CONDITIONS

The following conditions apply to all KPDES permits.

5.1 Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Any person who violates applicable statutes or who fails to perform any duty imposed, or who violates any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty as provided at KRS 224.99.010.

5.2 Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit. See Section 6.6 for permit-specific application requirements.

5.3 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.

5.4 Duty to Mitigate

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

5.5 Proper Operation and Maintenance

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

5.6 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.

5.7 Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

5.8 Duty to Provide Information

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

5.9 Inspection and Entry

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

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

5.10 Monitoring and Records

- (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five (5) years (or longer as required by 401 KAR 5:065, Section 2(10) [40 CFR 503]), 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 (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.
- (3) 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) 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.
- (4) Monitoring must be conducted according to test procedures approved under 401 KAR 5:065, Section 2(8) [40 CFR 136] unless another method is required under 401 KAR 5:065, Section 2(9) or (10) [40 CFR subchapters N or O].
- (5) KRS 224.99-010 provides that any person who knowingly violates KRS 224.70-110 or other enumerated statutes, or who knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall be guilty of a Class D felony and, upon conviction, shall be punished by a fine of not more than \$25,000, or by imprisonment for not more than one (1) year, or both. Each day upon which a violation occurs shall constitute a separate violation.

5.11 Signatory Requirement

- (1) All applications, reports, or information submitted to the Director shall be signed and certified pursuant to 401 KAR 5:060, Section 4 [40 CFR 122.22].
- (2) KRS 224.99-010 provides that any person who knowingly provides false information in any document filed or required to be maintained under KRS Chapter 224 shall be guilty of a Class D felony and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars (\$25,000), or by imprisonment, or by fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.

5.12 Reporting Requirements

5.12.1 Planned Changes

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

- (1) The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source in KRS 224.16-050 [40 CFR 122.29(b)]; or
- (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under KRS 224.16-050 [40 CFR 122.42(a)(1)].
- (3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

5.12.2 Anticipated Noncompliance

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

5.12.3 Transfers

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS 224 [CWA; see 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory].

5.12.4 Monitoring Reports

Monitoring results shall be reported at the intervals specified elsewhere in this permit.

- (1) Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.
- (2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 401 KAR 5:065, Section 2(8) [40 CFR 136], or another method required for an industry-specific waste stream under 401 KAR 5:065, Section 2(9) or (10) [40 CFR subchapters N or O], the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

- (3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

5.12.5 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 fourteen (14) days following each schedule date.

5.12.6 Twenty-Four-Hour Reporting

- (1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
- (2) The following shall be included as information which must be reported within twenty-four (24) hours under this paragraph.
 - a) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See §122.41(g))
 - b) Any upset which exceeds any effluent limitation in the permit.
 - c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within twenty-four (24) hours.
- (3) The Director may waive the written report on a case-by-case basis under 40 CFR 122.41 (l), if the oral report has been received within twenty-four (24) hours.

5.12.7 Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Sections 5.12.1, 5.12.4, 5.12.5 and 5.12.6, at the time monitoring reports are submitted. The reports shall contain the information listed in Section 5.12.6.

5.12.8 Other Information

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

5.13 Bypass

5.13.1 Definitions

- (1) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- (2) 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.

5.13.2 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 Section 5.13.3 and 5.13.4.

5.13.3 Notice

- (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass.
- (2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section 5.12.6.

5.13.4 Prohibition of Bypass

- (1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
 - a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if 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
 - c) The permittee submitted notices as required under Section 5.13.3.
- (2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three (3) conditions listed above in Section 5.13.4

5.14 Upset

5.14.1 Definition

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.

5.14.2 Effect of an Upset

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Section 5.14.3 are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

5.14.3 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:

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (2) The permitted facility was at the time being properly operated; and

- (3) The permittee submitted notice of the upset as required in Section 5.12.6; and
- (4) The permittee complied with any remedial measures required under Section 5.4.

5.14.4 Burden of Proof

In any enforcement preceding the permittee seeking to establish the occurrence of an upset has the burden of proof.

SECTION 6

OTHER CONDITIONS

6 OTHER CONDITIONS

6.1 Notice of Intent (NOI) Requirements

Coverage under this permit is automatic. With this reissuance of KYG990000, DOW has elected not to require the submission of a Notice of Intent (NOI) due administrative factors.

6.2 Schedule of Compliance

The permittee shall attain compliance with all requirements of this permit on the effective date of this permit unless otherwise stated. The requirements of this permit are not tied to submission of an NOI to discharge, and therefore compliance must be met from the time an eligible operator begins discharging

6.3 Authorization to Discharge

Facilities with eligible discharges are automatically covered under this permit. Operators are thereby authorized to discharge under the terms and conditions of this permit upon its effective date.

6.4 Other Permits

This permit has been issued under the provisions of KRS Chapter 224 and regulations promulgated pursuant thereto. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by this Cabinet and other state, federal, and local agencies.

6.5 Permit Duration

This permit has a five (5) year duration and will expire on the date indicated on the signature page. However, existing coverage under an expired general permit continues in effect in accordance with 40 CFR 122.6, as incorporated by 401 KAR 5:060, Section 2(4), until DOW makes a determination on any proposal to reissue the permit.

6.6 Continuation of Expiring Permit

This permit shall be continued in effect and enforceable after the expiration date of the permit provided the permittee submits a timely and complete application (if required) in accordance with 401 KAR 5:060, Section 2(4).

6.7 Antidegradation

For those discharges subject to the provisions of 401 KAR 10:030, Section, 1(3)(b)5, the permittee shall Implement the provisions of Section 5.8.

6.8 Reopener Clause

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved in accordance with 401 KAR 5:050 through 5:080, if the effluent standard or limitation so issued or approved:

- (1) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
- (2) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of KRS Chapter 224 when applicable.