

DRAFT NPDES PERMIT NO. PR0026361

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended, 33 U.S.C. § 1251 et. seq. (the "Act"),

Snapperfarm, Inc.
P.O. Box 685
Culebra, Puerto Rico 00775

hereinafter referred to as "the permittee" is authorized to discharge from a facility named "Snapperfarm, Inc. Offshore Cage Site" located at:

a site 2 nautical miles offshore, southwest of the ferry port in Culebra Island, Puerto Rico, with corner latitude/longitude coordinates of the production area as specified in Part I, Special Condition 7.a hereof.

to receiving waters named: Vieques Sound

in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I and II hereof. All references to Title 40 of the Code of Federal Regulations are to regulations that are in effect on the effective date of this permit, including all amendments thereto published in the Federal Register. Unless otherwise specified herein, all terms are defined as provided in the applicable regulations under Title 40 of the Code of Federal Regulations.

This permit shall become effective on Effective Date of Permit (EDP).

This permit and the authorization to discharge shall expire at midnight, EDP + 5 years.

Signed this day of

Kevin Bricke
Acting Director
Division of Environmental Planning
and Protection
U.S. Environmental Protection Agency
Region II

TABLE A-1 EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
AT THE EDGE OF THE PRODUCTION AREA

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During the period beginning on EDP and lasting through the permit expiration date, the permittee is authorized to discharge saltwater fish (cobia) excrement and unconsumed fish food (used in the breeding of these confined fishes in cages submerged in the sea). Such discharge shall be limited and monitored by the permittee at the production area monitoring points (002, 004, 005, 006, 007, 008, 009 and 010) as specified below:

<u>Effluent Characteristics</u>	<u>Gross Discharge Limitations</u>		<u>Monitoring Requirements</u>	
	Units (specified)		Measurement Frequency	Sample Type
	<u>Monthly Average</u>	<u>Daily Maximum</u>		
Ammonia (mg/l)		-----	Monthly	Grab
BOD ₅ (mg/l) ^{1, 2, 3}		30.0	Monthly	Grab
Color (Pt-Co Units) ^{2, 3}	Shall not be altered by other than natural phenomena except when it can be proven that such change in color is harmless to biota and aesthetically acceptable.		Monthly	Grab
Copper (Cu) (µg/l) ^{2, 3}		----	Φ	Grab
Dissolved Oxygen (mg/l) ^{1, 2, 3}	Shall not contain less than 4.0 mg/l except when natural conditions cause this value to be depressed.		Monthly	Grab
Nitrate (mg/l)		-----	Monthly	Grab
Nitrite (mg/l)		-----	Monthly	Grab
Nitrogen, Total (NO ₃ , NO ₂ , NH ₃) (µg/l) ^{2, 3}		5,000	Monthly	Grab

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<u>Effluent Characteristics</u>	<u>Gross Discharge Limitations</u>		<u>Monitoring Requirements</u>	
	Units (specified)		Measurement	Sample
	<u>Monthly Average</u>	<u>Daily Maximum</u>	<u>Frequency</u>	<u>Type</u>
Oil and Grease (mg/l) ^{2,3}	The waters of Puerto Rico shall be substantially free from floating non-petroleum oils and greases as well as petroleum derived oils and greases.		Monthly	Grab
pH (SU) ^{2,3}	Shall always lie between 7.3 and 8.5 except when caused by natural phenomena.		Monthly	Grab
Solids and Other Matter ^{2,3}	The waters of Puerto Rico shall not contain floating debris, scum or other floating materials attributable to discharges in amounts sufficient to be unsightly or deleterious to the existing or designated uses of the water body.		----	----
Selenium (Se) (µg/l) ^{2,3}		----	Φ	Grab
Suspended, Colloidal or Settleable Solids (ml/l) ^{1,2,3,@}	Solids from wastewater source shall not cause deposition in or be deleterious to the existing or designated uses of the waters.		Monthly	Grab
Taste and Odor Producing Substances ^{2,3}	Shall contain none in amounts that will render any undesirable taste or odor to edible aquatic life.		----	----
Temperature °F (°C) ^{2,3}	Except by natural causes, no heat may be added to the waters of Puerto Rico which would cause the temperature of any site to exceed 90°F (32.2°C).		Monthly	Grab

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<u>Effluent Characteristics</u>	<u>Gross Discharge Limitations</u>		<u>Monitoring Requirements</u>	
	Units (specified)		Measurement	Sample
	<u>Monthly Average</u>	<u>Daily Maximum</u>	<u>Frequency</u>	<u>Type</u>
Turbidity (NTU) ^{2,3}		10	Monthly	Grab
Zinc (Zn) (µg/l) ^{2,3}		----	Φ	Grab
Special Conditions	See special conditions below that constitute part of this permit.			

Notes:

To comply with the monitoring requirements specified above, measurements of the current velocity shall be taken to determine the direction of the current. If the current direction is towards the northwest, the samples shall be taken at sampling points 002, 004, 005, 008, and 009. If the current direction is towards the southeast, the samples shall be taken at sampling points 002, 004, 006, 007 and 010.

@ The permittee shall perform sampling individually for Settleable Solids and Total Suspended Solids.

Φ The permittee shall implement a monthly monitoring program using the analytical method approved by EPA with the lowest possible detection level, in accordance with Section 6.2.3 of the Puerto Rico Water Quality Standards Regulation (PRWQSR), as amended, for one (1) year period, after which they will be conducted annually. The monitoring program shall commence not later than thirty (30) days after the Environmental Quality Board of Puerto Rico's (EQB's) written approval of the Quality Assurance Project Plan (QAPP). The QAPP must be submitted for evaluation and approval of EQB not later than thirty (30) days after the EDP. The results of the monitoring program shall be submitted to EQB and EPA-Region II no later than sixty (60) days of completion of the one year monitoring program. Based on the evaluation of the results obtained, EQB will determine if an effluent limitation is necessary for this parameter. In such case, the Water Quality Certificate (WQC) will be reopened to include the applicable effluent limitation.

Notes 1, 2, and 3 see page 11 in the Special Conditions in Part I.A.

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MONITORING REQUIREMENTS
AT THE BACKGROUND SAMPLING POINT

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During the period beginning on EDP and lasting through the permit expiration date, the permittee shall perform monitoring at the background monitoring station, as specified below:

<u>Effluent Characteristics</u>	<u>Monitoring Requirements</u>	
	<u>Measurement Frequency</u>	<u>Sample Type</u>
Ammonia (mg/l)	Monthly	Grab
BOD ₅ (mg/l) ^{1, 2, 3}	Monthly	Grab
Color (Pt-Co Units) ^{2, 3}	Monthly	Grab
Copper (Cu) (µg/l) ^{2, 3}	Monthly	Grab
Current Velocity (m/s) ³	Monthly	Instantaneous
Dissolved Oxygen (mg/l) ^{2, 3}	Monthly	Grab
Nitrate (mg/l)	Monthly	Grab
Nitrite (mg/l)	Monthly	Grab
Nitrogen, Total (NO ₃ , NO ₂ , NH ₃)(µg/l) ^{2, 3}	Monthly	Grab

TABLE A-2

MONITORING REQUIREMENTS
AT THE BACKGROUND SAMPLING POINT

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<u>Monitoring Requirements</u>	
<u>Measurement</u>	<u>Sample</u>
<u>Frequency</u>	<u>Type</u>
<u>Effluent Characteristics</u>	
Oil and Grease (mg/l) ^{2,3}	Grab
pH (SU) ^{2,3}	Grab
Selenium (Se) (µg/l) ^{2,3}	Grab
Temperature °F (°C) ^{2,3}	Grab
Turbidity (NTU) ^{2,3}	Grab
Zinc (Zn) (µg/l) ^{2,3}	Grab

1, 2, and 3 see page 11 in the Special Conditions in Part I.A.

These special conditions are an integral part of the permit:

1. The discharge will only consist of unconsumed food and excrement of the saltwater fishes (Cobia) confined in cages submerged in the sea in the production system.^{2,4}
2. The permittee shall install, maintain and operate all water pollution control equipment in such a manner as to be in compliance with the applicable Rules and Regulations.³
3. No toxic substances shall be discharged in toxic concentrations other than those allowed as specified in the NPDES permit. Those toxic substances included in the permit application, but not regulated by the NPDES permit, shall not exceed the concentrations specified in the applicable regulatory limitations.^{2,3}
4. The waters of Puerto Rico shall not contain any substance attributable to discharge at such concentration which, either alone or as a result of synergistic effects with other substances, is toxic or produces undesirable physiological responses in humans, fish or other fauna or flora.²
5. All sample collection, preservation, and analysis shall be carried out in accordance with the Code of Federal Regulation (CFR) Number 40, Part 136. All chemical analyses shall be certified by a chemist licensed to practice the profession in Puerto Rico. All bacteriological tests shall be certified by a microbiologist or a medical technician licensed to practice the profession in Puerto Rico.^{1,3}
6. No change in the design and configuration of the cages inside of the production area will be permitted without the previous authorization of the EQB.⁴
7. The production system consists of eight (8) cages located within an area of 500 meters length by 500 meters width. The cages have approximately 25 meters of diameter by 15 meters of height and are placed in a row between points 2 and 4 of the production area at a depth of 7.5 meters.

a. The production area is delineated by the following points:

<u>Points</u>	<u>Geographic Coordinates (NAD 83)</u>
Point 1	18°16'40.19" N, 65°20'00.23" W
Point 2	18°16'40.40" N, 65°19'43.22" W
Point 3	18°16'24.14" N, 65°19'43.00" W
Point 4	18°16'23.93" N, 65°20'00.01" W

b. The production area sampling points shall be situated at points 002, 004, 005, 006, 007, 008, 009 and 010, which are located at the following coordinates:

<u>Points</u>	<u>Geographic Coordinates (NAD 83)</u>
Point 2	18°16'40.40" N, 65°19'43.22" W
Point 4	18°16'23.93" N, 65°20'00.01" W
Point 5	18°16'40.30" N, 65°19'50.82" W
Point 6	18°16'33.13" N, 65°19'43.12" W
Point 7	18°16'24.02" N, 65°19'52.41" W
Point 8	18°16'31.20" N, 65°20'00.11" W
Point 9	18°16'35.75" N, 65°19'55.57" W
Point 10	18°16'28.58" N, 65°19'47.76" W

- c. The background sampling point shall be located one hundred (100) meters from point 001 of the production area, at the following point: 18° 16' 22.25" N, 65° 20' 02.97" W.
- d. The permittee shall perform current velocity measures (speed and direction) in the background sampling station during each sampling event.
- e. The permittee shall maintain records of the equipment used to be situated at the production area and background sampling points. Such records shall include the date when the equipment was obtained or leased, calibration date, serial number, model, etc.

To identify the location of the production area and background sampling points, the permittee shall use the procedure established in the EPA-QA/QC of the Amended Section 301(h) Technical Support Document, EPA 842-B-94-007, September 1994 (Table D-1 Example ZID Boundary station locations).

If the permittee determines to use another method to identify the sampling points of the production area and background, the permittee shall, prior to the utilization of such method, obtain the written approval from EQB.

- f. The samples of the eight (8) stations of the production area and the background monitoring station shall be taken at three (3) depths in each station: 10%, 50%, 90% of the depth.
- g. Fifteen (15) months after EDP, the permittee shall submit a report of the first year of the monitoring program. Based on the review of the monitoring results the EQB will determine if it is necessary to reopen the WQC to modify (increase or decrease) the monitoring requirements or the location and/or number of ambient monitoring stations.

8. Solids from the production system shall not cause deposition in the bottom of the receiving water body in such amount that will be deleterious to the existing or designated uses of the receiving water body.
9. The permittee shall implement a monthly monitoring program to determine if the solids generated due to this activity cause deposition in the bottom of the receiving water body in such amount that will be deleterious to the existing or designated uses of the receiving water body. The monitoring program shall commence no later than thirty (30) days after the EQB's written approval of the QAPP. The QAPP must be submitted for the evaluation and approval of EQB no later than thirty (30) days after the Effective Date of the Permit (EDP). The results of the monitoring program shall be submitted to EQB no later than sixty (60) days after completion of the monitoring program. Based on the evaluation of the results obtained, EQB will determine if it is necessary to revoke the Water Quality Certificate.
10. The referenced activity shall not cause the growth or propagation of organisms that negatively disturb the ecological equilibrium in the areas adjacent to the production system.
11. The production area shall be free of debris, scum, floating oil and any other substances that produce objectionable odors.
12. The permittee shall maintain the production system in good operating conditions. At least quarterly, the production system shall be inspected to determine if some repairs, replacing, etc., are required. A semiannual report of the inspections, reports or replacements performed shall be submitted to EPA and EQB by the end of January and July.
13. The permittee shall employ efficient feed management and feeding strategies that limit feed input to the minimum amount reasonably necessary to achieve production goals and sustain targeted rates of animal growth.
14. The permittee shall dispose of accumulated solids and attached marine growth contained within or on the net-pen in a manner which prevents to the maximum extent practical these materials from entering or re-entering the receiving water body.
15. The permittee shall recover floating debris and trash which enters the receiving water incidental to the operation of the facility.
16. The permittee shall remove and dispose of animal mortalities properly on a regular basis to prevent discharge to a water body.

A. SPECIAL CONDITIONS

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17. The permittee shall ensure proper storage of medications, pesticides and feed in a manner that prevents spills that may result in the discharge of such substances to a water body. Also, the permittee shall implement procedures for properly containing, cleaning and disposing of any spilled material.
 18. The EQB can require that the permittee conduct bioaccumulation studies, dye studies, water quality studies or any other pertinent studies. If the EQB requires one or more of the aforementioned studies, the permittee will be notified to conduct such study(ies). Sixty (60) days after the notification of the EQB, the permittee shall submit, for evaluation and approval of the EQB, a protocol to conduct such study(ies). Thirty (30) days after the EQB approval, the permittee shall conduct such study(ies). Sixty (60) days after conducting such study(ies), the permittee shall submit a report that includes the results of such study(ies).
 19. The authorization for the production system will not be transferable and does not convey any property rights of any sort or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, of any infringement of Federal or State law or regulations.
- 1, 2, 3 and 4 see next page.

A. REFERENCES OF SPECIAL CONDITIONS

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1. According to Article 1, Puerto Rico Water Quality Standards Regulation and Amendments.
2. According to Article 3, Puerto Rico Water Quality Standards Regulation and Amendments.
3. According to Article 6, Puerto Rico Water Quality Standards Regulation and Amendments.
4. According to the Environmental Public Policy Act of September 22, 2004, as amended, Act. No. 416.

B. MONITORING AND REPORTING REQUIREMENTS

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1. Monitoring and records. See Part II.B.10.

2. Discharge monitoring reports.

a. See Part II.B.12.d.

b. Monitoring results obtained during the previous month shall be summarized and reported on a Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed reporting period. The first report is due on EDP + 1 month + 28 days. Duplicate signed copies of these, and all other reports required herein, shall be submitted to the Regional Administrator and State Director at the following addresses:

COMPLIANCE ASSISTANCE
PROGRAM SUPPORT BRANCH
REGION II
U.S. ENVIRONMENTAL PROTECTION
AGENCY
290 BROADWAY - 21ST FLOOR
NEW YORK, NEW YORK 10007-1866

DIRECTOR
US EPA REGION II
CARIBBEAN ENVIRONMENTAL
PROTECTION DIVISION
EDIF CENTRO EUROPA APT 417
1492 AVENIDA PONCE DE LEON
SAN JUAN, PUERTO RICO 00907-4127

ENVIRONMENTAL QUALITY BOARD OF PUERTO RICO
P.O. BOX 11488
SANTURCE, PUERTO RICO 00910
ATTN: WATER QUALITY BUREAU

3. Quality assurance practices. The permittee is required to show the validity of all data by requiring its laboratory to adhere to the following minimum quality assurance practices:

a. Duplicate⁽¹⁾ and spiked⁽²⁾ samples must be run for each constituent analyzed for permit compliance on 5% of the samples, or at least on one sample per month, whichever is greater. If the analysis frequency is less than one sample per month, duplicate and spiked samples must be run for each analysis.

b. For spiked samples, a known amount of each constituent is to be added to the discharge sample. The amount of constituent added should be approximately the same amount present in the unspiked sample, or must be approximately that stated as maximum or average in

¹ Duplicate samples are not required for the following parameters: Color, Temperature, Turbidity.

² Spiked samples are not required for the following parameters listed in Table 1 of 40 C.F.R. 136: Acidity, Alkalinity, Bacteriological, Benzidine, Chlorine, Color, Dissolved Oxygen, Hardness, pH, Oil and Grease, Radiological, Residues, Temperature, Turbidity. Procedures for spiking samples and spiked sample requirements for parameters not listed on the above-referenced table are available through the U.S. Environmental Protection Agency's (EPA's) Regional Quality Assurance Coordinator.

the discharge permit.

c. The data obtained in a. shall be summarized in an annual report submitted at the end of the fourth quarter of reporting in terms of precision, percent recovery, and the number of duplicate and spiked samples run.

d. Precision for each parameter shall be calculated by the formula, standard deviation $s = (\sum d^2/2K)^{1/2}$, where d is the difference between duplicate results, and k is the number of duplicate pairs used in the calculation.

e. Percent recovery for each parameter shall be calculated by the formula $R = 100 (F-I)/A$, where F is the analytical result of the spiked sample, I is the result before spiking of the sample, and A is the amount of constituent added to the sample.

f. The percent recovery, R, for each parameter in e. above shall be summarized yearly in terms of mean percent recovery and standard deviation from the mean. The formula, $s = (\sum (\bar{x}-x)^2/(n-1))^{1/2}$, where "s" is the standard deviation around the mean " \bar{x} ", "x" is an individual recovery value, and "n" is the number of data points, shall be applied.

g. The permittee and/or the permittee's contract laboratory is required to annually analyze an external quality control reference sample for each pollutant. These are available through an approved performance test provider at:

<http://www.a2la.org/dirsearchnew/nelacptproviders.cfm>

h. The permittee and/or his contract laboratory is required to maintain records of the specific analytical methods used, including options employed, if any, within a particular method, and of reagent standardization and equipment calibration operations.

i. If a contract laboratory is utilized, the permittee shall submit the name and address of the laboratory and the parameters analyzed at the time it submits its discharge monitoring reports (see Section 2.b above). Any change in the contract laboratory being used or the parameters analyzed shall be reported prior to or together with the monitoring report covering the period during which the change was made.

4. Twenty-four hour reporting.

a. The permittee must report violations of maximum daily discharge limitations in accordance with the reporting requirements set forth in Part II.B.12.f. (24 hour reporting followed by 5 day written submission) for the following pollutants: Not Applicable

5. Additional reporting requirements. The permittee shall notify the Regional Administrator and State Director as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest (except as specified in part (4)) of the following "notification levels":

- (1) One hundred micrograms per liter (100 ug/l);
- (2) 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;
- (3) Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The notification levels, if any, established by the Director in the permit.

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

- (1) Five hundred micrograms per liter (500 ug/l);
- (2) One milligram per liter (1 mg/l) for antimony;
- (3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The notification levels, if any, established by the Director in the permit.

C. GENERAL REPORTING REQUIREMENTS

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(ACCORDING TO CONCENTRATED AQUATIC ANIMAL
PRODUCTION POINT SOURCE CATEGORY)

1. Drugs. Except as noted below, the permittee must notify EPA, as the permitting authority, of the use in the concentrated aquatic animal production facility of any investigational new animal drug (INAD) or any extralabel drug use where such a use may lead to a discharge of the drug to waters of the U.S. Reporting is not required for an INAD or extralabel drug use that has been previously approved by the Food and Drug Administration (FDA) for a different species or disease if the INAD or extralabel use is at or below the approved dosage and involves similar conditions of use.
[Note: The definition for drug, INAD, and extra label drug use are provided in 40 CFR 451. **Also, although this requirement refers to notification for the discharge of certain drugs to waters of the U.S., Part I, A. Special Condition 1 does not authorize the discharge of drugs from the production area.**]
 - a. The permittee must provide a written report to EPA, as the permitting authority, of an INAD's impending use within 7 days of agreeing or signing up to participate in an INAD study. The written report must identify the INAD to be used, method of use, the dosage, and the disease or condition the INAD is intended to treat.
 - b. For INADs and extralabel drug uses, the permittee must provide an oral report to EPA as soon as possible, preferably in advance of use, but no later than 7 days after initiating use of that drug. The oral report must identify the drugs used, method of application, and the reason for using that drug.
 - c. For INADs and extralabel drug uses, the permittee must provide a written report to EPA, as the permitting authority, within 30 days after initiating use of that drug. The written report must identify the drug used and include: the reason for treatment, date(s) and time(s) of the addition (including duration), method of application; and the amount added.
2. Failure in, or damage to, the structure of an aquatic animal containment system resulting in an unanticipated material discharge of pollutants to waters of the U.S. In accordance with the following procedures, the permittee must notify EPA, as the permitting authority, when there is a reportable failure or damage.
 - a. The permittee must provide an oral report to EPA within 24 hours of discovery of any reportable failure or damage that results in a material discharge of pollutants, describing the cause of the failure or damage in the containment system and identifying materials that have been released to the environment as a result of this failure.
 - b. The permittee must provide a written report within 7 days of discovery of the failure or damage documenting the cause, the estimated time elapsed until the

C. GENERAL REPORTING REQUIREMENTS

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failure or damage was repaired, an estimate of the material released as a result of the failure or damage, and steps being taken to prevent a recurrence.

3. Spill of drugs, pesticides or feed resulting in a discharge to waters of the U.S. In the event a spill of drugs, pesticides or feed occurs that results in a discharge to waters of the U.S., the permittee must provide an oral report of the spill to EPA within 24 hours of its occurrence and a written report within 7 days. The report shall include the identity and quantity of the material spilled. [Note: The definition for pesticide, is provided in 40 CFR 451.]
4. Telephone Number for Notification The following telephone number should be used for providing the oral reports described in Items 1, 2 and 3 above: (212) 637-3834. EPA will notify the permittee of any updated telephone number for providing these oral reports.
5. Best Management Practices Plan
 - a. The permittee must develop a Best Management Practices (BMP) plan.
 - b. The permittee must make the BMP plan available to EPA upon request.
 - c. The permittee must certify in writing to EPA that this BMP plan has been developed. This certification must be submitted to EPA prior to the start of any production at the facility and shall be signed in accordance with the signatory requirements specified in Part II.B.11.
 - d. The permittee must maintain the BMP plan on site. If no onsite location is available, then the permittee must maintain the BMP either on the vessel used for transport of the fish or at an associated land-based facility, if applicable.
 - e. The BMP plan must describe how the permittee will achieve the permit requirements below in Part I, Section D. ADDITIONAL REQUIREMENTS, Item 1 (Narrative Effluent Limitations).

D. ADDITIONAL REQUIREMENTS

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1. Narrative Effluent Limitations

The permittee must meet the following narrative effluent limitations a through h below, expressed as practices:

- a. Feed management. Employ efficient feed management and feeding strategies that limit feed input to the minimum amount reasonably necessary to achieve production goals and sustain targeted rates of aquatic animal growth. These strategies must minimize the accumulation of uneaten food beneath the pens through the use of active feed monitoring and management practices. These practices may include one or more of the following: Use of real-time feed monitoring, including devices such as video cameras, digital scanning sonar, and upweller systems; monitoring of sediment quality beneath the pens; monitoring of benthic community quality beneath the pens; capture of waste feed and feces; or other good husbandry practices approved by EPA as the permitting authority. Real-time feed monitoring means a system designed to track the rate of feed consumption and to detect uneaten feed passing through the nets at a net pen facility. These systems may rely on a combination of visual observation and hardware including, but not limited to, devices such as video cameras, digital scanning sonar, or upweller systems, that allow facilities to determine when to cease feeding the aquatic animals. Visual observation alone from above the pens does not constitute real-time monitoring.
- b. Waste collection and disposal. Collect, return to shore, and properly dispose of all feed bags, packaging materials, waste rope and netting.
- c. Transport or harvest discharge. Minimize any discharge associated with the transport or harvesting of aquatic animals including blood, viscera, aquatic animal carcasses, or transport water containing blood.
- d. Carcass removal. Remove and dispose of aquatic animal mortalities properly on a regular basis to prevent discharge to waters of the U.S.
- e. Materials storage.
 - (1) Ensure proper storage of drugs, pesticides and feed in a manner designed to prevent spills that may result in the discharge of drugs, pesticides or feed to waters of the U.S.
 - (2) Implement procedures for properly containing, cleaning, and disposing of any spilled material.

D. ADDITIONAL REQUIREMENTS

(ACCORDING TO CONCENTRATED AQUATIC ANIMAL
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f. Maintenance.

- (1) Inspect the production system on a routine basis in order to identify and promptly repair any damage.
- (2) Conduct regular maintenance of the production system in order to ensure that it is properly functioning.

g. Recordkeeping.

- (1) In order to calculate representative feed conversion ratios, maintain records for aquatic animal net pens documenting the feed amounts and estimates of the numbers and weight of aquatic animals.
- (2) Keep records of the net changes, inspections and repairs.

h. Training. The permittee must:

- (1) In order to ensure the proper clean-up and disposal of spilled material adequately train all relevant facility personnel in spill prevention and how to respond in the event of a spill.
- (2) Train staff on the proper operation and cleaning of production systems including training in feeding procedures and proper use of equipment.

E. ADDITIONAL REQUIREMENTS

(ACCORDING TO FINDING OF NO SIGNIFICANT IMPACT)

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1. Monitoring Measures – The following measures/practices must be implemented from project initiation until this initial permit expires:
 - a. The permittee will implement the June 2009, Final Environmental Monitoring Program (EMP) approved by the National Marine Fisheries Service (NMFS) and the conditions in the Water Quality Certificate (WQC) issued by the Puerto Rico Environmental Quality Board (PREQB) on September 30, 2008. Additionally, the permittee will send a copy of associated reports to EPA.
 - b. The permittee will abide by the feed limits contained in the permit application, i.e., a maximum limit of 280,000 pounds per month, which equates to less than 10,000 pounds of feed per day.
 - c. The permittee will provide dated baseline photographs and/or video of the ocean bottom beneath the cages prior to project initiation and then continue providing dated photographs and/or video of the exact same location/coordinates throughout operation. As indicated in the EMP, the permittee will be placing two-meter long steel rods into the sand bed prior to project initiation directly below each cage to be shown in each photograph/video. Additionally, the rods must be visible demarcated in inches. The permittee will submit this series of photographs/videos in an organized way simultaneously with the environmental monitoring program report.
 - d. The permittee will include ammonia, nitrite and nitrate in its water quality monitoring activities following the same procedures as identified in the Water Quality Certification (Appendix C of the Environmental Assessment (EA)).
 - e. If considering additional species in the future, the permittee will consider lower trophic level species and will not add any other species prior to receiving NMFS and the Puerto Rico Department of Natural and Environmental Resources approvals. The permittee will send EPA a copy of any such approvals.
 - f. The permittee will notify EPA, NMFS and the appropriate local authorities within two weeks of occurrence of all mortality events of unknown cause that result in 0.10% or greater mortality for three consecutive days.
 - g. The permittee will use the least environmentally damaging feeds and keep abreast of latest advances. If the least environmentally damaging feeds are not used, the permittee will provide a sound justification for not doing so. The permittee will send a well documented report to EPA explaining results of the use of any feed that varies from its normal feed within 60 days of changing feed. It has been found

E. ADDITIONAL REQUIREMENTS

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that the human health risk associated with seafood consumption is linked to feeding habits of the fish. Since it has the capacity to control the diet of the caged fish; the permittee may be able to offer a safer product for human health and consumption.

- h. The permittee will develop an adaptive management plan. This plan should include a matrix detailing potential impacts on the benthic community and water quality and possible responses to observed detrimental changes. EPA, NMFS, PREQB and the Puerto Rico Department of Natural and Environmental Resources should be part of preparing the initial matrix. An adaptive management plan should be reflective of and responsive to actual occurrences and conditions.
- i. In the event that sun exposure is insufficient for proper cage cleaning, the permittee will establish a plan identifying alternatives, and describing potential impacts. The permittee will send a draft of this plan to EPA within 60 days of EDP.

F. ADDITIONAL REQUIREMENTS

(ACCORDING TO OCEAN DISCHARGE CRITERIA REVIEW)

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1. The permittee must comply with all permit conditions established pursuant to 40 CFR §125.123(d) as follows (where the CFR citations are noted in brackets) and with other related permit conditions as follows:
 - a. The discharge of pollutants will, following dilution as estimated at the boundary of the production area not exceed the limiting permissible concentration for the liquid and suspended particulate phases of the waste material as described in 40 CFR §227.27(a) (2) and (3), §227.27(b), and §227.27(c) of the Ocean Dumping Criteria; and” (ii) not exceed the limiting permissible concentration for the solid phase of the waste material or cause an accumulation of toxic materials in the human food chain as described in §127.27(b) and (d) of the Ocean Dumping Criteria. [40 CFR §125.123(d)(1)]
 - b. The discharge of medications from the production system may result in accumulating in the sediments in toxic concentration. The permittee must use drugs approved by the Food and Drug Administration (FDA) to ensure that there are no adverse impacts on farmed cobia as well as on the marine organisms. **[Note: Although this requirement refers to the discharge of medications, Part I, A. Special Condition 1 does not authorize the discharge of drugs from the production area.]**
 - c. The potential long-term impacts from the permittee’s cage operation site on the water quality, benthic invertebrate community, bioaccumulation, and sediment in the vicinity of the proposed production area must be assessed via the following:
 - i. EMP for Snapperfarm Inc. Open Ocean Aquaculture (dated June 2009) specified in Part I.E.1 of the NPDES permit [40 CFR 125.123(d)(2)];
 - ii. Conditions listed in the Snapperfarm Finding of No Significant Impact (FNSI) dated August 2009 which are relevant to Ocean Discharge Criteria;
 - iii. PREQB’s WQC monitoring requirements dated September 30, 2008 [40 CFR 125.123(d)(2)];
 - iv. NPDES permit monitoring requirements Dated August 2009 [40 CFR 125.123(d)(2)], and
 - v. A comprehensive Snapperfarm Benthic Invertebrate Community Monitoring Program, to assess the stability condition of the benthic community as a result of the permitted discharge, must be proposed by the permittee which follows the guidelines in the **“Outline of the Snapperfarm Benthic Invertebrate Community Monitoring Program”** shown below. [40 CFR 125.123(d)(2)]

F. ADDITIONAL REQUIREMENTS

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The permittee must, within 6 months of the effective date of its NPDES permit, submit to EPA for its review and approval, a Plan of Study (POS) and QAPP for the Snapperfarm Benthic Invertebrate Community Monitoring Program. EPA is willing to assist the permittee in the development of such program. The POS and QAPP may be submitted as a single document if appropriate. No monitoring under the Snapperfarm Benthic Invertebrate Community Monitoring Program shall begin until the permittee has an EPA approved POS and QAPP. EPA will notify the permittee in writing of any deficiencies in the POS and QAPP along with a due date for response. The permittee must follow the procedures in the approved POS and QAPP when conducting the Benthic Invertebrate Community Monitoring Program. The POS and QAPP must be developed according to the “**Outline of the Snapperfarm Benthic Invertebrate Community Monitoring Program**” as follows:

Outline of the Snapperfarm Benthic Invertebrate Community Monitoring Program:

Ocean Discharge Criteria of the permittee’s NPDES permit must include a monitoring program requirement that is sufficient to allow EPA to assess the impact of the discharge on water, sediment, and biological quality including, where appropriate, analysis of bioaccumulative and/or persistent impact on aquatic life of the discharge and therefore, make a determination that there will be no unreasonable degradation for the permittee’s next NPDES permit application.

Determination of no unreasonable degradation of the marine environment is based on an analysis of the extent to which there are:

- a) Significant adverse changes in ecosystem diversity, productivity, and stability of the biological community within the area of discharge and surrounding communities.
- b) Threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms, or
- c) Loss of aesthetic, recreational, scientific, or economic values which is unreasonable in relation to benefit derived from the discharge.

Monitoring Objective: To assess the stability condition of the benthic community as a result of the permitted discharge.

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Rationale: By comparing biological variables of benthic population/or community at both potentially impacted areas and reference areas. This community data will yield significant information on the effects of effluent impact on marine biota, including magnitude and direction of community response. A sediment analysis in conjunction with the infauna sampling will relate the biota condition with the concentrations of contaminants present.

Criteria: Unreasonable degradation occurs when a 25% or greater reduction in diversity for a given community or a 50% or greater reduction in the population of a dominant or commercially important species takes place in any one of the three major community groups (plankton, nekton or benthos).

Assessment parameters:

- a) species diversity (ecosystem diversity)
- b) abundance (population size)
- c) species richness
- d) species evenness
- e) dominance
- f) mean biomass (wet weight)
- g) sediment analysis (total organic content, grain size)
- h) cluster analysis
- i) list of pollution tolerant and opportunistic species

Methods: Grab sampler (either 0.1m² van Veen grab or Smith-McIntyre) attached to hydraulically operated cable, with 0.5 mm mesh screens for sieving sediments. Five replicates should be collected at each station.

Sampling Frequency: Sampling should be conducted quarterly beginning within 3 months after EPA approves the POS and QAPP or, if operations have not begun at the time of approval, then beginning within 3 months after the start of operations. Subsequent sampling frequency and duration will be re-evaluated by EPA based upon an analysis of the data (both water quality and benthic data from this Benthic Invertebrate Community Monitoring Program, the EMP, and NPDES permit monitoring). EPA will notify the permittee of the revised sampling frequency/duration.

- vi. If the sediment core sample results from the EMP indicate that a potential bioaccumulation in the marine organisms may occur then a POS and QAPP for a fish bioaccumulation monitoring plan must be developed and submitted to EPA by the permittee no later than 60 days after the EPA's written request. EPA is willing to

F. ADDITIONAL REQUIREMENTS

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- assist the permittee in the development of such program. The POS and QAPP may be submitted as a single document if appropriate. [40 CFR 125.123(d)(2)]
- d. The final Snapperfarm monitoring report must be submitted to EPA by the permittee with the permittee's renewal NPDES permit application. The report must be a comprehensive assessment of all of the above-mentioned data/information collected from, but not limited to, the EMP, the monitoring requirements included in its NPDES permit and the Snapperfarm Benthic Invertebrate Community Monitoring Program. The report must compile the monitoring data and include: appropriate data analysis, summary of the data collected, conclusions based on the data collected and other available data and an explanation of how the data complies with the Ocean Discharge Criteria requirements in 40 CFR §125 Subpart M. The report must support the permittee's findings regarding whether or not its operation has caused unreasonable degradation. [40 CFR 125.123(d)(2)], [40 CFR 125.123(d)(3)]
- e. In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the director determines that continued discharges may cause unreasonable degradation of the marine environment. [40 CFR §125.123(d)(4)]

1. "Average monthly discharge limitation" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

2. "Average weekly discharge limitation" means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

3. "Bypass" means the intentional diversion of wastes from any portion of a treatment facility.

4. "Composite" means a combination of individual (or continuously taken) samples obtained at regular intervals over the entire discharge day. The volume of each sample shall be proportional to the discharge flow rate. For a continuous discharge, a minimum of 24 individual grab samples (at hourly intervals) shall be collected and combined to constitute a 24-hour composite sample. For intermittent discharges of more than four (4) hours duration, grab samples shall be taken at a minimum of 30 minute intervals.

5. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharge over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of pollutant over the day. For purposes of sampling, "daily" means an operating day or 24-hour period.

6. "Director" means the "Regional Administrator" or the "State Director", as the context requires, or an authorized representative. Until the State has an approved State program authorized by EPA under 40 C.F.R. Part 123, "Director" means the Regional Administrator. When there is an approved State program, "Director" normally means the State Director. Even in such circumstances, EPA may retain authority to take certain action (see, for example, 40 C.F.R. 123.1(d), 45 Federal Register 14178, April 1, 1983, on the retention of jurisdiction over permits EPA issued before program approval). If any condition of this permit requires the reporting of information or other actions to both the Regional Administrator and the State Director, regardless of who has permit-issuing authority, the terms "Regional Administrator" and "State Director" will be used in place of "Director".

7. "Discharge Monitoring Report" or "DMR" means the EPA uniform national form, including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by permittees.

8. "Grab" means an individual sample collected in less than 15 minutes.
9. "Gross" means the weight or the concentration contained in the discharge. (Unless a limitation is specified as a net limitation, the limitation contained in this permit is a gross limitation).
10. "Maximum daily discharge limitation" means the highest allowable "daily discharge".
11. "Monthly" means one day each month (the same day each month) and a normal operating day (e.g., the 2nd Tuesday of each month).
12. "Net" means the amount of a pollutant contained in the discharge measured in appropriate units as specified herein, less the amount of a pollutant contained in the surface water body intake source, measured in the same units, over the same period of time, provided:
 - a. The intake water source must be drawn for the same body of water into which the discharge is made; and
 - b. In cases where the surface water body intake source is pretreated for the removal of pollutants, the intake level of a pollutant to be used in calculating the net is that level contained after the pretreatment steps.
13. "Regional Administrator" means the Regional Administrator of Region II of EPA or the authorized representative of the Regional Administrator.
14. "Severe property damage" means that substantial physical damage to the treatment facilities which would cause 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.
15. "State Director" means the chief administrative officer of the State water pollution control agency, or the authorized representative of the State Director.
16. "Toxic pollutant" means any of the pollutants listed in 40 CFR 401.15 (45 F.R. 44503, July 30, 1979) and any modification to that list in accordance with Section 307 (a)(1) of the Clean Water Act.
17. "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

A. DEFINITIONS

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

18. "Weekly" means every seventh day (the same day of each week) and a normal operating day.

1. Duty to Comply.

a. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

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

c. The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every four years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties listed below were adjusted for inflation starting in 1996.

d. The Clean Water Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405, of the Clean Water Act is subject to a civil penalty not to exceed \$27,500 per day for each violation. Any person who negligently violates permit conditions implementing Section 301, 302, 306, 307, 308, 318 or 405 of the Clean Water Act is subject to a fine not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both. Any person who knowingly violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Clean Water Act is subject to a fine not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

2. Duty to Reapply. This permit and the authorization to discharge shall terminate on the expiration date indicated on the first page. In order to receive authorization to discharge after the expiration date of this permit, the permittee must apply for and obtain a new permit. If the permit issuing authority remains EPA, the permittee shall complete, sign, and submit an application to the Regional Administrator no later than 180 days before the expiration date.

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

4. 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.

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, installed by the permittee, when the operation is necessary to achieve compliance with the conditions of the permit.

6. Permit actions.

a. This permit may be modified, revoked and reissued, or terminated during its term 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.

b. Causes for modification, revocation and reissuance, and termination are set forth in 40 C.F.R. 122.62 and 122.64.

- (1) Specified causes for modification, revocation and reissuance, and termination include:
 - (a) Noncompliance by the permittee with any condition of the permit;
 - (b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
 - (c) A determination that the permitted discharge endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
 - (d) There is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit.
- (2) Specified causes for modification and, upon request or agreement of the permittee, revocation and reissuance of the permit include material and

substantial alterations or additions to the permittee's operation which occurred after permit issuance and which justify the application of permit conditions that are different or absent from this permit, (e.g., production changes, relocation or combination of discharge points, changes in the nature or mix of products produced) provided the reconstruction activities do not cause the new source permit issuance provisions of 40 C.F.R. 122.29 to be applicable.

c. With the exception of permit modifications which satisfy the criteria in 40 C.F.R. 122.63 for "minor modifications," the applicable procedures required by 40 C.F.R. Part 124, including notice and opportunity for a hearing, shall be followed before this permit is modified, revoked and reissued, or terminated.

7. 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 persons or property or invasion of other private rights, or any infringement of State or local laws or regulations.

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.

9. Inspection and Entry. The permittee shall allow the Regional Administrator, the head of the State water pollution control agency, or any other authorized representative(s), upon the presentation of credentials and other documents as may be required by law, to:

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

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

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

d. Sample 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.

10. Monitoring and records.

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. 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, for a period of at least 3 years from the date of the sample, measurement report or application. This period may be extended by request of the Director at any time.

c. Records of monitoring information shall include:

- (1) The date, exact place, and time of sampling or measurement;
- (2) The individual(s) who performed the sampling or measurements;
- (3) The date(s) analyses were performed;
- (4) The individual(s) who performed the analyses;
- (5) The analytical techniques or methods used;
- (6) The quality assurance information specified in Part I of this permit; and
- (7) The results of such analyses.

d. Monitoring shall be conducted according to test procedures approved under 40 C.F.R. Part 136.

e. The Clean Water Act provides that any person who knowingly falsifies, tampers with, or 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, or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or both. (See section 309.c.4 of the Clean Water Act).

11. Signatory requirements.

a. All permit applications shall be signed as follows:

- (1) For a corporation, by a responsible corporate officer; or
- (2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
- (3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

b. All reports required by this permit, and other information requested by the Regional Administrator or State Director pursuant to the terms of this permit, including DMRs and reports of noncompliance, shall be signed as follows:

- (1) By a person described in subsection a. or by a duly authorized representative of that person.
- (2) A person is a duly authorized representative only if:
 - (a) The authorization is made in writing by a person described on subsection a.;
 - (b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company.
 - (c) The written authorization is submitted to the Regional Administrator, U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York, 10007-1866, Attention: Compliance Assistance Program Support Branch, and to the State Director.
- (3) If a written authorization submitted pursuant to subsection b. 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 b. must be submitted to the Regional Administrator and State Director prior to or together with any reports or information to be signed by an authorized representative.

c. Certification. Any person signing a document under subsection a. or b. shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under the 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."

d. The Clean Water Act provides that any person who knowingly makes any false material 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, or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or both. (See section 309.c.4 of the Clean Water Act).

12. Reporting Requirements.

a. Planned changes. The permittee shall give notice to the Regional Administrator and State Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a "new source" in 40 C.F.R. 122.29(b);
- (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification requirement applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Part I.B.5, above; or
- (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.

b. Anticipated noncompliance. The permittee shall give advance notice to the Regional Administrator and State Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements as soon as it becomes aware of the circumstances.

c. Transfers.

- (1) This permit is not transferable to any person except after notice to the Regional Administrator and State Director. Except as provided in paragraph (2), a permit may be transferred by the existing permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the Clean Water Act.
- (2) This permit may be automatically transferred to a new permittee if:
 - (a) The existing permittee notifies the Regional Administrator and State Director at least 30 days in advance of the proposed transfer date in subparagraph (b);
 - (b) 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
 - (c) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. (A modification under this subparagraph may also be a minor modification under 40 C.F.R. 122.63.) If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subparagraph (b).
- (3) If this permit is automatically transferred in accordance with the provisions of paragraph (2), the permit may be modified to reflect the automatic transfer after its effective date.

d. Monitoring reports.

- (1) Monitoring results shall be reported at the intervals specified in Part I of this permit.
- (2) Monitoring results shall be reported on a Discharge Monitoring Report (DMR).
- (3) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 C.F.R. 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.
- (4) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

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. Twenty-four hour reporting.

- (1) The following information shall be reported orally to the Regional Administrator at (732) 548-8730 and State Director within 24 hours from the time the permittee becomes aware of the circumstances:
 - (a) Any noncompliance which may endanger health or the environment;
 - (b) Any unanticipated bypass (see 13 below) which violates any effluent limitation in the permit;
 - (c) Any upset (see 14 below) which violates any effluent limitation in the permit; or
 - (d) The violation of a maximum daily discharge limitation for any of the pollutants listed in Part I of this permit is required to be reported within 24 hours. This list includes any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

- (2) In addition to the oral 24-hour report, the permittee shall also provide a written submission to the Regional Administrator and State Director within five 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 recurrence of the noncompliance.
- (3) Except with respect to written reports required under paragraph (1)(a) of subsection f., above, the Director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

g. Other noncompliance. The permittee shall report to the Regional Administrator and State Director all instances of noncompliance not reported under subsections d, e, and f at the time the monitoring report covering the period of noncompliance is submitted. The reports shall contain the information listed in paragraph (2) of subsection f., above.

h. 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 Regional Administrator and State Director, it shall promptly submit such facts or information to the Regional Administrator and State Director.

13. Bypassing

a. Bypass not violating limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subsections b. and c.

b. Notice.

- (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
- (2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subsection f. of section 12 above.

c. Prohibition of bypass.

- (1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
 - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of unheated 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 judgement to prevent a bypass which occurred during normal periods of equipment downtime or maintenance; and
 - (c) The permittee submitted notices as required under subsection b.
- (2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph (1).

14. Upset.

a. 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 subsection b. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

b. Conditions necessary for 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;
- (3) The permittee submitted notice of the upset as required in subsection f. of section 12 above; and

- (4) The permittee complied with any remedial measures required under section 4 above (duty to mitigate).
- c. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

15. Removed substances. Solids, sludges, filter backwash or other pollutants removed in the course of treatment or control of wastewaters and/or the treatment of intake waters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters. The following data shall be reported together with the monitoring data required in Part I, B.2.:

- (a) The sources of the materials to be disposed of;
- (b) The approximate volumes and weights;
- (c) The method by which they were removed and transported; and
- (d) Their final disposal locations.

16. Oil and hazardous substance liability. The imposition of responsibilities upon, or the institution of any legal action against the permittee under Section 311 of the Act shall be in conformance with regulations promulgated pursuant to Section 311 to discharges from facilities with NPDES permits.

17. Reopener clause for toxic effluent limitations. Notwithstanding any other condition of this permit, if any applicable toxic effluent standard or prohibition is promulgated under Section 301(b)(2)(C) and (D), 304(b)(2) and 307(a)(2) of the Clean Water Act and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, this permit shall be promptly modified or revoked and reissued to conform to that effluent standard or prohibition.

18. State laws. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Act. The issuance of this permit does not preempt any duty to obtain State or local assent required by law for the discharge.

19. Availability of information.

a. NPDES permits, effluent data, and information required by NPDES application forms provided by the Director under 40 C.F.R. 122.21 (including information submitted on the

forms themselves and any attachments used to supply information required by the forms) shall be available for public inspection at the offices of the Regional Administrator and State Director.

b. In addition to the information set forth in subsection a., any other information submitted to EPA in accordance with the conditions of this permit shall be made available to the public without further notice unless a claim of business confidentiality is asserted at the time of submission in accordance with the procedures in 40 C.F.R. Part 2 (Public Information).

c. If a claim of confidentiality is made for information other than that enumerated in subsection a., that information shall be treated in accordance with the procedures in 40 C.F.R. Part 2. Only information determined to be confidential under those procedures shall not be made available by EPA for public inspection.

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

C. EFFECTIVENESS OF PERMIT

PART II

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Permit No. PR0026361

1. This permit shall become effective in its entirety on the date indicated on the first page of this permit unless a petition has been filed with the Environmental Appeals Board to review any condition of the permit decision pursuant to the provisions of 40 CFR Part 124.19. All contested conditions and any uncontested condition(s) that are inseverable from the contested conditions shall be stayed. All other conditions shall become effective thirty (30) days after the date of the notification specified in 40 CFR 124.16(a)(2)(ii).

2. For purposes of judicial review under Section 509(b) of the Clean Water Act, final agency action on a permit does not occur unless and until a party has exhausted its administrative remedies under 40 CFR 124. Any party which neglects or fails to seek review under 40 CFR 124.19, thereby waives its opportunity to exhaust available agency administrative remedies.