

**North Dakota Department of Environmental Quality Public Notice  
Reissue of an NDPDES Permit**

Public Notice Date: 11/24/2020

Public Notice Number: ND-2020-031

**Purpose of Public Notice**

The Department intends to reissue the following North Dakota Pollutant Discharge Elimination System (NDPDES) Discharge Permit under the authority of Section 61-28-04 of the North Dakota Century Code.

**Permit Information**

Application Date: 3/27/2020

Application Number: NDP000022

Applicant Name: Malach USA

Mailing Address: 1515 7th Street S.E., Valley City, ND 58072

Telephone Number: 7018451017

Proposed Permit Expiration Date: 12/31/2025

**Facility Description**

Malach USA is located at 1515 7th Street S.E.; Valley City, ND 58072 in Barnes County. Malach USA operates a regulated metal finishing operation. A wastewater discharge permit is issued under the North Dakota Pollution Discharge Elimination System program for the discharge of only the process wastewater after treatment from the metal finishing operation to Valley City's Publicly Owned Treatment Works (POTW). This discharge is a new source subject to 40 CFR part 433.17. The concentration of the process-wastewater pollutants from the treatment system shall not exceed the values set forth in the above referenced subpart. Furthermore, except 40 CFR 403.7, the permitted discharge must comply with 40 CFR part 403.

**Tentative Determinations**

Proposed effluent limitations and other permit conditions have been made by the Department. They assure that State Water Quality Standards and applicable provisions of the FWPCAA will be protected.

**Information Requests and Public Comments**

Copies of the application, draft permit, and related documents are available for review. Comments or requests should be directed to the ND Dept of Env Quality, Div of Water Quality, 918 East Divide Ave, Bismarck ND 58501-1947 or by calling 701.328.5210.

All comments received by December 24, 2020 will be considered prior to finalizing the permit. If there is significant interest, a public hearing will be scheduled. Otherwise, the Department will issue the final permit within sixty (60) days of this notice. If you require special facilities or assistance relating to a disability, call TDD at 1.800.366.6868.

## STATEMENT OF BASIS FOR NDPDES PERMIT NDP000022

### Malach USA Industrial Pretreatment (Categorical Industrial User – Metal Finisher) November 2020

#### INTRODUCTION

The Federal Clean Water Act (CWA, 1972, and later amendments in 1977, 1981, and 1987, etc.) established water quality goals for the navigable (surface) waters of the United States. One mechanism for achieving the goals of the CWA is the National Pollutant Discharge Elimination System (NPDES), which the US Environmental Protection Agency (EPA) oversees. In 1975, the State of North Dakota was delegated primacy of the NPDES program by the EPA. The North Dakota Department of Environmental Quality, hereafter referred to as “department”, has been designated the state water pollution control agency for all purposes of the CWA as amended [33 U.S.C. 1251, et seq.], and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of the act and similar federal acts. The department’s authority and obligations for the wastewater discharge permit program is in North Dakota Administrative Code (NDAC) article 33.1-16, which was adopted under North Dakota Century Code (NDCC) chapter 61-28. In North Dakota, these permits are referred to as North Dakota Pollutant Discharge Elimination System (NDPDES) permits.

This facility falls under the Industrial Pretreatment Program, which is under the NDPDES program. The department was delegated pretreatment authority from the EPA in 2005. The following regulations apply to NDPDES permits issued to Significant and/or Categorical Industrial Users:

- Procedures the department follows for issuing NDPDES permits (NDAC chapter 33.1-16-01);
- North Dakota Pretreatment Regulations (NDAC chapter 33.1-16-01.1);
- Code of Federal Regulations (CFR) General Pretreatment Regulations for Existing and New Sources of Pollution (40 CFR Section 403).

These rules require industrial users that introduce pollutants into publicly owned treatment works (POTWs) comply with applicable Pretreatment Standards and Requirements. To protect POTWs an industrial user permit or similar control mechanism must be obtained prior to discharge. Regulations adopted by the state also define the basis for limits on each discharge and for other requirements imposed by the permit.

According to NDAC section 33.1-16-01-08, the department must prepare a draft permit and accompanying statement of basis and make it available for public review. The department must also publish an announcement (public notice) during a period of thirty days, informing the public where a draft permit may be obtained and where comments regarding the draft permit may be sent (NDAC section 33.1-16-01-07). For more information regarding preparing and submitting comments about the statement of basis and permit, please see **Appendix A – Public Involvement**. Following the public comment period, the department may make changes to the draft NDPDES permit. The department will summarize the responses to comments and changes to the permit in **Appendix D – Response to Comments**.

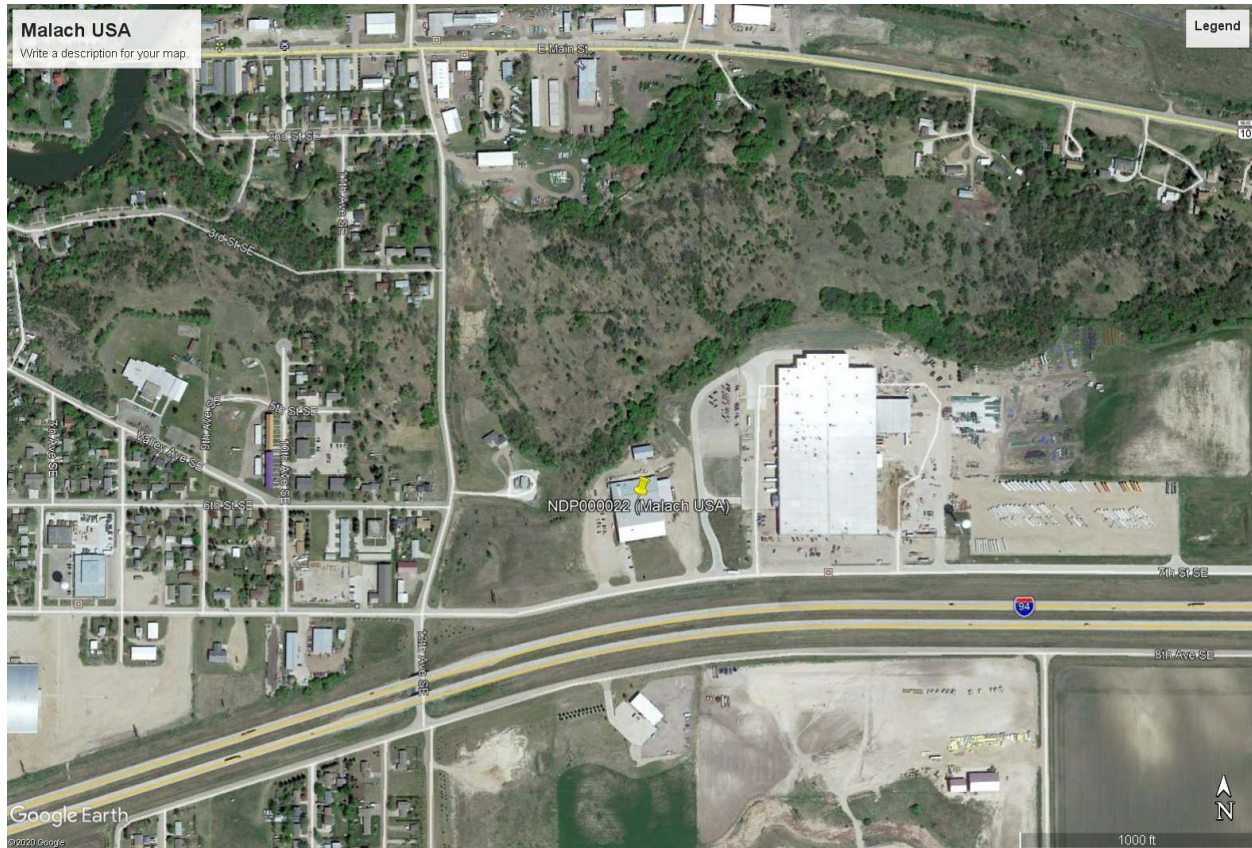
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**BACKGROUND INFORMATION**

**Table 1 – General Facility Information**

<b>Applicant:</b>	<b>Malach USA</b>
<b>Facility Name and Address:</b>	<b>Malach USA 1515 7<sup>th</sup> St SE Valley City, ND 58072</b>
<b>Owner:</b>	<b>Malach USA</b>
<b>Operator:</b>	<b>Malach USA</b>
<b>Permit Number:</b>	<b>NDP000022</b>
<b>Permit Type:</b>	<b>Categorical Industrial User – Metal Finisher</b>
<b>Discharge Location:</b>	<b>Internal from pretreatment system to City of Valley City POTW</b>
<b>Receiving POTW:</b>	<b>City of Valley City</b>
<b>Standard Industrial Classification Code(s):</b>	<b>3479</b>
<b>North American Industry Classification Code:</b>	<b>332812</b>



**Figure 1 – Location overview of Malach USA. Imagery date 5/16/1016 – Google Earth.**

**DESCRIPTION OF OPERATIONS**

Malach USA in Valley City, ND operates a manufacturing plant to produce metal products for large transit industry sectors. Main activities at the facility include metal fabrication, equipment assembly, painting, process water pretreatment, receiving raw materials, storing, and shipping of finished product.

Fabricated metal is prepped with Bonderite Preclean 2960 then power washed with Clarity CW-27 and Bonderite M-AD 500 and Bonderite M-FE 101 iron prior to painting including welding, deburring, painting, and final product washing.

**Pretreatment Process**

The facility checks and adjusts the pH to meet permit conditions prior to batch discharging to the POTW. The facility also filters the wastewater to remove solids.

**Production Rate**

Malach USA estimates a yearly process flow of 58,907 gallons discharged per year to the POTW. Average daily flow estimates are 2.55 gallons per day (gpd). Maximum daily flow estimates are 40 gpd. When compared with (an average of 100 gallons used per resident of Valley City – 6,585 residents) the POTW’s average daily effluent flow (DMR data 2015-present) Malach USA is anticipated to contribute less than 0.001% of the total effluent flow at the POTW.

**Outfall Description**

The authorization to discharge provided under this proposed permit is limited to the outfall specifically designated as the permitted discharge location. Discharges at any location not authorized under an NDPDES permit is a violation of the CWA and could subject the person(s) responsible for such discharges to penalties under Section 309 of the CWA. Knowingly discharging from an unauthorized location or failing to report an unauthorized discharge within the specified timeframe outlined in this permit could subject such person(s) to criminal penalties as provided under the CWA.

**Table 2 – Outfall location.**

Outfall 001. Internal. Active			
Latitude: 46.918245	Longitude: -97.982735	County: Barnes	
Township: 140 N	Range: 58 W	Section: 27	QQ: AB
Description: Internal compliance point that collects process wastewater and serves as a sampling point prior to discharge to the city of Valley City POTW.			

**PERMIT STATUS**

This facility is a Categorical Industrial User – Metal Finisher and is therefore subject to pretreatment regulations described in NDAC 33.1-16-01.1 and 40 CFR Part 433.17. The department proposes to re-issue this facility’s individual pretreatment permit, allowing process wastewater to be discharged to the City of Valley City’s POTW.

The department issued the previous permit for this facility on January 1, 2016. The previous permit had effluent limits for the following parameters: total cadmium, total chromium, total copper, total lead, total nickel, total silver, total zinc, total cyanide, pH, and total toxic organics (TTO). On March 27, 2020, the department received an initial reapplication form from Malach USA, which was accepted by the department on March 27, 2020.

The permittee is required to submit an effluent characterization for all parameters contained in 40 CFR Part 433.17 with the application for permit renewal. These results shall be recorded on the Discharge Monitoring Reports (DMRs) provided by the department. If the permittee's production processes should change or expand, or chemical additives are changed, the department reserves the right to review and adjust the required monitoring. The permittee shall promptly notify the department and the POTW in advance of any substantial change in the volume or character of pollutants in the permittee's discharge as outlined in 40 CFR 403.12(j).

### **SUMMARY OF COMPLIANCE WITH PRETREATMENT REGULATIONS AND CATEGORICAL LIMITS**

The facility last received an industrial compliance inspection with sampling in July 2020. No issues were noted during the inspection.

The facility does not have a toxic organics management plan (TOMP). In lieu of submitting a TOMP to the department, the facility samples for total toxic organics (TTO) semiannually. Analysis for TTO is required to continue unless a TOMP has been submitted to the department.

Total toxic organics is the summation of concentrations of all toxic organics present in the wastewater at levels greater than 0.01 mg/l for each parameter. The complete TTO list can be found in 40 CFR 433.11(e). The monitoring requirement for TTOs may be waived by the department upon submittal and approval of a solvent management plan that addresses the TTO management methods specified in 40 CFR 433.12(b) and with the inclusion of a certification statement in 40 CFR 433.12(a) with every periodic compliance report.

Malach USA has been in compliance with pretreatment requirements during the current permit cycle.

Historical parameter data are summarized for the time frame shown in Table 2 below:

**Table 2 – Historical Wastewater Monitoring Data**

<b>Pollutant or pollutant property (mg/L)</b>	<b>Maximum limit for any 1 day</b>	<b>Monthly average shall not be exceeded</b>	<b>2016 – 2020 maximum for any 1 day</b>	<b>2016 – 2020 monthly average maximum</b>	<b>Exceedances</b>
Cadmium (Total)	0.11 mg/L	0.07 mg/L	0.001 mg/L	0.001 mg/L	0
Chromium (Total)	2.77 mg/L	1.71 mg/L	0.05 mg/L	0.05 mg/L	0
Copper (Total)	3.38 mg/L	2.07 mg/L	0.16 mg/L	0.16 mg/L	0
Lead (Total)	0.69 mg/L	0.43 mg/L	0.002 mg/L	0.002 mg/L	0
Nickel (Total)	3.98 mg/L	2.38 mg/L	0.08 mg/L	0.08 mg/L	0
Silver (Total)	0.43 mg/L	0.24 mg/L	0.001 mg/L	0.001 mg/L	0

Zinc (Total)	2.61 mg/L	1.48 mg/L	0.27 mg/L	0.27 mg/L	0
Cyanide (Total)	1.20 mg/L	0.65 mg/L	0.02 mg/L	0.02 mg/L	0
pH	Shall be between 5.0 and 12.5		5.45 – 6.44 s.u.		0
Total Toxic Organics (TTO)	2.13 mg/L	NA	0.481 mg/L		0

### PROPOSED LIMITS AND SELF-MONITORING REQUIREMENTS

The facility is required to monitor wastewater based on the Categorical Industrial User (CUI) under 40 CFR Part 433.

This permit covers the discharge of only the process wastewater after treatment from the metal finishing operation to the city of Valley City's POTW. This discharge is considered a new source and is subject to 40 CFR Part 433.17 pretreatment standards. The pollutant concentration of the process wastewater from the treatment system shall not exceed the values set forth in as referenced in table 3.

#### Local Limits

The department has not required Valley City to develop an approved pretreatment program, thus the department is the pretreatment Control Authority. Pollutant loading from wastewater discharge with technology-based controls in place and is not expected to cause problems such as interference, pass-through, or hazardous exposure to workers at the POTW, nor result in unacceptable pollutant levels in the POTW's sludge.

#### Effluent Limitations

The department proposes the following effluent limitations for Discharge Point 001.

**Table 3 – Effluent Limitations, Discharge Point 001.**

Table – 3 Pretreatment Standards for New Sources – 40 CFR 433.17		
Parameter	Daily Maximum	Maximum for Monthly Average
Milligrams per liter (mg/L)		
<b>Total Facility Flow, Mgal</b>	*	*
<b>Process Flow, gpd</b>	*	*
<b>Cadmium (Total)</b>	0.11	0.07
<b>Chromium (Total)</b>	2.77	1.71
<b>Copper (Total)</b>	3.38	2.07
<b>Lead (Total)</b>	0.69	0.43
<b>Nickel (Total)</b>	3.98	2.38
<b>Silver (Total)</b>	0.43	0.24
<b>Zinc (Total)</b>	2.61	1.48
<b>Cyanide (Total)</b>	1.20	0.65
<b>pH <sup>a</sup></b>	Between 5.0 – 12.5 S.U. at all times	

<b>Total Toxic Organics (TTO)<sup>b c</sup></b>	2.13	NA
* This item for the stated parameter is not limited. However, the department may impose limitations based on sample history and to protect the receiving POTW.		
<sup>a</sup> The pH, an instantaneous limitation, shall be between 5.0 S.U. and 12.5 S.U. Any single analysis and or measurement beyond this limitation shall be considered a violation of the conditions of this permit.		
<sup>b</sup> Organic compounds comprising TTO's are listed in 40 CFR Part 433.11(e). The sample results for TTO's shall be reported as the summation of all quantifiable values greater than 0.01 mg/l for the listed compounds.		
<sup>c</sup> Grab samples shall be composited by the laboratory immediately prior to analysis. The requirement for TTO analysis may be waived by the NDDEQ in lieu of a NDDEQ-approved solvent management plan as specified in 40 CFR 433.12. This waiver is only available after NDDEQ approves the solvent management plan.		

Samples and measurements shall be representative of the nature of the regulated wastewater discharge. All compliance samples and measurements shall be taken of the process generated wastewater effluent prior to combining with any other streams. Test procedures for the analysis of pollutants shall conform to regulations published pursuant to Section 304 (h) of the CWA codified in 40 CFR 136.

### Self-Monitoring Requirements

The minimum monitoring schedule is detailed below in Table 4. Specified monitoring frequencies take into account the quantity and variability of the discharge, the treatment method, past compliance, pollutant significance, and monitoring cost.

**Table 4 – Self-Monitoring Requirements, Outfall 001**

Parameter	Sample Type	Frequency
<b>Total Facility Flow</b>	Water Meter	Semi-Annually
<b>Process Flow, total</b>	Estimate	Daily
<b>Cadmium</b>	Composite <sup>a</sup>	Semi-Annually
<b>Chromium</b>	Composite <sup>a</sup>	Semi-Annually
<b>Copper</b>	Composite <sup>a</sup>	Semi-Annually
<b>Lead</b>	Composite <sup>a</sup>	Semi-Annually
<b>Nickel</b>	Composite <sup>a</sup>	Semi-Annually
<b>Silver</b>	Composite <sup>a</sup>	Semi-Annually
<b>Zinc</b>	Composite <sup>a</sup>	Semi-Annually
<b>Cyanide</b>	Grab <sup>b</sup>	Semi-Annually
<b>pH</b>	Instantaneous	Continuous
<b>TTO</b>	Grab <sup>b</sup>	Semi-Annually
<sup>a</sup> The composite sample must be representative of the quality of the discharge. A 24-hour composite sample proportioned according to flow is required where feasible. If unfeasible, the composite shall consist of a minimum of four (4) separate grab samples taken at two (2) hour intervals and proportioned as to flow.		
<sup>b</sup> Batch discharger – A single grab sample must be representative of the process waste stream. The grab sample shall be collected in a container and maintain a zero head space as to not allow volatilization to occur.		
.		



The permittee shall promptly notify the department and the POTW in advance of any substantial change in the volume or character of pollutants in the permittee's discharge as outlined in 40 CFR 403.12(j).

## **OTHER PERMIT CONDITIONS**

### **General Prohibitions**

The permittee shall not introduce into the POTW any pollutant(s) which cause pass through or interference.

### **Specific Prohibitions**

The following pollutants may not be introduced into a POTW from any source:

1. Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than sixty (60) degrees Celsius (140 degrees Fahrenheit) using the test methods specified in 40 CFR Part 261.21.
2. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0 S.U., unless the works is specifically designed to accommodate such discharges.
3. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference.
4. Any pollutant, including oxygen demanding pollutants (biochemical oxygen demand, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW.
5. Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plan exceeds forty degrees Celsius (140 degrees Fahrenheit) unless the approval authority, upon request of the POTW, approves alternate temperature limits.
6. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.
7. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
8. Any trucked or hauled pollutants, except at discharge points designated by the POTW.

### **Prohibited Unless Approved**

Any of the following discharges are prohibited unless approved by the department under extraordinary circumstances (such as lack of direct discharge alternatives due to combined sewer service or a need to augment sewage flows due to septic conditions):

1. Noncontact cooling water in significant volumes.
2. Stormwater and other direct inflow sources.
3. Wastewaters significantly affecting system hydraulic loading, which do not require treatment or would not be afforded a significant degree of treatment by the system.

### **Dilution Prohibition**

The permittee is prohibited from diluting its effluent as a partial or complete substitute for adequate treatment to achieve compliance with permit limitations.

### **Reporting and Recordkeeping**

Conditions are based on the authority to specify any appropriate reporting and recordkeeping requirements to prevent and control waste discharges (40 CFR 403.12).

The results of discharge monitoring shall be reported to the department. The reporting is to be done electronically using the department's Electronic Reporting Information System (ERIS).

### **Operations and Maintenance**

This proposed permit requirement was included to ensure proper operation and regular maintenance of equipment. This provides safeguards so that constructed facilities are used to their optimum potential in terms of pollutant capture and treatment.

An Operation and Maintenance (O&M) manual shall be required. This manual shall detail sampling procedures taken during or prior to the discharge of wastewater. The manual shall list the person responsible for sampling. This manual shall also identify a list of responsible parties to notify in event of a pretreatment process failure. This manual shall be kept on-site and updated if sampling procedures change. If desired, a copy of the manual can be forwarded to the department for documentation into the permit file.

### **Spill and Slug Discharge Prevention, Control, and Countermeasure Plan (SPCCP)**

The department has the authority to require the permittee to develop best management practices to prevent a sludge discharge or a spill release under section 402(a)(1) of the CWA. The facility stores chemicals on-site from which a potential spill could impact wastewater discharges. The permittee must develop a plan for preventing the release of

pollutants to the POTW and/or waters of the state and minimizing damages if such a spill occurs. The SPCCP shall include the following:

1. A description of a reporting system to be used to immediately notify facility management, the POTW operator, and appropriate state, federal, and local authorities of any spills or slug discharges, and provisions to provide a written follow-up report within five days;
2. A description of operator training, equipment, and facilities (including overall facility plan) for preventing, containing, or treating spills or slug discharges;
3. A list of all raw materials, products, chemicals, and hazardous materials used, processed, or stored at the facility; the normal quantity maintained on the premises for each listed material and a map showing where they are located;
4. A description of discharge practices for batch and continuous processes under normal and non-routine circumstances; and,
5. An implementation schedule including additional operator training and procurement and installation of equipment or facilities required to properly implement the plan.

## **PERMIT ISSUANCE PROCEDURES**

### **Permit Modifications**

This permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to Water Quality Standards, the development and approval of waste load allocation plans, the development or revision to water quality management plans, changes in sewage sludge practices, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants and/or sewage sludges. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition.

### **Proposed Permit Issuance**

This proposed permit meets all statutory requirements for the department to authorize a wastewater discharge. The permit includes limits and conditions to protect the POTW. The department proposes to issue this permit for a term of five (5) years.

## APPENDIX A – PUBLIC INVOLVEMENT INFORMATION

The department proposes to issue a permit to **Malach USA**. The permit includes wastewater discharge limits and other conditions. This statement of basis describes the facility and the department's basis for requiring a permit.

The department will place a Public Notice of Draft on **November 24, 2020** in **The Valley City Times-Record** to inform the public and to invite comment on the proposed draft North Dakota Pollutant Discharge Elimination System permit and statement of basis.

The Notice –

- Tells where copies of the draft permit and statement of basis are available for public evaluation.
- Offers to provide assistance to accommodate special needs.
- Urges people to submit their comments before the end of the comment period.
- Informs the public that if there is significant interest, a public hearing will be scheduled.

You may obtain further information from the department by telephone, 701.328.5210 or by writing to the address listed below:

North Dakota Department of Environmental Quality  
Division of Water Quality  
918 East Divide Avenue, 4<sup>th</sup> Floor  
Bismarck, ND 58501

The primary author of this permit and statement of basis is Brian O'Gorman.

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**Tentative Determinations**

Proposed effluent limitations and other permit conditions have been made by the Department. They assure that State Water Quality Standards and applicable provisions of the FWPCAA will be protected.

**Information Requests and Public Comments**

Copies of the application, draft permit, and related documents are available for review. Comments or requests should be directed to the ND Dept of Env Quality, Div of Water Quality, 918 East Divide Ave, Bismarck ND 58501-1947 or by calling 701.328.5210.

All comments received by December 24, 2020 will be considered prior to finalizing the permit. If there is significant interest, a public hearing will be scheduled. Otherwise, the Department will issue the final permit within sixty (60) days of this notice. If you require special facilities or assistance relating to a disability, call TDD at 1.800.366.6868.

**APPENDIX B – DEFINITIONS Pretreatment Permit BP 2020.11.12**

1. "**Act**" means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended [33 U.S.C. 1251, et seq.].
2. "**Approval authority**" means the department.
3. "**Best management practices**" or "**BMPs**" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and (b). Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.
4. "**Bypass**" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.
5. "**Categorical industrial user**" means an industrial user that is subject to a categorical pretreatment standard or categorical standard.
6. "**Categorical pretreatment standard**" or "**categorical standard**" means any regulation containing pollutant discharge limits promulgated by the environmental protection agency in accordance with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of users and that appear in 40 CFR chapter I, subchapter N, parts 405 through 471.
7. "**Control authority**" means either:
  - a. The publicly owned treatment works, if the publicly owned treatment works which receives the indirect discharge administers an approved pretreatment program in accordance with sections 33.1-16-01.1-06 and 33.1-16-01.1-08; or
  - b. The department, if the publicly owned treatment works which receives the indirect discharge does not administer an approved pretreatment program in accordance with sections 33.1-16-01.1-06 and 33.1-16-01.1-08.
8. "**Department**" means the North Dakota Department of Environmental Quality, Division of Water Quality.
9. "**Director**" means the department.
10. "**DMR**" means discharge monitoring report.
11. "**EPA**" means the United States Environmental Protection Agency.
12. "**Indirect discharge**" means the introduction of pollutants into a publicly owned treatment works from any nondomestic source regulated under 307(b), (c), or (d) of the Federal Water Pollution Control Act.
13. "**Industrial user**" or "**user**" means a source of indirect discharge.

14. "**Interference**" means an indirect discharge which, alone or in conjunction with any other indirect discharges, both:

- a. Inhibits or disrupts the publicly owned treatment works processes or operations, or its sludge processes, use or disposal; and
- b. Causes a violation of any requirement of the publicly owned treatment works North Dakota pollutant discharge elimination system permit, including an increase in the magnitude or duration of a violation or prevents sewage sludge use or disposal in compliance with federal or state law or statute.

15. "**New source**" means:

- a. Any building, structure, facility, or installation for which construction commenced after the publication of proposed pretreatment standards which will apply to such source after promulgation, from which there is or may be an indirect discharge, provided that:
  - (1) The building, structure, facility or installation is constructed at a site at which no other source is located;
  - (2) The building, structure, facility or installation totally replaces the process or production equipment that causes the indirect discharge at an existing source; or
  - (3) The production or wastewater generating processes of the building, structure, facility or installation is substantially independent of an existing source at the same site. In determining whether these are substantially independent factors, such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraphs 2 and 3 of subdivision a, but otherwise alters, replaces or adds to existing process or production equipment.
- c. Construction of a new source as defined under this subsection has commenced if the owner or operator has:
  - (1) Begun, or caused to begin as part of a continuous onsite construction program:
    - (a) Any placement, assembly, or installation of facilities or equipment; or
    - (b) Significant site preparation work which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
  - (2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without

substantial loss and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subsection.

16. "**Passthrough**" means a discharge which exits the publicly owned treatment works into waters of the state in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the publicly owned treatment works North Dakota pollutant discharge elimination system permit, including an increase in the magnitude or duration of a violation.
17. "**Pretreatment**" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a publicly owned treatment works. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the publicly owned treatment works. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e).
18. "**Pretreatment requirements**" means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.
19. "**Pretreatment standards**" means any regulation which applies to industrial users that contains pollutant discharge limits promulgated by the environmental protection agency in accordance with the Federal Water Pollution Control Act, including prohibitive discharge limits established pursuant to section 33.1-16-01.1-02.
20. "**Publicly owned treatment works**" or "**POTW**" means a treatment works as defined by section 212 of the Federal Water Pollution Control Act, which is owned by a state or municipality, including any devices or systems used in the storage, treatment, recycling, and reclamation of municipal sewage or liquid industrial wastes, as well as sewers, pipes, and other conveyances that convey wastewater to a publicly owned treatment works treatment plant. This term also means the municipality that has jurisdiction over the indirect discharges to and the discharges from the treatment works.
21. "**Publicly owned treatment works treatment plant**" means that portion of the publicly owned treatment works which is designed to provide treatment of municipal sewage and industrial waste.
22. "**Severe property damage**" means substantial physical damage to property, damage to treatment facilities which renders 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.
23. "**Significant industrial user**" means:



- a. All industrial users subject to categorical pretreatment standards under sections 33.1-16-01.1-04 and 33.1-16-01-31;
  - b. Any other industrial user that meets at least one of the following criteria:
    - (1) Discharges an average of twenty-five thousand gallons [94,635 liters] per day or more of process wastewater to the publicly owned treatment works, excluding sanitary wastewater, noncontact cooling water and boiler blowdown wastewater;
    - (2) Contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the publicly owned treatment works treatment plant; or
    - (3) Is designated as a significant industrial user by the control authority on the basis that the user has a reasonable potential for adversely affecting the publicly owned treatment works operation or for violating any pretreatment standard or requirement.
  - c. The control authority may determine that an industrial user subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N is a nonsignificant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than one hundred gallons per day (gpd) of total categorical wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:
    - (1) The industrial user, prior to the control authority's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;
    - (2) The industrial user annually submits the certification statement required in 40 CFR 403.12(q) together with any additional information necessary to support the certification statement; and
    - (3) The industrial user never discharges any untreated concentrated wastewater.
  - d. Upon a finding that an industrial user which meets the criteria of subdivision b has no reasonable potential for adversely affecting the publicly owned treatment works operation or for violating any pretreatment standard or requirement, the control authority may, at any time, determine that the industrial user is not a significant industrial user.
24. "**Upset**" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. Upset does not include noncompliance to the extent caused by operational error, inadequate or improperly designed treatment facilities, lack of preventative maintenance, or careless or improper operation.
25. "**Water management division director**" means the director of the water management division of the regional office of the United States environmental protection agency or this person's delegated representative.

### **APPENDIX C – CALCULATIONS**

The department reviewed DMR information, 40 CFR Part 403, and 40 CFR Part 433, to determine appropriate requirements to be placed in this permit.

STATEMENT OF BASIS FOR NDPDES PERMIT NDP000022  
MALACH USA  
EXPIRATION DATE: DECEMBER 31, 2025  
Page **18** of **18**

**APPENDIX D – RESPONSE TO COMMENTS**

Comments received during the public comment period will be placed here.

Permit No: NDP000022  
Effective Date: January 1, 2021  
Expiration Date: December 31, 2025

AUTHORIZATION TO DISCHARGE UNDER THE  
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with Chapter 33.1-16-01 of the North Dakota Department of Environmental Quality rules as promulgated under Chapter 61-28 (North Dakota Water Pollution Control Act) of the North Dakota Century Code,

Malach USA

is authorized to discharge wastewater from its metal finishing facility in Valley City, North Dakota to the City of Valley City's Publicly Owned Treatment Works provided all of the conditions of this permit are met.

This permit and the authorization to discharge shall expire at midnight,  
December 31, 2025

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Karl H. Rockeman, P.E.  
Director  
Division of Water Quality

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**DEFINITIONS Pretreatment Permit BP 2020.11.12**

1. **“Act”** means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended [33 U.S.C. 1251, et seq.].
2. **“Approval authority”** means the department.
3. **“Best management practices”** or **“BMPs”** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and (b). Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.
4. **“Bypass”** means the intentional diversion of waste streams from any portion of an industrial user’s treatment facility.
5. **“Categorical industrial user”** means an industrial user that is subject to a categorical pretreatment standard or categorical standard.
6. **“Categorical pretreatment standard”** or **“categorical standard”** means any regulation containing pollutant discharge limits promulgated by the environmental protection agency in accordance with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of users and that appear in 40 CFR chapter I, subchapter N, parts 405 through 471.
7. **“Control authority”** means either:
  - a. The publicly owned treatment works, if the publicly owned treatment works which receives the indirect discharge administers an approved pretreatment program in accordance with sections 33.1-16-01.1-06 and 33.1-16-01.1-08; or
  - b. The department, if the publicly owned treatment works which receives the indirect discharge does not administer an approved pretreatment program in accordance with sections 33.1-16-01.1-06 and 33.1-16-01.1-08.
8. **“Department”** means the North Dakota Department of Environmental Quality, Division of Water Quality.
9. **“Director”** means the department.
10. **“DMR”** means discharge monitoring report.
11. **“EPA”** means the United States Environmental Protection Agency.
12. **“Indirect discharge”** means the introduction of pollutants into a publicly owned treatment works from any nondomestic source regulated under 307(b), (c), or (d) of the Federal Water Pollution Control Act.
13. **“Industrial user”** or **“user”** means a source of indirect discharge.

14. **“Interference”** means an indirect discharge which, alone or in conjunction with any other indirect discharges, both:
- a. Inhibits or disrupts the publicly owned treatment works processes or operations, or its sludge processes, use or disposal; and
  - b. Causes a violation of any requirement of the publicly owned treatment works North Dakota pollutant discharge elimination system permit, including an increase in the magnitude or duration of a violation or prevents sewage sludge use or disposal in compliance with federal or state law or statute.
15. **“New source”** means:
- a. Any building, structure, facility or installation for which construction commenced after the publication of proposed pretreatment standards which will apply to such source after promulgation, from which there is or may be an indirect discharge, provided that:
    - (1) The building, structure, facility or installation is constructed at a site at which no other source is located;
    - (2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the indirect discharge at an existing source; or
    - (3) The production or wastewater generating processes of the building, structure, facility, or installation is substantially independent of an existing source at the same site. In determining whether these are substantially independent factors, such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
  - b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraphs 2 and 3 of subdivision a, but otherwise alters, replaces or adds to existing process or production equipment.
  - c. Construction of a new source as defined under this subsection has commenced if the owner or operator has:
    - (1) Begun, or caused to begin, as part of a continuous onsite construction program:
      - (a) Any placement, assembly, or installation of facilities or equipment; or
      - (b) Significant site preparation work which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
    - (2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation.



16. **"Passthrough"** means a discharge which exits the publicly owned treatment works into waters of the state in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the publicly owned treatment works North Dakota pollutant discharge elimination system permit, including an increase in the magnitude or duration of a violation.
17. **"Pretreatment"** means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a publicly owned treatment works. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the publicly owned treatment works. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e).
18. **"Pretreatment requirements"** means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.
19. **"Pretreatment standards"** means any regulation which applies to industrial users that contains pollutant discharge limits promulgated by the environmental protection agency in accordance with the Federal Water Pollution Control Act, including prohibitive discharge limits established pursuant to section 33.1-16-01.1-02.
20. **"Publicly owned treatment works"** or **"POTW"** means a treatment works as defined by section 212 of the Federal Water Pollution Control Act, which is owned by a state or municipality, including any devices or systems used in the storage, treatment, recycling, and reclamation of municipal sewage or liquid industrial wastes, as well as sewers, pipes, and other conveyances that convey wastewater to a publicly owned treatment works treatment plant. This term also means the municipality that has jurisdiction over the indirect discharges to and the discharges from the treatment works.
21. **"Publicly owned treatment works treatment plant"** means that portion of the publicly owned treatment works which is designed to provide treatment of municipal sewage and industrial waste.
22. **"Severe property damage"** means substantial physical damage to property, damage to 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.
23. **"Significant industrial user"** means:
  - a. All industrial users subject to categorical pretreatment standards under sections 33.1-16-01-31 and 33.1-16-01.1-04;
  - b. Any other industrial user that meets at least one of the following criteria:

- (1) Discharges an average of twenty-five thousand gallons [94,635 liters] per day or more of process wastewater to the publicly owned treatment works, excluding sanitary wastewater, noncontact cooling water, and boiler blowdown wastewater;
  - (2) Contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the publicly owned treatment works treatment plant; or
  - (3) Is designated as a significant industrial user by the control authority on the basis that the user has a reasonable potential for adversely affecting the publicly owned treatment works operation or for violating any pretreatment standard or requirement.
- c. The control authority may determine that an industrial user subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N is a nonsignificant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than one hundred gallons per day (gpd) of total categorical wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:
- (1) The industrial user, prior to the control authority's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;
  - (2) The industrial user annually submits the certification statement required in 40 CFR 403.12(q) together with any additional information necessary to support the certification statement; and
  - (3) The industrial user never discharges any untreated concentrated wastewater.
- d. Upon a finding that an industrial user which meets the criteria of subdivision b has no reasonable potential for adversely affecting the publicly owned treatment works operation or for violating any pretreatment standard or requirement, the control authority may, at any time, determine that the industrial user is not a significant industrial user.
24. "**Upset**" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. Upset does not include noncompliance to the extent caused by operational error, inadequate or improperly designed treatment facilities, lack of preventive maintenance, or careless or improper operation.
25. "**Water management division director**" means the director of the water management division of the regional office of the United States environmental protection agency or this person's delegated representative.

**OUTFALL DESCRIPTION**

<b>Outfall 001. Internal. Active</b>			
Latitude: 46.918245	Longitude: -97.982735	County: Barnes	
Township: 140 N	Range: 58 W	Section: 27	QQ: AB
Description: This internal compliance point collects process wash water and serves as a sampling point prior to discharge to the City of Valley City's sanitary sewer system.			

**PERMIT SUBMITTALS SUMMARY**

Coverage Point	Submittal	Frequency	First Submittal Date
001A	Discharge Monitoring Report	Semiannually	July 31, 2021
001A	Total Toxic Organics (TTO) Certification Statement	Semiannually	July 31, 2021
001A	Spill and Slug Prevention, Control, and Countermeasure Plan (SPCCP) <sup>1</sup>	1/permit cycle	December 31, 2025
001A	Slug Discharge Control Plan Update <sup>1</sup>	1/permit cycle	December 31, 2025
001A	Toxic Organic Management Plan Update	1/permit cycle	December 31, 2025
Application Renewal	NDPDES Application Renewal	1/permit cycle	March 30, 2025
1.	Spill and Slug Discharge Prevention Control and Countermeasure Plan, or documentation certifying that it is current and up to date.		

**SPECIAL CONDITIONS**

The permittee is prohibited from diluting its effluent as a partial or complete substitute for adequate treatment to achieve compliance with permit limitations.

## I. LIMITATIONS AND MONITORING REQUIREMENTS

### A. Discharge Authorization

During the effective period of this permit, the permittee is authorized to discharge pollutants from Outfall 001 as specified to the **City of Valley City's Publicly Owned Treatment Works (POTW)**.

This permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams, and operations that have been clearly identified in this permit application process.

### B. Effluent Limitations and Monitoring

The permittee must limit and monitor all discharges as specified below:

Parameter	Effluent Limitations		Monitoring Requirements	
	Daily Maximum <sup>a</sup>	Monthly Average <sup>b</sup>	Sample type	Sample Frequency
Total Facility Flow, MG	N/A	Report Monthly Total	Calculated	Semiannually
Process Flow, gpd	Report Max. Daily Value	Report Monthly Average	Calculated	Daily
Cadmium (Total), mg/l	0.11	0.07	Composite <sup>c</sup>	Semiannually
Chromium (Total), mg/l	2.77	1.71	Composite <sup>c</sup>	Semiannually
Copper (Total), mg/l	3.38	2.07	Composite <sup>c</sup>	Semiannually
Lead (Total), mg/l	0.69	0.43	Composite <sup>c</sup>	Semiannually
Nickel (Total), mg/l	3.98	2.38	Composite <sup>c</sup>	Semiannually
Silver (Total), mg/l	0.43	0.24	Composite <sup>c</sup>	Semiannually
Zinc (Total), mg/l	2.61	1.48	Composite <sup>c</sup>	Semiannually
Cyanide (Total), mg/l	1.20	0.65	Grab <sup>d</sup>	Semiannually
pH <sup>e, f</sup>	Between 5.0 S.U. to 12.5 S.U. at all times		Instantaneous	Continuously
Total Toxic Organics (TTO), mg/l <sup>g</sup>	2.13	N/A	Grab <sup>d</sup>	Semiannually
<p>a. The maximum daily effluent limitation is defined as the highest allowable daily discharge. The daily discharge means the discharge of a pollutant measured during a calendar day.</p>				
<p>b. The average monthly effluent limitation is defined as the highest allowable average of daily discharges over a calendar month – calculated by the sum of all daily discharges measured during a calendar month divided by the number of</p>				

	daily discharges measured during that month.
c.	Daily composite samples shall consist of a minimum of four (4) time or flow proportioned grab samples collected throughout the process day from a well-mixed effluent chamber.
d.	Batch discharger – A single grab sample must be representative of the process waste stream. The grab sample shall be collected in a container and maintain a zero head space as to not allow volatilization to occur.
e.	The pH, an instantaneous limitation, shall be between 5.0 S.U. and 12.5 S.U. Any single analysis and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.
f.	The permittee shall maintain a pH log for any batch discharges of process wastewater.
g.	Organic compounds comprising TTO's are listed in 40 CFR Part 433.11(e). The sample results for TTO's shall be reported as the summation of all quantifiable values greater than 0.01 mg/l for the listed compounds.
<p>The permittee is authorized to submit the following TTO certification once per six (6) month in lieu of performing TTO monitoring:</p> <p>TTO Certification Statement: "Based on my inquiry of the person or persons directly responsible for managing compliance with the permit limitation for Total Toxic Organics (TTO's), I certify that, to the best of my knowledge and belief, no dumping of concentrated toxic organics into the wastewaters has occurred since filing the last discharge monitoring report. I further certify that this facility is implementing the toxic organic management plan submitted to the North Dakota Department of Environmental Quality."</p> <p>Responsible Official: _____ Date: _____</p>	

## II. MONITORING, RECORDING, AND REPORTING REQUIREMENTS BP 2020.10.19

### A. Representative Sampling (Routine and Non-Routine Discharges)

All samples and measurements taken shall be representative of the monitored discharge.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the permittee must collect additional samples at the appropriate outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample. The permittee must analyze the additional samples for those parameters limited under **Part I Effluent Limitations and Monitoring** requirements of this permit that are likely to be affected by the discharge.

The permittee must collect such additional samples as soon as the spill, discharge, or bypassed effluent reaches the outfall. The samples must be analyzed in accordance with B. Test Procedures. The permittee must report all additional monitoring in accordance with D. Additional Monitoring.

### B. Test Procedures

The collection and transportation of all samples shall conform with EPA preservation techniques and holding times found in 40 CFR 136. All laboratory tests shall be performed by a North Dakota certified laboratory in conformance with test procedures pursuant to 40 CFR 136, unless other test procedures have been specified in this permit or approved by EPA as an alternate test procedure under 40 CFR 136.5. The method of determining the total amount of water discharged shall provide results within 10 percent of the actual amount.

### C. Recording of Results

Records of monitoring information shall include:

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

### D. Additional Monitoring

If the discharge is monitored more frequently than this permit requires, all additional results, if in compliance with B. Test Procedures, shall be included in the summary on the Discharge Monitoring Report.

### **E. Reporting of Monitoring Results**

1. Monitoring results shall be summarized and reported to the department using Discharge Monitoring Reports (DMRs). If no discharge occurs during a reporting period, "No Discharge" shall be reported. The permittee must submit DMRs electronically using the electronic information reporting system unless requirements in subsection 3 are met.
2. Prior to December 21, 2025, the permittee may elect to electronically submit the following compliance monitoring data and reports instead of mailing paper forms. Beginning December 21, 2025, the permittee must report the following using the electronic reporting system:
  - a. General permit reports [e.g., notices of intent (NOI); notices of termination (NOT); no exposure certifications (NOE)];
  - b. Municipal separate storm sewer system program reports;
  - c. Pretreatment program reports;
  - d. Sewer overflow/bypass event reports; and
  - e. Clean Water Act 316(b) annual reports
3. The permittee may seek a waiver from electronic reporting. To obtain a waiver, the permittee must complete and submit an Application for Temporary Electronic Reporting Waiver form (SFN 60992) to the department. The department will have 120 days to approve or deny the waiver request. Once the waiver is approved, the permittee may submit paper versions of monitoring data and reports to the department.
  - a. One of the following criteria must be met in order to obtain a waiver. The department reserves the right to deny any waiver request, even if they meet one of the criteria below.
    1. No internet access,
    2. No computer access,
    3. Annual DMRs (upon approval of the department),
    4. Employee turnover (3-month periods only), or
    5. Short duration permits (upon approval of the department)

All reports must be postmarked by the last day of the month following the end of each reporting period. All original documents and reports required herein shall be signed and submitted to the department at the following address:

ND Department of Environmental Quality  
Division of Water Quality  
918 East Divide Ave  
Bismarck ND 58501-1947

**F. Records Retention**

All records and information (including calibration and maintenance) required by this permit shall be kept for at least three years or longer if requested by the department or EPA.

**III. COMPLIANCE RESPONSIBILITIES**

**A. Duty to Comply**

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

**B. Proper Operation and Maintenance**

The permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit. If necessary to achieve compliance with the conditions of this permit, this shall include the operation and maintenance of backup or auxiliary systems.

**C. Planned Changes**

The department shall be given advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance. Any anticipated facility expansions, production increase, or process modifications which might result in new, different, or increased discharges of pollutants shall be reported to the department as soon as possible. Changes which may result in a facility being designated a "new source" as determined in 40 CFR 122.29(b) shall also be reported.

**D. Duty to Provide Information**

The permittee shall furnish to the department, within a reasonable time, any information which the department 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 department, upon request, copies of records required to be kept by this permit. When a permittee becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or any report, it shall promptly submit such facts or information.

**E. Signatory Requirements**

All applications, reports, or information submitted to the department shall be signed and certified.

All permit applications shall be signed by a responsible corporate officer, a general partner, or a principal executive officer or ranking elected official.

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



The authorization is made in writing by a person described above and submitted to the department; and

The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

If an authorization under E. Signatory Requirements is no longer accurate for any reason, a new authorization satisfying the above requirements must be submitted to the department prior to or together with any reports, information, or applications to be signed by an authorized representative.

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

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

**F. Twenty-four Hour Notice of Noncompliance Reporting**

1. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The following occurrences of noncompliance shall be included in the oral report to the department at 701.328.5210:
  - a. Any lagoon cell overflow or any unanticipated bypass which exceeds any effluent limitation in the permit under G. Bypass of Treatment Facilities;
  - b. Any upset which exceeds any effluent limitation in the permit under H. Upset Conditions; or
  - c. Violation of any daily maximum effluent or instantaneous discharge limitation for any of the pollutants listed in the permit.
2. A written submission shall also be provided within five days of the time that the permittee became aware of the circumstances. The written submission shall contain:
  - a. A description of the noncompliance and its cause;
  - b. The period of noncompliance, including exact dates and times;
  - c. The estimated time noncompliance is expected to continue if it has not been corrected; and
  - d. Steps taken or planned to reduce, eliminate, and prevent recurrence of the

noncompliance.

3. If monitoring performed by the permittee indicates noncompliance, the permittee must repeat the sampling and analysis for the pollutant in violation and report the results of the resampling within 30 days of becoming aware of the original violation to the department as outlined in Section II(E) of this permit. The resampling is required by 40 CFR 403.12(g)(2).

Reports shall be submitted to the address in **Part II.E . Reporting of Monitoring Results**. The department may waive the written report on a case by case basis if the oral report has been received within 24 hours by the department at 701.328.5210 as identified above.

All other instances of noncompliance shall be reported no later than at the time of the next Discharge Monitoring Report submittal. The report shall include the four items listed in this subsection.

#### **G. Bypass of Treatment Facilities**

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to any of the following provisions in this section.
2. Bypass exceeding limitations-notification requirements:
  - a. Notice of Potential Problems, including slug loading. The permittee shall notify the POTW and the department immediately of all discharges that could cause problems to the POTW, including any slug loadings as defined in 40 CFR 403.5(b).
  - b. 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 bypass.
  - c. Unanticipated Bypass. The permittee shall submit notice of an unanticipated bypass as required under F. Twenty-four Hour Notice of Noncompliance Reporting.
3. Prohibition of Bypass. Bypass is prohibited, and the department 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 the 1. Anticipated Bypass

subsection of this section.

The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three (3) conditions listed above.

#### **H. Upset Conditions**

An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of the following paragraph 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.

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 the permittee can identify its cause(s);
2. The permitted facility was, at the time being, properly operated;
3. The permittee submitted notice of the upset as required under F. Twenty-four Hour Notice of Noncompliance Reporting and
4. The permittee complied with any remedial measures required under I. Duty to Mitigate.

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

#### **I. 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. The permittee, at the department's request, shall provide accelerated or additional monitoring as necessary to determine the nature and impact of any discharge.

#### **J. Removed Materials**

Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be buried or disposed of in such a manner to prevent any pollutant from entering any waters of the state or creating a health hazard. Sludge/digester supernatant and filter backwash shall not be directly blended with or enter either the final plant discharge and/or waters of the state. The permit issuing authority shall be contacted prior to the disposal of any sewage sludges. At that time, concentration limitations and/or self-monitoring requirements may be established.

#### **K. Duty to Reapply**

Any request to have this permit renewed should be made six months prior to its expiration date.

#### **IV. GENERAL PROVISIONS**

##### **A. Inspection and Entry**

The permittee shall allow department and EPA representatives, upon the presentation of credentials if requested, to enter the permittee's premises to inspect the wastewater treatment facilities and monitoring equipment, to sample any discharges, and to have access to and copy any records required to be kept by this permit.

##### **B. Availability of Reports**

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the department and EPA. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

##### **C. Transfers**

This permit is not transferable except upon the filing of a Statement of Acceptance by the new party and subsequent department approval. The current permit holder must provide a copy of the existing permit to the new controller, operator, or owner of the existence of this permit and also notify the department of the possible change.

##### **D. New Limitations or Prohibitions**

The permittee shall comply with any effluent standards or prohibitions established under Section 306(a), Section 307(a), or Section 405 of the Act for any pollutant (toxic or conventional) present in the discharge or removed substances within the time identified in the regulations even if the permit has not yet been modified to incorporate the requirements.

##### **E. Permit Actions**

This permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to Water Quality Standards, the development and approval of waste load allocation plans, the development or revision to water quality management plans, changes in sewage sludge practices, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants and/or sewage sludges. 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.

##### **F. 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.

##### **G. State Laws**

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

##### **H. Oil and Hazardous Substance Liability**

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

**I. Property Rights**

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

**J. 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.

**V. PROHIBITED DISCHARGES**

**A. General Prohibitions**

The permittee shall not introduce into the POTW any pollutant which causes pass through or interference.

**B. Specific Prohibitions**

The following pollutants may not be introduced into a POTW from any source:

1. Pollutants which create a fire or explosion hazard in the POTW, including waste streams with a closed cup flashpoint of less than sixty (60) degrees Celsius (140 degrees Fahrenheit) using the test methods specified in 40 CFR Part 261.21.
2. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0 S.U. or greater than 12.5 S.U., unless the POTW is specifically designed to accommodate such discharges.
3. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference.
4. Any pollutant released in a discharge at a flow rate and/or pollutant concentration which will cause interference.
5. Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plan exceeds forty degrees Celsius (140 degrees Fahrenheit), unless the department, upon request of the POTW, approves alternate temperature limits.
6. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.
7. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
8. Any trucked or hauled pollutants, except at discharge points designated by the POTW.

**C. Prohibited Unless Approved**

Any of the following discharges are prohibited unless approved by the department under extraordinary circumstances (such as lack of direct discharge alternatives due to

combined sewer service or a need to augment sewage flows due to septic conditions):

1. Noncontact cooling water in significant volumes.
2. Storm water and other direct inflow sources.
3. Wastewaters significantly affecting system hydraulic loading, which do not require treatment or would not be afforded a significant degree of treatment by the system.

**D. Dilution Prohibited**

The permittee shall not dilute the wastewater discharge with stormwater or increase the use of potable water, process water, noncontact cooling water, or, in any way, attempt to dilute effluent as a partial or complete substitute for adequate treatment to achieve compliance with limitations contained in this permit.

**E. Spill and Slug Discharge Prevention, Control and Countermeasure Plan**

The Spill and Slug Discharge Prevention and Control Plan (SPCCP) shall include the following:

1. A description of a reporting system to be used to immediately notify facility management, the POTW operator, and appropriate state, federal, and local authorities of any spills or slug discharges, and provisions to provide a written follow-up report within five days;
2. A description of operator training, equipment, and facilities (including overall facility plan) for preventing, containing, or treating spills or slug discharges;
3. A list of all raw materials, products, chemicals, and hazardous materials used, processed, or stored at the facility; the normal quantity maintained on the premises for each listed material and a map showing where they are located;
4. A description of discharge practices for batch and continuous processes under normal and non-routine circumstances;
5. A brief description of any unauthorized discharges that occurred during the 36-month period preceding the effective date of this permit and subsequent measures taken by the permittee to prevent or to reduce the possibility of further unauthorized discharges;
6. An implementation schedule including additional operator training and procurement and installation of equipment or facilities required to properly implement the plan; and
7. In the event that the permittee finds it necessary to descale its pretreatment system, the City of Richardton POTW shall be notified, and the wastewater generated by the descaling operation shall be isolated until it's chemical nature can be characterized. If the analysis reveals concentration levels of pollutants greater than the permit allows, the department shall be notified, and alternative methods of disposal shall be identified.

The current approved plan shall be maintained on the plant site and be readily available to facility personnel. The permittee shall submit an update of the SPCCP, or a certification that it is current, with the application for permit renewal.