

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

Public Notice Date: 1/13/2023

Public Notice Number: ND-2022-026

**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: 8/4/2022

Application Number: ND0025283

Applicant Name: Leonardite Products LLC

Mailing Address: 13375 Hwy 1804, Williston, ND 58802-0548

Telephone Number: 701.572.7659

Proposed Permit Expiration Date: 3/31/2028

**Facility Description**

The reapplication is for a mining facility (Stony Creek Mine) located in Township 154 North, Range 100 West. Any discharge would consist of groundwater and/or surface runoff, and would be to the Little Muddy Creek, a Class II stream.

**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. For further information on making public comments/public comment tips please visit: <https://deq.nd.gov/PublicCommentTips.aspx>. Comments or requests should be directed to the ND Dept of Env Quality, Div of Water Quality, 4201 Normandy Street, Bismarck ND 58503-1324 or by calling 701.328.5210.

All comments received by February 12, 2023 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.

The NDDEQ will consider every request for reasonable accommodation to provide an accessible meeting facility or other accommodation for people with disabilities, language interpretation for people with limited English proficiency (LEP), and translations of written material necessary to access programs and information. To request accommodations, contact Jennifer Skjod, Acting Non-discrimination Coordinator at 701-328-5226 or [jskjod@nd.gov](mailto:jskjod@nd.gov). TTY users may use Relay North Dakota at 711 or 1-800-366-6888.

**FACT SHEET FOR NDPDES PERMIT  
ND0025283**

**PERMIT REISSUANCE**

**Leonardite Products LLC**

**DATE OF THIS FACT SHEET – December 2022**

**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) has oversight authority. In 1975, the State of North Dakota was delegated primacy of the NPDES program by EPA. The North Dakota Department of Environmental Quality (NDDEQ), hereafter referred to as "department", has been designated the state water pollution control agency for all purposes of the Federal Water Pollution Control Act, 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 the NDAC 33.1-16 (North Dakota Administrative Code) which was promulgated pursuant to NDCC chapter 61-28 (North Dakota Century Code). The department uses North Dakota Pollutant Discharge Elimination System (NDPDES) as its permitting title.

The following rules or regulations apply to NDPDES permits:

- Procedures the department follows for issuing NDPDES permits (NDAC chapter 33.1-16-01),
- Standards of Quality for Waters of the State (NDAC chapter 33.1-16-02.1).

These rules require any treatment facility operator to obtain an NDPDES permit before discharging wastewater to state waters. They also define the basis for limits on each discharge and for other requirements imposed by the permit.

According to the North Dakota Administrative Code (NDAC) section 33.1-16-01-08, the department must prepare a draft permit and accompanying fact sheet, 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 chapter 33.1-16-01-07). For more information regarding preparing and submitting comments about the fact sheet 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**.

## TABLE OF CONTENTS

BACKGROUND INFORMATION.....	3
FACILITY DESCRIPTION.....	4
<i>Discharge Outfall</i> .....	4
PREVIOUS PERMIT STATUS .....	4
SUMMARY OF COMPLIANCE WITH PREVIOUS PERMIT ISSUED .....	4
<i>Past Discharge Data</i> .....	5
PROPOSED PERMIT LIMITS .....	5
EFFLUENT LIMITATIONS.....	5
SELF-MONITORING REQUIREMENTS .....	9
SURFACE WATER QUALITY-BASED EFFLUENT LIMITS.....	10
<i>Numerical Criteria for the Protection of Aquatic Life and Recreation</i> .....	10
<i>Numerical Criteria for the Protection of Human Health</i> .....	10
<i>Narrative Criteria</i> .....	11
<i>Antidegradation</i> .....	11
<i>Mixing Zones</i> .....	11
EVALUATION OF SURFACE WATER QUALITY-BASED EFFLUENT LIMITS FOR NUMERIC CRITERIA .....	11
<i>Oil &amp; Grease</i> .....	11
<i>pH</i> .....	11
HUMAN HEALTH .....	12
MONITORING REQUIREMENTS .....	12
TEST PROCEDURES.....	12
OTHER PERMIT CONDITIONS.....	12
PERMIT ISSUANCE PROCEDURES .....	12
PERMIT ACTIONS.....	12
PROPOSED PERMIT ISSUANCE .....	12
APPENDIX A – PUBLIC INVOLVEMENT INFORMATION.....	14
APPENDIX B – DEFINITIONS .....	16
APPENDIX C – DATA AND TECHNICAL CALCULATIONS .....	19
APPENDIX D – RESPONSE TO COMMENTS .....	20

## BACKGROUND INFORMATION

**Table 1 – General Facility Information**

Applicant:	Leonardite Products LLC
Facility Name and Address:	Leonardite Products LLC 13375 Highway 1804, Williston, ND 58801
Permit Number:	ND0025283
Permit Type:	Minor, Permit Reissuance
Type of Treatment:	Settling Pond
SIC Code:	1221 – Bituminous Coal and Lignite Surface Mining
NAICS Code:	212111 – Bituminous Coal and Lignite Surface Mining
Discharge Location:	T154N, R100W, Section 8 Latitude: 48.174293 Longitude: -103.578091
Hydrologic Code:	10110102 – Little Muddy



Figure 1 – Aerial Photograph of Leonardite Products LLC – Stony Creek Mine, Williston ND  
(Google Earth Pro, Generated October 2022)

## **FACILITY DESCRIPTION**

Leonardite Products LLC (company) is an independently owned and operated leonardite mining and processing operation located east of Williston, North Dakota. The company markets leonardite, a low-grade coal or slack coal, for use in oilfield water-based drilling fluids and for use in agriculture as a soil amendment. The discharge location, structure description, and hydrologic considerations are identified in the surface mining permit issued by the North Dakota Public Service Commission (PSC). The approved surface mining permit issued by the PSC is GRGR-0501. Surface mining permits are required in the state under North Dakota Century Code Chapter 38-14.1.

Currently, Leonardite Products LLC has one discharge point listed under the NDPDES reporting requirements, which is regulated under the coal mining effluent limits.

### **Discharge Outfall**

The facility has one active discharge point described as the Stony Creek Mine, an open pit, located in Section 8, Township 154 North, Range 100 West in Williams County. Company mining operations ceased in Section 17 prior to the permit issued on April 1, 2013. The City of Williston landfill currently controls the company's former area of operation in Section 17.

In the event the permitted mining operation has a discharge, the discharge would be to the Little Muddy Creek, a class II stream. The current permit identifies discharges to Stony Creek, a class III stream. The department removed Stony Creek from the permit since current or future mining operations within the approved PSC permit are all located within the Little Muddy subbasin which would discharge to the Little Muddy Creek, and the area within the Stony Creek watershed was released from bond and no longer considered an active mining or reclamation area.

## **PERMIT STATUS**

The department issued the most current permit for this facility on April 1, 2018. The current permit includes monitoring requirements for total manganese (TMn), total iron (TFe), total suspended solids (TSS), pH, settleable solids (SS), and oil and grease. The permit is scheduled to expire at midnight on March 31, 2023.

The facility submitted EPA NPDES Application Form 1 and EPA NPDES Application Form 2F for permit renewal. The department received and accepted the application forms on August 4, 2022.

Coverage under the department's NDR32-0000 permit, the general stormwater discharge permit associated with mining, extraction, and paving material preparation activities, for the processing facility is not required since stormwater runoff from the facility does not discharge to waters of the state through a discharge point as defined in NDCC 61-28. Should this change, coverage under the NDR32-0000 permit would be required prior to the discharge taking place.

## **SUMMARY OF COMPLIANCE WITH PREVIOUS PERMIT ISSUED**

The department's assessment of compliance is based on review of the facility's Discharge Monitoring Reports (DMRs) and inspections conducted by department staff. The department staff conducted one routine, non-sampling compliance inspection since the current permit has been issued. The inspection was conducted on October 25, 2022. No issues were noted during the inspection.

### **Past Discharge Data**

A review of the DMR information from the issuing date of the current permit on April 1, 2018, showed that no discharges have taken place for the facility.

## **PROPOSED PERMIT LIMITS**

### **EFFLUENT LIMITATIONS**

Wastewater discharged from mining operations would consist of runoff from precipitation that comes into contact with active mining areas, reclamation areas, and non-active/non-reclaimed areas. The quantity of wastewater generated would depend on the amount of area considered active, reclaimed, or non-active/non-reclaimed in the facility's surface mining permit with the North Dakota PSC. Mining operations currently encompass approximately 96 acres. The quantity of wastewater, in the mining area, is dependent on the amount of stormwater runoff generated by a precipitation event.

Discharges from mining operations are regulated by national effluent guidelines which establish technology-based effluent limitations. The technology based effluent limitations may be found in Title 40 of the Code of Federal Regulations, Part 434 – or 40 CFR 434, in addition to Tables 2 and 3 of this fact sheet.

In the absence of a federal standard, limitations may be generated using Best Professional Judgment (BPJ) to ensure reasonable control technologies are used to prevent potential harmful effects of the discharge. In addition, the department must consider and include limitations necessary to protect water quality standards applicable to the receiving waters.

The current permit contains language that states precipitation shall be measured by gauge and recorded daily by the permittee. The permit also contains language allowing the permittee to elect to use the nearest National Weather Service recording station to measure precipitation amounts to qualify for overflow waivers. In addition, the current permit also contains language on the use of Williston Sloulin Field Station ID: 32-9425 to identify precipitation amounts to qualify for overflow waivers, but due to the permanent closure of Williston Sloulin Field, the department determined that this station shall no longer be used.

The proposed effluent limitations shall take effect once the permit becomes active. The effluent limitations and the basis for the limitations are provided in the Tables 2 through 4.

**Table 2 - Active Mining Areas**

<b>Effluent Parameter</b>	<b>Units</b>	<b>Monthly Average</b>	<b>Daily Maximum</b>	<b>Basis <sup>c</sup></b>
-------------------------------	--------------	----------------------------	--------------------------	---------------------------

**Table 2 - Active Mining Areas**

Total Manganese <sup>a</sup>	mg/L	2.0	4.0	40 CFR 434.22 by BPJ
Total Iron <sup>a</sup>	mg/L	3.5	7.0	40 CFR 434.42
Total Suspended Solids <sup>a</sup> (TSS)	mg/L	35.0	70.0	40 CFR 434.42
Settleable Solids <sup>a</sup>	mL/L	N/A	0.5	40 CFR 434.63(a)
Oil & Grease – Visual <sup>b</sup>	N/A	N/A	N/A	WQS
Oil & Grease <sup>b</sup>	mg/L	*	10	BPJ
pH	S.U.	within the range 6.0 to 9.0		40 CFR 434.42; WQS
The permittee shall maintain the capability to measure the instantaneous flow rate, daily.				Previous Permit
The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards. This may include rate of discharge restrictions or notifying downstream landowners along the receiving stream.				BPJ
<b>Notes:</b>				
<p>a. <u>Alternate Limitations:</u> The department may waive the limitations for total manganese, total iron, and total suspended solids for overflows caused by a single or series of precipitation or snowmelt events after reviewing all information submitted in response to the Noncompliance Notification conditions of the permit. During overflow discharges total suspended solids sampling shall be done in conjunction with settleable solids sampling for comparison purposes. Monitoring for settleable solids is not required for routine discharges.</p> <p>The settleable solids limit may be waived if there is a precipitation event greater than 2.64 inches in 24 hours. The limit may also be waived for snowmelt events on a case-by-case basis for facilities designed and maintained to contain runoff from a 10-year, 24-hour precipitation event.</p> <p>To qualify for these limitations, the facility must be designed, constructed, operated, and maintained to treat the runoff from a 10-year, 24-hour precipitation event (2.64 inches). For sedimentation ponds, any required pond dewatering must have been accomplished within 10 days of the last precipitation event when practicable. Additional time is allowable when dewatering is delayed due to activities or conditions downstream of the facility such as agricultural activities, landowner accessibility, drainage channel stability or capacity. The permittee has the burden of proof that these conditions are met.</p> <p>Precipitation shall be measured by gauge and recorded daily by the permittee.</p>				
<p>b. There shall be no floating oil or visible sheen present in the discharge. If floating oil or a visible sheen is detected in the discharge, the department shall be contacted, and a grab sample analyzed to ensure compliance with the concentration limitation. Any single analysis</p>				

**Table 2 - Active Mining Areas**

	and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.
c.	<p>The basis of the effluent limitations is given below:</p> <p>"Previous Permit" refers to limitations in the previous permit. The NPDES regulations <b>40 CFR Part 122.44(1)(1) Reissued permits</b> require that when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was issued have materially and substantially changed since the previous permit was issued and would constitute cause for permit modification or revocation and reissuance under <b>40 CFR Part 122.62</b>.</p> <p>"BPJ" refers to best professional judgment.</p> <p>"WQS" refers to effluent limitations based on the State of North Dakota's "Standards of Quality for Waters of the State," NDAC Chapter 33.1-16-02.1.</p>
N/A	Not applicable
*.	This parameter is not limited. However, the department may impose limitations based on sample history and to protect the receiving waters.

**Table 3 - Reclamation Areas**

Effluent Parameter	Units	Daily Maximum	Basis <sup>c</sup>
Settleable Solids <sup>a</sup>	mL/L	0.5	40 CFR 434.52(a); 40 CFR 434.63(a) & (e)
Total Suspended Solids <sup>b</sup> (TSS)	mg/L	70	BPJ; Previous Permit
pH	S.U.	within the range 6.0 to 9.0	WQS
The daily flow rate may be determined by instantaneous flow measurement or calculated from daily readings. The total volume discharged (total flow) and average flow rate shall be recorded monthly.			Previous Permit
The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards. This may include rate of discharge restrictions or notifying downstream landowners along the receiving stream.			BPJ
<b>Notes:</b>			
a.	The settleable solids requirements apply to overflows or increases in flow caused by a single or series of precipitation or snowmelt events. The limitation may be waived if the amount of precipitation exceeds the amount expected from a 10-year, 24-hour precipitation event (2.64 inches). The limitation may also be waived for snowmelt events on a case-by-		



**Table 3 - Reclamation Areas**

	<p>case basis for facilities designed and maintained to contain runoff from a 10-year, 24-hour precipitation event.</p> <p>Precipitation shall be measured by gauge and recorded daily by the permittee.</p>
b.	<p>The total suspended solids limitation shall apply only to controlled discharges made by mechanical or gravity dewatering devices. During an overflow, discharge sampling for total suspended solids shall be done in conjunction with settleable solids sampling for comparison purposes. Monitoring for settleable solids is not required for routine discharges.</p>
c.	<p>The basis of the effluent limitations is given below:</p> <p>"Previous Permit" refers to limitations in the previous permit. The NPDES regulations 40 CFR Part 122.44(1)(1) Reissued permits require that when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was issued have materially and substantially changed since the previous permit was issued and would constitute cause for permit modification or revocation and reissuance under 40 CFR Part 122.62.</p> <p>"BPJ" refers to best professional judgement.</p> <p>"WQS" refers to effluent limitations based on the State of North Dakota's "Standards of Quality for Waters of the State," NDAC Chapter 33.1-16-02.1.</p>

**Table 4 - Non-Active and Non-Reclamation Areas**

<p>The permittee is authorized to discharge storm water runoff from miscellaneous locations not designated as active mining or reclamation areas.</p> <p>These requirements describe the minimum level of treatment for areas not subject to effluent requirements specified for active mining and reclamation areas. The areas covered by these requirements include: haul roads, SPGM stockpiles, initial site development, delayed reclamation of support features, and small areas of disturbance not feasibly controlled by discharge points.</p> <p>Best Management Practices (BMP) and all procedures outlined in applicable surface mining permits shall be followed to minimize any adverse effects on surface water from storm water runoff. The department may require additional BMP, specific maintenance, and/or designate discharge points with appropriate monitoring if deemed necessary to protect receiving waters.</p>	<p>BPJ</p>
--	------------

## SELF-MONITORING REQUIREMENTS

Samples obtained from active mining and reclamation areas must be taken prior to the discharge water leaving company property or entering any receiving stream.

Nutrient monitoring is being added to the proposed permit to coincide with the development of the state's nutrient reduction strategy.

**Table 5 - Self-Monitoring Requirements**

Effluent Parameter	Frequency	Sample Type <sup>a</sup>
<b>Active Mining Areas:</b>		
Total Manganese	Monthly	Grab
Total Iron	Monthly	Grab
TSS	Weekly	Grab
Settleable Solids	Weekly	Grab
Oil & Grease – Visual	Daily	Visual
Oil & Grease	Conditional	Grab
pH	Monthly	Instantaneous
Flow, Total <sup>b</sup>	Daily	Calculated
Drain, Total <sup>b</sup>	Monthly	Calculated
Total Days Discharging	Monthly	Calculated
Nitrogen, Total <sup>c</sup>	Monthly	Grab/Calculated
Phosphorus, Total	Monthly	Grab/Calculated
<b>Reclamation Areas:</b>		
TSS	Monthly	Grab
Settleable Solids	Monthly	Grab
pH	Monthly	Instantaneous
Flow, Total <sup>b</sup>	Daily	Calculated
Drain, Total <sup>b</sup>	Monthly	Calculated
Total Days Discharging	Monthly	Calculated
Nitrogen, Total <sup>c</sup>	Monthly	Grab/Calculated
Phosphorus, Total	Monthly	Grab/Calculated
<b>Notes:</b>		
a.	Refer to Appendix B for definitions.	
b.	The daily flow rate shall be determined by instantaneous flow measurement or calculated from daily readings.	
c.	Total nitrogen is a combination of nitrate, nitrite, and Total Kjeldahl Nitrogen (TKN).	

## **SURFACE WATER QUALITY-BASED EFFLUENT LIMITS**

The North Dakota State Water Quality Standards (NDAC Chapter 33.1-16-02.1), or Water Quality Standards (WQS), are designed to protect existing water quality and preserve the beneficial uses of North Dakota's surface waters. Wastewater discharge permits must include conditions that ensure the discharge will meet the surface water quality standards. Water quality-based effluent limits may be based on an individual waste load allocation or on a waste load allocation developed during a basin wide total maximum daily load (TMDL) study. TMDLs result from a scientific study of the water body and are developed in order to reduce pollution from all sources.

As previously mentioned, discharges from the mining operation would be to the Little Muddy Creek, which the WQS classify a class II stream. Class II streams shall be the same as the quality of class I streams, except that additional treatment may be required to meet the drinking water requirements of the department. Streams in this classification may be intermittent in nature which would make these waters of limited value for beneficial uses such as municipal water, fish life, irrigation, bathing, or swimming.

The section of the Little Muddy River from its confluence with East Fork Little Muddy River, downstream to Lake Sakakawea, is listed in the 2018 North Dakota Section 303(d) list of Waters Needing Total Maximum Daily Loads (TMDL). The section is listed as impaired for fecal coliform. The affected use (recreation) is listed as fully supporting but threatened. The TMDL development status is "high." This means there is a high priority for the waterbody/pollutant combination to be targeted for TMDL development.

The facility uses septic tanks to handle sanitary waste. Septic haulers remove the sanitary waste when the tanks reach capacity. There has been no history of leaks from the tanks. Because of this, discharges from the mining operation are not expected to contribute to the fecal coliform impairment.

### **Numerical Criteria for the Protection of Aquatic Life and Recreation**

Numerical water quality criteria are listed in the water quality standards for surface waters (NDAC Chapter 33.1-16-02.1). They specify the maximum levels of pollutants allowed in receiving water to protect aquatic life and recreation in and on the water. The department uses numerical criteria along with chemical and physical data for the wastewater and receiving water to derive the effluent limits in the discharge permit. When surface water quality-based limits are more stringent or potentially more stringent than technology-based limits, the discharge must meet the water quality-based limits.

### **Numerical Criteria for the Protection of Human Health**

The U.S. EPA has published numeric water quality criteria for the protection of human health that are applicable to dischargers. These criteria are designed to protect humans from exposure to pollutants linked to cancer and other diseases, based on consuming fish and shellfish and drinking contaminated surface waters. The Water Quality Standards also include radionuclide criteria to protect humans from the effects of radioactive substances.

## **Narrative Criteria**

Narrative water quality criteria (NDAC Chapter 33.1-16-02.1-08) limit concentrations of pollutants from exceeding applicable standards of the receiving waters. The department adopted a narrative biological goal solely to provide an additional assessment method that can be used to identify impaired surface waters.

## **Antidegradation**

The purpose of North Dakota's Antidegradation Policy (NDAC Chapter 33.1-16-02(Appendix IV)) is to:

- Provide all waters of the state one of three levels of antidegradation protection.
- Determine whether authorizing the proposed regulated activity is consistent with antidegradation requirements.

The department's fact sheet demonstrates that the existing and designated uses of the receiving water will be protected under the conditions of the proposed permit.

## **Mixing Zones**

The department's WQS contain a Mixing Zone and Dilution Policy and Implementation Procedure, NDAC Chapter 33.1-16-02.1 (Appendix III). This policy addresses how mixing and dilution of point source discharges with receiving waters will be addressed in developing chemical-specific and whole effluent toxicity discharge limitations for point source discharges. Depending upon site-specific mixing patterns and environmental concerns, some pollutants/criteria may be allowed a mixing zone or dilution while others may not. In all cases, mixing zone and dilution allowances shall be limited, as necessary, to protect the integrity of the receiving water's ecosystem and designated uses.

## **EVALUATION OF SURFACE WATER QUALITY-BASED EFFLUENT LIMITS FOR NUMERIC CRITERIA**

### **Oil & Grease**

The WQS state that waters of the state must be free from oil or grease attributable to wastewater which causes a visible sheen or film upon the water. Using BPJ the department has determined that a daily maximum limitation of 10 mg/L is appropriate for active mining areas if a visible sheen is detected. Other treatment systems in the state have similar limitations.

### **pH**

The WQS state that discharges to Class II and Class III streams shall have an instantaneous pH limitation between 6.0 (s.u) and 9.0 (s.u.).

## **HUMAN HEALTH**

North Dakota's water quality standards include numeric human health-based criteria that the department must consider when writing NDPDES permits. These criteria were established in 1992 by the U.S. EPA in its National Toxics Rule (40 CFR 131.36). The National Toxics Rule allows states to use mixing zones to evaluate whether discharges comply with human health criteria. The department determined the applicant's discharge is unlikely to contain chemicals regulated to protect human health. The department will re-evaluate this discharge for impacts to human health at the next permit reissuance.

## **MONITORING REQUIREMENTS**

The department requires monitoring, recording, and reporting (NDAC Chapter 33.1-16-01-(21 through 23) and 40 CFR 122.41) to verify that the treatment process is functioning correctly and that the discharge complies with the permit's limits.

## **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 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.

## **OTHER PERMIT CONDITIONS**

No other permit conditions are proposed for the facility.

## **PERMIT ISSUANCE PROCEDURES**

### **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.

### **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 human health and

FACT SHEET FOR NDPDES PERMIT ND0025283

LEONARDITE PRODUCTS LLC

**EXPIRATION DATE: March 31, 2028**

Page 13 of 20

aquatic life, and the beneficial uses of waters of the State of North Dakota. The department proposes to issue this permit for a term of five (5) years.

## **APPENDIX A – PUBLIC INVOLVEMENT INFORMATION**

The department proposes to reissue a permit to **Leonardite Products LLC** for its leonardite mining operation. The permit includes wastewater discharge limits and other conditions. This fact sheet describes the facility and the department's reasons for requiring permit conditions.

The department will place a Public Notice of Draft on **January 13, 2023**, in the **Williston Herald** to inform the public and to invite comment on the proposed draft North Dakota Pollutant Discharge Elimination System permit and fact sheet.

The Notice –

- Indicates where copies of the draft Permit and Fact Sheet are available for public evaluation.
- Offers to provide assistance to accommodate special needs.
- Urges individuals 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  
4201 Normandy Street  
Bismarck, ND 58503

The primary author of this permit and fact sheet is Kylee Harrison.

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

Public Notice Date: 1/13/2023

Public Notice Number: ND-2022-026

**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: 8/4/2022

Application Number: ND0025283

Applicant Name: Leonardite Products LLC

Mailing Address: 13375 Hwy 1804, Williston, ND 58802-0548

Telephone Number: 701.572.7659

Proposed Permit Expiration Date: 3/31/2028

**Facility Description**

The reapplication is for a mining facility (Stony Creek Mine) located in Township 154 North, Range 100 West. Any discharge would consist of groundwater and/or surface runoff, and would be to the Little Muddy Creek, a Class II stream.

**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 FWPCA will be protected.

**Information Requests and Public Comments**

Copies of the application, draft permit, and related documents are available for review. For further information on making public comments/public comment tips please visit: <https://deq.nd.gov/PublicCommentTips.aspx>. Comments or requests should be directed to the ND Dept of Env Quality, Div of Water Quality, 4201 Normandy Street, Bismarck ND 58503-1324 or by calling 701.328.5210.

All comments received by February 12, 2023 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.

The NDDEQ will consider every request for reasonable accommodation to provide an accessible meeting facility or other accommodation for people with disabilities, language interpretation for people with limited English proficiency (LEP), and translations of written material necessary to access programs and information. To request accommodations, contact Jennifer Skjod, Acting Non-discrimination Coordinator at 701-328-5226 or [jskjod@nd.gov](mailto:jskjod@nd.gov). TTY users may use Relay North Dakota at 711 or 1-800-366-6888.



## APPENDIX B – DEFINITIONS

### DEFINITIONS Standard Permit BP 2019.05.29

1. “**Act**” means the Clean Water Act.
2. “**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.
3. “**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.
4. “**Best management practices**” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.
5. “**Bypass**” means the intentional diversion of waste streams from any portion of a treatment facility.
6. “**Composite**” sample means a combination of at least 4 discrete sample aliquots, collected over periodic intervals from the same location, during the operating hours of a facility not to exceed a 24 hour period. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.
7. “**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 discharged over the day. For pollutants with limitations expressed in other units of measurement, the “daily discharge” is calculated as the average measurement of the pollutant over the day.
8. “**Department**” means the North Dakota Department of Environmental Quality, Division of Water Quality.
9. “**DMR**” means discharge monitoring report.
10. “**EPA**” means the United States Environmental Protection Agency.
11. “**Geometric mean**” means the  $n^{\text{th}}$  root of a product of  $n$  factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

12. **“Grab”** for monitoring requirements, means a single "dip and take" sample collected at a representative point in the discharge stream.

13. **“Instantaneous”** for monitoring requirements, means a single reading, observation, or measurement. If more than one sample is taken during any calendar day, each result obtained shall be considered.

14. **“Maximum daily discharge limitation”** means the highest allowable “daily discharge.”

15. **“Salmonid”** means of, belonging to, or characteristic of the family Salmonidae, which includes the salmon, trout, and whitefish.

16. **“Sanitary Sewer Overflows (SSO)”** means untreated or partially treated sewage overflows from a sanitary sewer collection system.

17. **“Severe property damage”** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

18. **“Total drain”** means the total volume of effluent discharged.

19. **“Upset”** means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

## **DEFINITIONS Permit Specific**

1. **“Active Mining Area”** means the area on and beneath land, used or disturbed in activity related to extraction, removal, or recovery of coal from its natural deposits. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.
2. **“Daily maximum concentration”** means the greatest discharge concentration during any calendar day. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration for that day.
3. **“Monthly Average Concentration”** means the average discharge concentration during a 30-consecutive day period (for reporting purposes a calendar month). It shall be determined by the summation of all daily concentrations for 30 days (calendar month) divided by the total number of days on which the values were obtained. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration of the day.

4. **“NDPDES”** means North Dakota Pollutant Discharge Elimination System.
5. **“Reclamation Area”** means an area which has been isolated from active mining area drainage and on which the final reclamation contour has been reached and seeding is completed. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.

### **APPENDIX C – DATA AND TECHNICAL CALCULATIONS**

The development of the permit did not require technical calculations by the North Dakota Department of Environmental Quality. The department reviewed DMR information and applicable water quality standards for class II and III streams to determine the appropriate requirements to be placed in the permit.

#### **APPENDIX D – RESPONSE TO COMMENTS**

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

Permit No: ND0025283  
Effective Date: April 1, 2023  
Expiration Date: March 31, 2028

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,

Leonardite Products, LLC  
Williston, North Dakota

is authorized to discharge from its leonardite mining operation located near Williston, North Dakota

from the specified locations and to specified receiving streams per page 6

provided all the conditions of this permit are met.

This permit and the authorization to discharge shall expire at midnight,  
March 31, 2028.

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

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

This page is intentionally left blank

## TABLE OF CONTENTS

<b>DEFINITIONS .....</b>	<b>4</b>
<b>FACILITY DESCRIPTION .....</b>	<b>6</b>
<b>OUTFALL DESCRIPTION .....</b>	<b>6</b>
<b>PERMIT SUBMITTALS SUMMARY .....</b>	<b>6</b>
<b>SPECIAL CONDITIONS .....</b>	<b>6</b>
<b>I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS .....</b>	<b>7</b>
A. Discharge Authorization .....	7
B. Effluent Limitations and Monitoring .....	7
<b>II. MONITORING, RECORDING, AND REPORTING REQUIREMENTS BP 2021.09.09 .....</b>	<b>11</b>
A. Representative Sampling (Routine and Non-Routine Discharges) .....	11
B. Test Procedures .....	11
C. Recording of Results .....	11
D. Additional Monitoring .....	11
E. Reporting of Monitoring Results .....	12
F. Records Retention .....	12
<b>III. COMPLIANCE RESPONSIBILITIES .....</b>	<b>13</b>
A. Duty to Comply .....	13
B. Proper Operation and Maintenance .....	13
C. Planned Changes .....	13
D. Duty to Provide Information .....	13
E. Signatory Requirements .....	13
F. Twenty-four Hour Notice of Noncompliance Reporting .....	14
G. Bypass of Treatment Facilities .....	14
H. Upset Conditions .....	15
I. Duty to Mitigate .....	15
J. Removed Materials .....	15
K. Duty to Reapply .....	16
<b>IV. GENERAL PROVISIONS .....</b>	<b>16</b>
A. Inspection and Entry .....	16
B. Availability of Reports .....	16
C. Transfers .....	16
D. New Limitations or Prohibitions .....	16
E. Permit Actions .....	16
F. Need to Halt or Reduce Activity Not a Defense .....	16
G. State Laws .....	16
H. Oil and Hazardous Substance Liability .....	16
I. Property Rights .....	16
J. Severability .....	17



## DEFINITIONS

### Standard Permit BP 2019.05.29

1. “**Act**” means the Clean Water Act.
2. “**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.
3. “**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.
4. “**Best management practices**” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.
5. “**Bypass**” means the intentional diversion of waste streams from any portion of a treatment facility.
6. “**Composite**” sample means a combination of at least 4 discrete sample aliquots, collected over periodic intervals from the same location, during the operating hours of a facility not to exceed a 24 hour period. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.
7. “**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 discharged over the day. For pollutants with limitations expressed in other units of measurement, the “daily discharge” is calculated as the average measurement of the pollutant over the day.
8. “**Department**” means the North Dakota Department of Environmental Quality, Division of Water Quality.
9. “**DMR**” means discharge monitoring report.
10. “**EPA**” means the United States Environmental Protection Agency.
11. “**Geometric mean**” means the  $n^{\text{th}}$  root of a product of  $n$  factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.
12. “**Grab**” for monitoring requirements, means a single “dip and take” sample collected at a representative point in the discharge stream.
13. “**Instantaneous**” for monitoring requirements, means a single reading, observation, or measurement. If more than one sample is taken during any calendar day, each result obtained shall be considered.
14. “**Maximum daily discharge limitation**” means the highest allowable “daily discharge.”

15. "**Salmonid**" means of, belonging to, or characteristic of the family Salmonidae, which includes the salmon, trout, and whitefish.

16. "**Sanitary Sewer Overflows (SSO)**" means untreated or partially treated sewage overflows from a sanitary sewer collection system.

17. "**Severe property damage**" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

18. "**Total drain**" means the total volume of effluent discharged.

19. "**Upset**" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

## DEFINITIONS

### Permit Specific

1. "**Active Mining Area**" means the area on and beneath land, used or disturbed in activity related to extraction, removal, or recovery of coal from its natural deposits. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.
2. "**Daily maximum concentration**" means the greatest discharge concentration during any calendar day. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration for that day.
3. "**Monthly Average Concentration**" means the average discharge concentration during a 30-consecutive day period (for reporting purposes a calendar month). It shall be determined by the summation of all daily concentrations for 30 days (calendar month) divided by the total number of days on which the values were obtained. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration of the day.
4. "**NDPDES**" means North Dakota Pollutant Discharge Elimination System.
5. "**Reclamation Area**" means an area which has been isolated from active mining area drainage and on which the final reclamation contour has been reached and seeding is completed. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.

## FACILITY DESCRIPTION

The discharges regulated by this permit consist of drainage from active mining and reclamation areas subject to effluent limits under 40 CFR 434. The discharges are from structures or other control features used to manage the quality of the effluent and the hydrologic considerations identified in the surface mining permit(s) issued by the North Dakota Public Service Commission, following interagency review and public comment, in accordance with NDCC Chapter 38-14.1. The current and proposed discharge structures are located within the boundaries of approved surface mining permits which encompass all or part of the following:

Township 154 North, Range 100 West, Section 8

and discharge to:

1. Little Muddy Creek, a Class II stream

## OUTFALL DESCRIPTION

The permittee must request and obtain an NDPDES discharge point number from the Department before a structure within a surface mining permit can be used to discharge waters subject to effluent standards. Upon the assignment of the NDPDES discharge point number, discharges may be made in accordance with the limitations, record keeping and reporting requirements outlined in this permit. Once a discharge point is activated it will be subject to reporting under NDPDES until such time it is authorized for removal. The department establishes whether the points are active mining areas or reclamation areas.

## PERMIT SUBMITTALS SUMMARY

Coverage Point	Submittal	Monitoring Period	Submittal Frequency	First Submittal Date
001A	Discharge Monitoring Report	Semiannually	Semiannually	October 31, 2023
Application Renewal	EPA Forms 1 & 2F	None	1/permit cycle	September 1, 2027

## SPECIAL CONDITIONS

No special conditions have been determined at this time.

## I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

### A. Discharge Authorization

During the effective period of this permit, the permittee is authorized to discharge pollutants from the outfall as specified to the following: **Little Muddy Creek**.

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

### B. Effluent Limitations and Monitoring

#### ACTIVE MINING AREAS:

Table 1: Effluent Limitations and Monitoring Requirements <b>Active Mining Areas</b>				
	Discharge Limitations		Monitoring Requirements	
Parameter	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Total Manganese <sup>a</sup>	2.0 mg/L	4.0 mg/L	Monthly	Grab
Total Iron <sup>a</sup>	3.5 mg/L	7.0 mg/L	Monthly	Grab
pH	Between 6.0 and 9.0 s.u.		Monthly	Instantaneous
Total Suspended Solids <sup>a</sup>	35.0 mg/L	70.0 mg/L	Weekly	Grab
Settleable Solids <sup>a</sup>	N/A	0.5 ml/L	Weekly	Grab
Oil and Grease – Visual <sup>b</sup>	N/A	Yes/No	Daily	Visual
Oil and Grease <sup>b</sup>	*	10.0 mg/L	Conditional	Grab
Total Flow (MG) <sup>c</sup>	Report	Report	Daily	Calculated
Total Drain (MG) <sup>c</sup>	Report	N/A	Monthly	Calculated
Total Days Discharging	Report	N/A	Monthly	Calculated
Nitrogen, Total, mg/L <sup>d</sup>	Monitor Only	Monitor Only	Monthly	Grab
Nitrogen, Total, lb/day <sup>d</sup>	Monitor Only	Monitor Only	Monthly	Calculated
Phosphorus, Total (as P), mg/L	Monitor Only	Monitor Only	Monthly	Grab
Phosphorus, Total (as P), lb/day	Monitor Only	Monitor Only	Monthly	Calculated
Notes:				
<p>a. Alternate Limitations: The Department may waive the limitations for Total Manganese, Total Iron, and Total Suspended Solids for overflows caused by single or series of precipitation or snowmelt events after reviewing all information submitted in response to the Noncompliance Notification conditions. During overflow discharges Total Suspended Solids sampling shall be done in conjunction with Settleable Solids sampling for comparison purposes. Monitoring for Settleable Solids is not required for routine discharges.</p> <p>The Settleable Solids limit may be waived if there is a precipitation event greater than 2.64 inches in 24 hours. The limit may also be waived for snowmelt events on a case by case basis for facilities designed and maintained to contain the runoff from a 10 year, 24 hour precipitation event.</p> <p>To qualify for these limitations the facility must be designed, constructed, operated, and maintained to contain the runoff from a 10-year, 24-hour precipitation event (2.64 inches). For sedimentation ponds, any required pond dewatering must have been accomplished within 10 days of the last precipitation event when practicable. Additional time is allowable</p>				

when dewatering is delayed due to activities or conditions downstream of the facility such as: agricultural activities, landowner accessibility, drainage channel stability or capacity. The permittee has the burden of proof that these conditions have been met.

Precipitation shall be monitored by gauge and recorded daily by the permittee.

b. There shall be no floating oil or visible sheen present in the discharge. If floating oil or a visible sheen is detected in the discharge, the department shall be contacted and a grab sample analyzed to ensure compliance with the concentration limitation. Any single analysis and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.

c. The daily flow rate shall be determined by instantaneous flow measurement or calculated from daily readings.

d. Total nitrogen is a combination of nitrate, nitrite, and Total Kjeldahl Nitrogen (TKN).

\* This parameter is not limited. However, the Department may impose limitations based on sample history and to protect the receiving waters.

N/A Not Applicable

Stipulations:

Samples taken in compliance with the monitoring requirements specified in this permit shall be taken prior to the discharge water leaving company property or mixing with receiving streams.

The dates of discharge, frequency of analysis, and number of exceedances shall be included on the DMR.

When alternate limitations are granted, the test results for parameters not subject to limitations shall be included as an attachment to the report for the applicable monitoring period.

The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards. This may include rate of discharge restrictions or notifying downstream landowners along the receiving streams.

## RECLAMATION AREAS:

Table 2: Effluent Limitations and Monitoring Requirements <b>Reclamation Areas</b>				
	<b>Discharge Limitations</b>		<b>Monitoring Requirements</b>	
<b>Parameter</b>	<b>Monthly Average</b>	<b>Daily Maximum</b>	<b>Measurement Frequency</b>	<b>Sample Type</b>
Settleable Solids <sup>a</sup>	*	0.5 ml/L	Monthly	Grab
Total Suspended Solids <sup>b</sup>	*	70.0 mg/L	Monthly	Grab
pH	6.0 – 9.0 s.u.		Monthly	Instantaneous
Total Flow (MG) <sup>c</sup>	Report	Report	Daily	Calculated
Total Drain (MG) <sup>c</sup>	Report	N/A	Monthly	Calculated
Total Days Discharging	Report	N/A	Monthly	Calculated
Nitrogen, Total, mg/L <sup>d</sup>	Monitor Only		Monthly	Grab
Nitrogen, Total, lb/day <sup>d</sup>	Monitor Only		Monthly	Calculated
Phosphorus, Total (as	Monitor Only		Monthly	Grab

P), mg/L			
Phosphorus, Total (as P), lb/day	Monitor Only	Monthly	Calculated
Notes:			
<p>a. The Settleable Solids requirements apply to overflow or increases in flow caused by a single or series of precipitation or snow melt events. The limitation may be waived if there is a precipitation greater than 2.64 inches in 24 hours. The limit may also be waived on a case by case basis for facilities designed and maintained to contain runoff from a 10 year, 24 hour precipitation event.</p> <p>Precipitation shall be monitored by gauge and recorded daily by the permittee. If the permittee elects, the results of the nearest National Weather Service recording station (Williston Soulin Field) may be used.</p>			
<p>b. The Total Suspended Solids limitation shall apply only to controlled discharges made by mechanical or gravity dewatering device. During an overflow, discharge sampling for Total Suspended Solids shall be done in conjunction with Settleable Solids sampling for comparison purposes. Monitoring for Settleable Solids is not required for routine discharges.</p>			
<p>c. The permittee shall maintain the capability to measure the instantaneous flow rate, daily.</p>			
<p>d. Total nitrogen is a combination of nitrate, nitrite, and Total Kjeldahl Nitrogen (TKN).</p>			
<p>* This parameter is not limited. However, the Department may impose limitations based on sample history and to protect the receiving waters</p>			
N/A Not Applicable			
<u>Stipulations:</u>			
<p>The permittee must not discharge any floating solids, visible foam in other trace amounts, or oily wastes that produce a sheen on the surface of the receiving water.</p> <p>All components of the treatment system and discharge structure shall be maintained to achieve a high-quality discharge and preserve the integrity of the structure. If necessary, BMPs shall be used upstream and downstream of the discharge structure to ensure that effluent quality is maximized.</p> <p>Samples taken in compliance with the monitoring requirements specified in this permit shall be taken prior to the discharge water leaving company property or mixing with receiving streams.</p> <p>The dates of discharge, frequency of analysis, and number of exceedances shall be included on the DMR. The results for Total Suspended Solids obtained during overflow conditions shall be included as an attachment to the report for the applicable monitoring period.</p> <p>The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards. This may include rate of discharge restrictions or notifying downstream landowners along the receiving stream.</p>			

#### NON-ACTIVE AND NON-RECLAMATION AREAS:

The permittee is authorized to discharge storm water runoff from miscellaneous locations not designated as active mining or reclamation areas.

These requirements describe the minimum level of treatment for areas not subject to effluent requirements specified for active mining and reclamation areas. The areas covered by these requirements include: haul roads, SPGM stockpiles, initial site development, delayed reclamation of support features, and small areas of disturbance not feasibly controlled by discharge points.

Best Management Practices (BMP) and all procedures outlined in applicable surface mining permits shall be followed to minimize any adverse effects on surface water from storm water runoff. The Department may require additional BMP, specific maintenance, and/or designate discharge points with appropriate monitoring if deemed necessary to protect receiving waters.

## **II. MONITORING, RECORDING, AND REPORTING REQUIREMENTS BP 2021.09.09**

### **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:
  - i. General permit reports [e.g., notices of intent (NOI); notices of termination (NOT); no exposure certifications (NOE)];
  - ii. Municipal separate storm sewer system program reports;
  - iii. Pretreatment program reports;
  - iv. Sewer overflow/bypass event reports; and
  - v. 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.
  - i. 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  
4201 Normandy Street  
Bismarck ND 58503-1324

#### **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:
  1. Any lagoon cell overflow or any unanticipated bypass which exceeds any effluent limitation in the permit under G. Bypass of Treatment Facilities;
  2. Any upset which exceeds any effluent limitation in the permit under H. Upset Conditions; or
  3. 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.

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.
  1. Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of bypass.

2. 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, at reasonable times and 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 should inform 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.