

## STATEMENT OF BASIS

Devils Lake Outlet  
ND-0026247

### Addendum

The department has evaluated the comments and testimony received during the public comment period for the draft permit for this facility. The comment period opened on April 14, 2003 and closed May 28, 2003. Two public hearings were advertised in the public notice and conducted during the comment period. After consideration of the comments and testimony submitted regarding the proposed discharge, the Department has made the following additions to the final permit.

#### Part I Description of Discharge Points

A second paragraph was added to the description of discharge points to describe the location and features of the intake structure. The description is as follows:

*The intake structure from the West Bay is located in the SW 1/4 Section 35, T153N, R67W (also known as Round Lake). The intake must be fitted with a screen system of sufficient mesh and size to preclude the uptake or transfer of adult fish species.*

#### Part I.A.1 (second paragraph)

Additional conditions were added following the first paragraph of item one listed under the Effluent Limitations and Monitoring Requirements to identify prerequisites to be met before making any discharge and describe specific periods when discharges cannot occur. The additional conditions are as follows:

*Prior to operating of the outlet discharge, the permittee shall complete the following conditions:*

- a. The initial biological assessment of ecological condition of the Sheyenne River as outlined in item 10 of appendix 2 of this permit.*
- b. The written adaptive management plan identifying procedures developed to ensure compliance with the permit requirements and applicable water quality standards as outlined in item 11 of appendix 2 of this permit. The adaptive management plan is not complete until approved by the Department of Health.*

*The discharge may operate only during the open-water season, the months May through November. There shall be no discharge during the months December through April. There shall be no discharge when the water elevation in Devils Lake is below 1445 ft (msl). Any discharge shall...*

#### Part I.A.9

The first sentence of Part I.A.9 was revised to clarify that the only adjustments the Department can make to the permit with out providing public notice are those which would not be considered

major modifications described in the federal guidelines. The condition was revised as follows:

The Department may make certain adjustments to the effluent limitations and monitoring requirements, not qualifying as major modifications under 40 CFR 122.62, without ...

Appendix 2 (added items 10 and 11)

Two conditions were added to Appendix 2, Process Control Monitoring, to describe the information deemed necessary for balancing the operation of the discharge with beneficial uses downstream of the discharge. The additional conditions are as follows:

10. *The ecological condition of the Sheyenne River will be determined through a biological assessment of the river within four stream reaches. One assessment reach should be located upstream from the outlet, one downstream of the outlet (approximately 1 mile), one just upstream from Lake Ashtabula, and one near the river's confluence with the Red River. Three sites will be sampled within each reach as a measure of spacial variability. The site located upstream of the outlet will be sampled the same time the downstream reaches are sampled to provide a measure of temporal variability. The biological assessment will consist of three biological assemblages (macroinvertebrates, fish, and periphyton) and a physical habitat assessment. At the same time these samples are collected, a grab water sample will be collected for chemical analysis. Field procedures should follow those used by the U.S. Environmental Protection Agency's Environmental Monitoring and Assessment Program for the Western States (EMAP Western Pilot). An initial assessment shall be completed by the permit holder prior to the operation of the outlet. Subsequent assessments will be completed on a periodic basis deemed appropriate by the Department.*
11. *Adaptive Management Plan. Criteria for establishing and implementing the adaptive management plan should be developed to ensure compliance with permit requirements and maintenance of beneficial uses of the water resources downstream. The plan should outline the basic procedures for evaluating monitoring data, responding to observed impacts to downstream water resources, and adjusting the operation discharge as needed.*

*The adaptive management plan shall be submitted to the Department for approval. Upon approval, the operation of the discharge may commence. The adaptive management plan will be considered part of the permit with all future discharges being required to comply with the operational conditions identified in the plan. All other permit limitations and conditions of the permit will remain in effect.*

Responses to comments were addressed according to general nature of issues raised. A list of issues raised in the comments and the department's responses have been included in the permit record.