

§ 301, 302, 306, 307, 308, 318, or 405 shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. Knowing violations. Section 309(c)(2) of the Act provides that any person who knowingly violates a permit condition implementing CWA § 301, 302, 306, 307, 308, 318, or 405 shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowing endangerment. Section 309(c)(3) of the Act provides that any person who knowingly violates a permit condition implementing CWA § 301, 302, 303, 306, 307, 308, 318, or 405, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. A person that is an organization shall be subject to a fine of not more than \$1,000,000.

d. False statements. Section 309(c)(4) of the Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or by both.

Except as provided in Permit conditions in Part VIII.F. ("Bypass of Treatment Facilities") and Part VIII.G., ("Upset Conditions"), nothing in this Permit shall be construed to relieve a permittee of the civil or criminal penalties for noncompliance.

#### *C. 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.

#### *D. Duty to Mitigate*

A permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this Permit that has a reasonable likelihood of adversely affecting human health or the environment.

#### *E. Proper Operation and Maintenance*

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

#### *F. Bypass of Treatment Facilities*

##### *1. Bypass not Exceeding Limitations*

A permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this Part.

##### *2. Notice*

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

b. Unanticipated bypass. A permittee shall submit notice of an unanticipated bypass as required under Part VII.F. ("Twenty-four hour notice of noncompliance reporting").

##### *3. Prohibition of Bypass*

a. Bypass is prohibited, and the Director or ADEC may take enforcement action against a permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) 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 shall have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) A permittee submitted notices as required under paragraph 2 of this Part.

b. The Director and ADEC may approve an anticipated bypass, after considering its adverse effects, if the Director and ADEC determine that it will meet the three conditions listed above in paragraph 3.a. of this Part.

#### *G. Upset Conditions*

##### *1. Effect of an Upset*

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if a permittee meets the requirements of paragraph 2 of this Part. 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.

##### *2. Conditions Necessary for a Demonstration of Upset*

To establish the affirmative defense of upset, a permittee shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that a permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. A permittee submitted notice of the upset as required under Part VII.F. ("Twenty-four hour notice of noncompliance reporting") and

d. A permittee complied with any remedial measures required under Part VIII.D. ("Duty to Mitigate").

##### *3. Burden of Proof*

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

#### *H. Planned Changes*

A permittee shall give notice to the Director and ADEC as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR § 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this Permit.

A permittee shall give notice to the Director and ADEC as soon as possible of any planned changes in process or chemical use whenever such change could significantly change the nature or increase the quantity of pollutants discharged.

#### *I. Anticipated Noncompliance*

A permittee shall also give advance notice to the Director and ADEC of any