



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

PMB 2020  
JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

January 11, 2008

Vern Meier  
TransCanada Keystone Pipeline, L.P.  
717 Texas Street, Suite 2400  
Houston, TX 77002

Re: *General Permit for Temporary Discharge  
Activities: (SDG070629)*

Dear Mr. Meier:

Your request meets the application requirements of the *South Dakota Surface Water Discharge System General Permit for Temporary Discharge Activities in South Dakota*. Your facility has been assigned the permit number listed above.

With the submission of your application, you are hereby granted authorization to discharge as described in the Notice of Intent form. The discharge authorization provided under this permit extends only to the location and activities specifically described in the Notice of Intent form that you have submitted.

Please thoroughly read over the permit before beginning to discharge. The permit requires ongoing monitoring. You are also required to submit a **Notice of Termination** form located in Appendix A upon the completion of your project.

As stated in the permit, this approval does not convey any property rights of any sort, nor does it authorize any injury to private property. These issues must be settled with the affected landowners.

Thank you for your interest in protecting the natural resources of South Dakota. If you have any questions, please contact me at (605) 773-3351.

Sincerely,

A handwritten signature in black ink, appearing to read "Albert Spangler".

Albert Spangler  
Natural Resource Project Engineer  
SDDENR/Surface Water Quality Program

Enclosure

**SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT  
AND NATURAL RESOURCES  
JOE FOSS BUILDING  
523 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA 57501-3181**

**AUTHORIZATION TO DISCHARGE UNDER THE  
SURFACE WATER DISCHARGE SYSTEM**

In compliance with the provisions of the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota (ARSD), Chapters 74:52:01 through 74:52:11,

**the permittee**

is authorized to discharge from the **temporary discharge activities described in the permittee's Notice of Intent form**

**to waters of the state identified in the permittee's Notice of Intent form**

in accordance with discharge point(s), effluent limits, monitoring requirements and other conditions set forth herein. Authorization for discharge is limited to those outfalls specifically listed in the permit.

This permit shall become effective **June 01, 2005**.

This permit and the authorization to discharge shall expire at midnight, **May 31, 2010**.

Signed this 1st day of June 2005.



Steven M. Pirner  
Secretary  
Department of Environment and Natural Resources

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## DEFINITIONS

**30-day (and monthly) average** means the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.

**7-day (and weekly) average** means the arithmetic mean of all samples collected during a consecutive 7-day period or calendar week, whichever is applicable. The calendar week which begins on Sunday and ends on Saturday, shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms. Weekly averages shall be calculated for all calendar weeks with Saturdays in the month. If a calendar week overlaps two months (i.e., the Sunday is in one month and the Saturday in the following month), the weekly average calculated for that calendar week shall be included in the data for the month that contains the Saturday.

**ARSD** means the Administrative Rules of South Dakota.

An **Authorized Release** is a discharge from a permitted outfall that meets all permit conditions and effluent limits.

**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 state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage, or leaks, sludge, or waste disposal, or drainage from raw material storage.

**BOD<sub>5</sub>** means Five-Day Biochemical Oxygen Demand. BOD is a measurement of the amount of oxygen utilized by the decomposition of organic material, over a specified time period (usually 5 days) in a sample.

**BTEX** means the sum of the concentrations of benzene, ethyl benzene, toluene, and zylene.

A **Bypass** is the intentional diversion of waste streams from any portion of a treatment facility.

**Composite samples** shall be flow proportioned. The composite sample shall contain at least four samples collected over the compositing period. Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six hours nor more than 24 hours. Acceptable methods for preparation of composite samples are as follows:

- a. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;
- b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;
- c. Constant sample volume, time interval between samples proportional to flow (i.e. sample taken every "X" gallons of flow); and
- d. Continuous collection of sample, with sample collection rate proportional to flow rate.

**Daily Maximum (Daily Max.)** is the maximum value allowable in any single sample or instantaneous measurement.

**Existing Source** means any building, structure, facility or installation from which there is or may be a discharge of pollutants, which is not considered a New Source.

A **grab** sample, for monitoring requirements, is a single "dip and take" sample collected at a representative point in the discharge stream.

An **instantaneous** measurement, for monitoring requirements, is a single reading, observation, or measurement.

**New Source** means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Federal Clean Water Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

- a. The building, structure, facility or installation is constructed at a site at which no other source is located; or
- b. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- c. The wastewater generating processes of the building, structure, facility, or installation are 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.

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 (b.) or (c.) of this section but otherwise alters, replaces, or adds to existing process or production equipment. Construction of a new source has commenced if the owner or operator has:

- a. Begun, or caused to begin as part of a continuous onsite construction program:
  - (1) Any placement, assembly, or installation of facilities or equipment; or
  - (2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment.
- b. 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 of feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

**pH** is the measure of the hydrogen ion concentration of water or wastewater; expressed as the negative log of the hydrogen ion concentration. A pH of 7 is neutral. A pH less than 7 is acidic, and a pH greater than 7 is basic.

**Process Wastewater** means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

**SDDENR** means the South Dakota Department of Environment and Natural Resources.

**Secretary** means the Secretary of the South Dakota Department of Environment and Natural Resources, or authorized representative.

**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.

**Sewage Sludge** is any solid, semi-solid or liquid residue that contains materials removed from domestic sewage during treatment. Sewage sludge includes, but is not limited to, primary and secondary solids and sewage sludge products.

**TSS** means **Total Suspended Solids**. TSS is a measure of the filterable solids present in a sample.

An **Unauthorized release** is a discharge from the lower end of the treatment or containment system through a release structure or over or through retention dikes that does not meet all permit conditions or effluent limits.

**Upset** means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limits 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.

**Acute Toxicity** occurs when 50 percent or more mortality is observed for either species (See **Section** ) at any effluent concentration. Mortality in the control must simultaneously be 10 percent or less for the effluent results to be considered valid.

**Chronic Toxicity** occurs when the survival, growth, or reproduction, as applicable, for either test species, at the effluent dilution(s) designated in this permit (see **Section** ), is significantly less (at the 95 percent confidence level) than that observed for the control specimens.

**IC25** (inhibition concentration) is a point estimate of the toxicant concentration that would cause a 25% reduction in a nonlethal biological measurement of the test organism, such as reproduction or growth.

**NOEC** (no observed effect concentration) is the highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organism at a specific time of observation. Determined using hypothesis testing.

## **1.0 COVERAGE UNDER THIS PERMIT**

### **1.1 Applicability of the General Permit**

This general permit is potentially applicable to all facilities conducting temporary discharge activities within the State of South Dakota. The water discharged from these activities must be relatively uncontaminated and must not contribute non-conventional or toxic pollutant loadings to the receiving waters.

### **1.2 Request for Authorization**

In order to be considered eligible for authorization to discharge wastewater under the terms and conditions of this permit, the owner, operator, and/or authorized agent of any facility desiring to discharge must complete and submit, a Notice of Intent form and a Certification of Applicant form (located in Appendix A at the end of this permit) at least thirty days prior to the first anticipated date of discharge. This submittal shall also be considered a request for a temporary water use permit, if required.

Such information shall be submitted to the following address:

original to:       South Dakota Department of Environment and Natural Resources  
                          Surface Water Quality Program  
                          Joe Foss Building  
                          523 East Capitol  
                          Pierre, South Dakota 57501-3181  
                          Telephone: (605) 773-3351

The permit issuing authority shall have up to thirty days after receipt of the Notice of Intent form to request additional data and/or deny the authorization under this general permit for any particular discharge. For existing individually authorized discharges, coverage under the general permit will not be effective unless and until the individual permit is either revoked or inactivated. SDDENR may waive, at its discretion, the thirty-day period.

## **2.0 EFFLUENT LIMITS AND MONITORING REQUIREMENTS**

### **2.1 Effluent Limits**

Effective immediately and lasting through the life of this permit, the quality of effluent discharged by the facility shall, as a minimum, meet the limits as set forth below:

1.       There shall be no discharge of any process-generated wastewater except wastewater resulting from activities described in the Notice of Intent Form.
2.       There shall be no direct discharge of any solids and/or sludges generated by the treatment of the discharge.
3.       There shall be no discharge of sanitary wastewater from toilets or related facilities.
4.       There shall be no discharge of floating solids or visible foam in other than trace amounts.
5.       There shall be no discharge of toxic pollutants in toxic amounts.
6.       No chemical may be added to the discharge unless prior permission for the use of the additive is specifically granted by the SDDENR.
7.       The permittee shall take such steps as are necessary to prevent or minimize stream scouring or bank erosion caused by the discharge.



Limit for Total Petroleum Hydrocarbons

8. The concentration of Total Petroleum Hydrocarbons in any single sample shall not exceed 1 mg/L nor shall there be a visible sheen in the discharge.

Limits for pH

9. The pH of the discharged water shall not be less than 6.5 standard units nor greater than 9 standard units at all times.

Limits for TSS

10. The Total Suspended Solids concentration shall not exceed 90 mg/L in any single sample.

Limits for potentially petroleum contaminated water

11. The total BTEX concentration shall not exceed 100 µg/L in any single sample. BTEX shall be measured as the sum of benzene, ethyl benzene, toluene, and zylene.
12. The benzene concentration shall not exceed 5 µg/L in any single sample.

Limits for potentially chlorinated water

13. The total residual chlorine concentration shall be non-detectable at the point the discharge enters the receiving waters in all samples. SDDENR considers the analytical detection limit for total residual chlorine to be 0.05 mg/L. Any sample results less than 0.05 mg/L will be considered non-detectable.

**2.2 Monitoring and Reporting Requirements**

1. Daily logs. The permittee shall maintain a daily log relating to any discharge(s). The log shall contain:
  - a. flow information and data;
  - b. sample results;
  - c. records of visual observations; and
  - d. notations of any problems relating to treatment of the discharge.
  
2. Samples shall be taken as often as necessary to provide representative information as to the nature and volume of the discharge(s). At a minimum, samples of each discharge shall be taken as follows:

Parameter	Sample Frequency <sup>1</sup>	Sample Type <sup>2</sup>
Flow Rate (gpm)	Daily	Measure or Estimate
Total Flow Volume (gallons)	Monthly	Measure or Estimate
pH (s.u.)	Weekly	Instantaneous
TPH (mg/L)	Daily	Visual/Grab <sup>3</sup>
Total Suspended Solids <sup>4</sup> (mg/L)	Weekly	Grab
Benzene <sup>5</sup> (µg/L)	Weekly	Grab
Total BTEX <sup>5</sup> (µg/L)	Weekly	Grab
Total Residual Chlorine <sup>6</sup> (mg/L)	Daily	Grab

<sup>1</sup> If the duration of the discharge is shorter than the required sample frequency, a minimum of one sample shall be taken for all parameters.

<sup>2</sup> See definitions section of permit for definitions.

<sup>3</sup> TPH shall be visually monitored daily. A TPH sample shall be taken during the first day of discharge and if a visual sheen is observed.

<sup>4</sup> In lieu of sampling for this parameter, the secretary may allow the facility to implement a pollution prevention plan that includes best management practices to prevent total suspended solids and other pollutants from entering the waters of the state.

<sup>5</sup> Benzene and BTEX monitoring is only required if petroleum contamination is expected in the water being discharged. This monitoring will be required by the department on a case by case basis.

<sup>6</sup> Residual chlorine monitoring is only required if the water being discharged has been chlorinated.

3. If sampling performed by the permittee indicates a violation, the permittee shall notify SDDENR in accordance with the provisions in **Part 4.8** of this permit. The permittee shall also repeat the sampling and analysis and submit the results of the repeat analysis to the department within thirty days after becoming aware of the violation.

**3.0 POLLUTION PREVENTION PLANS**

**3.1 Deadlines for Plan Preparation and Compliance**

If the permittee develops a pollution prevention plan instead of sampling, the plan must be developed and implemented prior to the start of the temporary discharge.

**3.2 Contents of the Plan**

The plan shall include, at a minimum, the following items:

1. Site Description  
 Each plan shall provide a description of pollutant sources and other information as indicated below:

- a. The type of temporary discharge activity;
- b. Estimates of the total volume of water to be discharged;
- c. The name of the receiving waters; and
- d. A Site map indicating:
  - (1) Drainage patterns;
  - (2) Location of major structural and nonstructural controls identified in the plan;
  - (3) Location of areas where stabilization practices are expected to occur;
  - (4) Surface waters and extent of wetland acreage; and
  - (5) Location of discharge point(s).

2. **Best Management Practices**

The plan shall describe appropriate best management practices and when and where they will be implemented for each temporary discharge activity identified in the Notice of Intent.

3. **Inspection Requirements**

The permittee shall ensure that qualified personnel inspect the site on a daily basis. The inspection shall include the temporary discharge site, areas where the best management practices are being implemented, and the discharge location. These areas shall be inspected to ensure that the best management practices are operating correctly and for evidence of, or the potential for, pollutants entering the receiving waters. If any pollutants are suspected of being discharged, a sample must be taken for those parameters listed in **part 2.2** of this permit.

The permittee shall maintain a notebook recording information obtained during the inspection. At a minimum, the notebook shall include the following:

- a. Date and time of the inspection;
- b. Name of the inspector(s);
- c. Identification of operational problems and/or maintenance problems;
- d. Recommendations, as appropriate, to remedy identified problems;
- e. A brief description of any actions taken with regard to problems identified; and
- f. Other information, as appropriate.

The permittee shall maintain the notebook in accordance with proper record-keeping procedures and shall make the notebook available for inspection, upon request, by the Secretary or the U.S. Environmental Protection Agency.

**3.3 Signature and Plan Review**

1. The plan shall be signed in accordance with the signatory requirements and retained at the site where the temporary discharge is occurring.
2. The permittee shall make plans available upon request to the Secretary and in the case of a discharge through a municipal separate storm sewer system, to the operator of the municipal system.
3. The Secretary may notify the permittee at any time that the plan does not meet the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan and identify which provisions require modifications in order to meet the minimum requirements. Within seven days of notification, the permittee shall make the required changes to the plan and shall submit to the Secretary a written certification that the requested changes have been made.

**3.4 Keeping Plans Current**

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of

the state. The plan shall also be amended if the plan proves to be ineffective in eliminating or significantly minimizing pollutants present in the temporary discharge.

#### **4.0 MONITORING, RECORDING AND REPORTING REQUIREMENTS**

##### **4.1 Representative Sampling**

Samples taken in compliance with the monitoring requirements established under **Part 2.2** shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

##### **4.2 Monitoring Procedures**

Monitoring must be conducted according to test procedures approved under ARSD 74:52:03:06, a.b.r. 40 CFR, Part 136, unless other test procedures have been specified in this permit.

##### **4.3 Reporting of Monitoring Results**

Effluent monitoring results obtained during the previous month shall be summarized for each month and reported on a Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed reporting period. If no discharge occurs during the reporting period, "no discharge" shall be reported. Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with the **Signatory Requirements** (see Part 4.14), and submitted to the Secretary at the following address:

original to: South Dakota Department of  
Environment and Natural Resources  
Surface Water Quality Program  
Joe Foss Building  
523 East Capitol Avenue  
Pierre, South Dakota 57501-3181

##### **4.4 Compliance Schedules**

Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any Compliance Schedule of this permit shall be submitted no later than 14 days following each schedule date.

##### **4.5 Additional Monitoring by the Permittee**

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under ARSD 74:52:03:06, a.b.r. 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

##### **4.6 Records Contents**

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The initials or name(s) of the individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The time analyses were initiated;
5. The initials or name(s) of individual(s) who performed the analyses;

6. References and written procedures, when available, for the analytical techniques or methods used; and,
7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

**4.7 Retention of Records**

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Secretary at any time. Data collected on site, copies of Discharge Monitoring Reports, and a copy of this permit must be maintained on site during the duration of activity at the permitted location.

**4.8 Twenty-four Hour Notice of Noncompliance Reporting**

1. The permittee shall report any noncompliance which may endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the State of South Dakota at (605) 773-3231 and the EPA, Region VIII, Emergency Response Branch at (303) 293-1788.
2. The following occurrences of noncompliance shall be reported by telephone to the Secretary at (605) 773-3351 by the first workday (8:00 a.m. – 5:00 p.m. Central Time) following the day the permittee became aware of the circumstances:
  - a. Any unanticipated bypass which exceeds any effluent limit in the permit (See **Part 5.7 – Bypass of Treatment Facilities**);
  - b. Any upset which exceeds any effluent limit in the permit (See **Part 5.8 – Upset Conditions**); or
  - c. Violation of a maximum daily discharge limit for any of the pollutants listed in the permit to be reported within 24 hours.
3. A written submission shall also be provided within five days of the time that the permittee becomes 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 reoccurrence of the noncompliance.
4. The Secretary may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Surface Water Quality Program, South Dakota Department of Environment and Natural Resources, Pierre, (605) 773-3351.
5. Reports shall be submitted to the addresses in **Part 4.3 – Reporting of Monitoring Results**.

**4.9 Other Noncompliance Reporting**

Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for **Part 4.3** are submitted. The reports shall contain the information listed in **Part 4.8.3**.

**4.10 Changes in Discharge of Toxic Substances**

Notification shall be provided to the Secretary as soon as the permittee knows of, or has reason to believe that any activity has occurred or will occur which would result in the discharge of a toxic pollutant, as defined in ARSD 74:52:01:01, which is not limited in the permit and if that discharge will exceed the highest of the following notification levels:

1. One hundred micrograms per liter (100 µg/L);
2. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile;
3. Five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol;
4. One milligram per liter (1 mg/L) for antimony; or
5. Five (5) times the maximum concentration value reported for that pollutant in the permit application.

**4.11 Planned Changes**

The permittee shall give notice to the Secretary as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limits in the permit. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source (see ARSD, Chapter 74:52:01:01(30)).

**4.12 Duty to Provide Information**

The permittee shall furnish to the Secretary, within a reasonable time, any information which the Secretary 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 Secretary, upon request, copies of records required to be kept by this permit.

**4.13 Other Information**

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Secretary, it shall promptly submit such facts or information.

**4.14 Signatory Requirements**

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

1. All permit applications shall be signed as follows:
  - a. For a corporation: by a responsible corporate officer;
  - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
  - c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.
2. All reports required by the permit and other information requested by the Secretary 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:
  - a. The authorization is made in writing by a person described above and submitted to the Secretary; and,

- b. 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. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)
3. Changes to authorization. If an authorization under paragraph 2 of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph 2 of this section must be submitted to the Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. Certification. 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.”

## **5.0 COMPLIANCE RESPONSIBILITIES**

### **5.1 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. The permittee shall give the director advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.

### **5.2 Duty to Mitigate**

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

### **5.3 Proper Operation and Maintenance**

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. However, the permittee shall operate, as a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

### **5.4 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.

### **5.5 Removed Substances**

Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be disposed of in such a manner so as 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.

**5.6 Inspection and Entry**

The permittee shall allow the Secretary or EPA, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and,
4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

**5.7 Bypass of Treatment Facilities**

1. Bypass not exceeding limits. The permittee may allow any bypass to occur which does not cause effluent limits 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 section.
2. Notice:
  - a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 60 days before the date of the bypass.
  - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under **Part 4.8 – Twenty-four Hour Notice of Noncompliance Reporting**.
3. Prohibition of bypass.
  - a. Bypass is prohibited and the Secretary 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 should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,
    - (3) The permittee submitted notices as required under paragraph 2. of this section.
  - b. The Secretary may approve an anticipated bypass, after considering its adverse effects, if the Secretary determines that it will meet the three conditions listed above in paragraph 3.a. of this section.



**5.8 Upset Conditions**

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limits if the requirements of paragraph 2. of this section 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 (i.e., Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limits).
2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
  - b. The permitted facility was at the time being properly operated;
  - c. The permittee submitted notice of the upset as required under **Part 4.8 – Twenty-four Hour Notice of Noncompliance Reporting**; and
  - d. The permittee complied with any remedial measures required under **Part 5.2 – Duty to Mitigate**.
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

**5.9 Toxic Pollutants**

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

**5.10 Anticipated Noncompliance**

The permittee shall give advance notice to the Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

**5.11 Permit Actions**

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

**5.12 Duty to Reapply**

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.

**5.13 Availability of Reports**

Except for data determined to be confidential under ARSD 74:52:02:17, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of SDDENR and EPA. Permit applications, permits and effluent data shall not be considered confidential.

**5.14 Property Rights**

The Secretary's issuance of this permit, adoption of design criteria, and approval of plans and specifications, does not convey any property rights of any sort, any exclusive privileges, any authorization to damage, injure or use any private property, any authority to invade personal rights, any authority to violate federal, state or local laws or regulations, or any taking, condemnation or use of eminent domain

against any property owned by third parties. The State does not warrant that the permittee's compliance with this permit, design criteria, approved plans and specifications, and operation under this permit, will not cause damage, injury or use of private property, an invasion of personal rights, or violation of federal, state or local laws or regulations. The permittee is solely and severally liable for all damage, injury or use of private property, invasion of personal rights, infringement of federal, state or local laws and regulations, or taking or condemnation of property owned by third parties, which may result from actions taken under the permit.

#### **5.15 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.

#### **5.16 Transfers**

This permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Secretary at least 30 days in advance of the proposed transfer date;
2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,
3. The Secretary does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2. above.

#### **5.17 Reopener Provision**

This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limits (and compliance schedule, if necessary), or other appropriate requirements if one or more of the following events occurs:

1. Water Quality Standards: The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.
2. Total Maximum Daily Load: Additional controls in the permit are necessary to implement a total maximum daily load approved by the Secretary and/or EPA.
3. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limits than contained in this permit.

### **6.0 PENALTIES FOR NONCOMPLIANCE**

#### **6.1 Penalties for Violations of Permit Conditions**

Any person who violates a permit condition shall, upon conviction, be punished by a Class 1 misdemeanor. In addition to a jail sentence authorized by SDCL 22-6-2, a Class 1 misdemeanor imposed by SDCL, Chapter 34A-2, is subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, for damages to the environment of this state. Except as provided in permit conditions on **Part 5.7 – Bypass of Treatment Facilities** and **Part 5.8 – Upset Conditions**, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

#### **6.2 Penalties for Tampering**

Any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit is in violation of the provisions of SDCL 34A-2-77, and is

subject to penalties under SDCL 34A-2-75. In addition to a jail sentence authorized by SDCL 22-6-2, such violators are subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state.

**6.3 Penalties for Falsification of Reports**

Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a Class 1 misdemeanor. In addition to a jail sentence authorized by SDCL 22-6-2, a Class 1 misdemeanor imposed by SDCL, Chapter 34A-2, is subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, for damages to the environment of this state, or both.

**6.4 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 Federal Clean Water Act.



DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

NOTICE OF INTENT &
CERTIFICATE OF APPLICANT FORM
TO RECEIVE COVERAGE UNDER THE
GENERAL PERMIT FOR TEMPORARY DISCHARGES
AND A TEMPORARY WATER USE PERMIT

This form is provided by the Secretary of the South Dakota Department of Environment and Natural Resources in accordance with §74:52:02:09 of the Administrative Rules of South Dakota. No South Dakota Surface Water Discharge Permit will be issued except under completion and submittal of this form to the following addresses:

original to: South Dakota Department of Environment and Natural Resources
Surface Water Quality Program
Joe Foss Building
523 East Capitol Avenue
Pierre, South Dakota 57501-3181
Telephone: (605) 773-3351 FAX: (605) 773-4068

PLEASE PRINT OR TYPE

I. Primary Contact Information

Owner Operator Contractor

Name Phone

Responsible Contact Person

Street

City State County Zip Code

II. Secondary Contact Information (If different from above)

Owner Operator Contractor

Name Phone

Responsible Contact Person

Street

City State County Zip Code

III Facility/Site Location

Name Phone

Responsible Contact Person

Street

City State County Zip Code

Is this facility located in Indian Country? Yes No

Section Quarter Township Range

Latitude Longitude

IV. Standard Industrial Classification (SIC) Code of facility:

FOR SDDENR USE ONLY
Permit Number: Date Received:
Date Permitted: PCS:

- V. Please list all the activities which require the applicant to obtain a discharge permit. (Attach additional sheets if necessary.)

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VI. Discharge Information

- A. Estimate the following:

Date water withdrawal will commence: \_\_\_\_\_

Date for commencement of discharge: \_\_\_\_\_

Termination date of withdrawal: \_\_\_\_\_

Termination date of discharge: \_\_\_\_\_

Total volume of withdrawal: \_\_\_\_\_

Total volume of discharge: \_\_\_\_\_

Average flow rate of withdrawal: \_\_\_\_\_

Average flow rate of discharge: \_\_\_\_\_

- B. Source of water which is to be discharged: \_\_\_\_\_

- C. Name of Receiving Waters: \_\_\_\_\_

- D. Brief description of water treatment processes employed, if any:

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- E. Describe the discharge and the type of wastewater from each outfall. Include all overflows, bypasses, or discharges from holding ponds, trenches, excavations, vessels, pipelines, etc.:

Outfall 001 \_\_\_\_\_

Outfall 002 \_\_\_\_\_

Outfall 003 \_\_\_\_\_

Attach additional sheets if necessary.

**NOTE:** Please place points of withdrawal and discharge on a topographic map, or other map if a topographic map is unavailable. This map should extend to one (1) square mile beyond the property boundaries of the facility and each of its discharge facilities, and those wells, springs, and other surface water bodies, drinking water wells, and surface water intake structures listed in public records, or otherwise known to the applicant in the map area.

- F. Is there any reason to believe that the discharge may contain any pollutant other than those limited in the permit (i.e. TSS, pH, Chlorine, BTEX, Benzene, and TPH)?  Yes  No  
If yes, list any pollutants that may be present: \_\_\_\_\_

**NOTE:** Attach any analytical data which indicate levels of pollutants present in water to be discharged.

VII. Pollution Prevention Plan

- A. Has the facility written a pollution prevention plan in lieu of sampling for TSS and pH?

Yes  No

- B. Brief description of best management practices being used in lieu of sampling:

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**VIII. Hydrostatic Testing**

- A. Type of vessel being tested: \_\_\_\_\_
- B. Material from which vessel is constructed: \_\_\_\_\_
- C. Check appropriate box:  Vessel has been previously used     Vessel is virgin material
- D. Description of fluid material normally contained/transported through the vessel:  
\_\_\_\_\_  
\_\_\_\_\_

**IX. List other information which you feel should be brought to the attention of the SDDENR regarding coverage under this general permit.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attach additional sheets if necessary.

**X. Certification – authorized representative should initial the check box.**

I certify under penalty of law that this document and all attachments were prepared under my direction (*initial*) 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 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 revocation of the permit and the possibility of fine and imprisonment for knowing violations.

**NOTE:** Application must be signed by the authorized chief elective or executive officer of the applicant, or by the applicant, if an individual.

**I declare and affirm under the penalties of perjury that this claim (petition, application, information) has been examined by me, and to the best of my knowledge and belief, is in all things true and correct.**

Name \_\_\_\_\_ Title \_\_\_\_\_  
Date \_\_\_\_\_  
Signature \_\_\_\_\_

Surface Water Quality Program  
 Joe Foss Building  
 523 East Capitol  
 Pierre, SD 57501-3181  
 Telephone: (605) 773-3351

STATE OF SOUTH DAKOTA  
 BEFORE THE SECRETARY OF  
 THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF THE ) **CERTIFICATION OF**  
 APPLICATION OF \_\_\_\_\_ )  
 ) **APPLICANT**  
 \_\_\_\_\_ )  
 (FACILITY NAME)  
 STATE OF \_\_\_\_\_ )  
 ) SS  
 COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, the applicant in the above matter after being duly sworn upon oath hereby certify the following information in regard to this application:

South Dakota Codified Laws Section 1-40-27 provides:

*"The secretary may reject an application for any permit filed pursuant to Titles 34A or 45, including any application by any concentrated swine feeding operation for authorization to operate under a general permit, upon making a specific finding that:*

*(1) The applicant is unsuited or unqualified to perform the obligations of a permit holder based upon a finding that the applicant, any officer, director, partner or resident general manager of the facility for which application has been made:*

- (a) Has intentionally misrepresented a material fact in applying for a permit;*
- (b) Has been convicted of a felony or other crime involving moral turpitude;*
- (c) Has habitually and intentionally violated environmental laws of any state or the United States which have caused significant and material environmental damage;*
- (d) Has had any permit revoked under the environmental laws of any state or the United States; or*
- (e) Has otherwise demonstrated through clear and convincing evidence of previous actions that the applicant lacks the necessary good character and competency to reliably carry out the obligations imposed by law upon the permit holder; or*

*(2) The application substantially duplicates an application by the same applicant denied within the past five years which denial has not been reversed by a court of competent jurisdiction. Nothing in this subdivision may be construed to prohibit an applicant from submitting a new application for a permit previously denied, if the new application represents a good faith attempt by the applicant to correct the deficiencies that served as the basis for the denial in the original application.*

*All applications filed pursuant to Titles 34A and 45 shall include a certification, sworn to under oath and signed by the applicant, that he is not disqualified by reason of this section from obtaining a permit. In the absence of evidence to the contrary, that certification shall constitute a prima facie showing of the suitability and qualification of the applicant. If at any point in the application review, recommendation or hearing process, the secretary finds the applicant has intentionally made any material misrepresentation of fact in regard to this certification, consideration of the application may be suspended and the application may be rejected as provided for under this section.*

*Applications rejected pursuant to this section constitute final agency action upon that application and may be appealed to circuit court as provided for under chapter 1-26."*

Pursuant to SDCL 1-40-27, I certify that I have read the forgoing provision of state law, and that I am not disqualified by reason of that provision from obtaining the permit for which application has been made.

I declare and affirm under the penalties of perjury that this claim (petition, application, information) has been examined by me, and to the best of my knowledge and belief, is in all things true and correct.

**NOTE:** Notice of Intent/Certificate of Applicant form must be signed by the authorized chief elective or executive officer of the applicant, or by the applicant, if an individual.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Applicant Name (print)

**PLEASE ATTACH SHEET DISCLOSING ALL FACTS PERTAINING TO  
SDCL 1-40-27 (1) (a) THROUGH (e).  
ALL VIOLATIONS MUST BE DISCLOSED, BUT WILL NOT  
AUTOMATICALLY RESULT IN THE REJECTION OF AN APPLICATION.**





DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

NOTICE OF TERMINATION  
OF COVERAGE UNDER THE  
GENERAL PERMIT FOR TEMPORARY DISCHARGES

This form is required to be submitted when a discharge permit is no longer required or necessary. Submission of this form shall in no way relieve the permittee of permit obligations required prior to submission of this form. Please submit this form to the following addresses:

original to: South Dakota Department of Environment  
and Natural Resources  
Surface Water Quality Program  
Joe Foss Building  
523 East Capitol Avenue  
Pierre, South Dakota 57501-3181  
Telephone: (605) 773-3351 FAX: (605) 773-5286

PLEASE PRINT OR TYPE

I. Permittee Information

Name \_\_\_\_\_ Phone \_\_\_\_\_  
Responsible Contact Person \_\_\_\_\_  
Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ County \_\_\_\_\_ Zip Code \_\_\_\_\_

II. Mailing Address of Facility/Site Location

Name \_\_\_\_\_ Phone \_\_\_\_\_  
Responsible Contact Person \_\_\_\_\_  
Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ County \_\_\_\_\_ Zip Code \_\_\_\_\_

III. Permit Number: SDG070629

IV. Check the reason for termination of permit coverage:

Temporary discharge is no longer occurring       You are no longer the operator of the facility  
 Other reason(s): \_\_\_\_\_

**NOTE:** Attach any Discharge Monitoring Reports (DMRs) which indicate pollutants in exceedance of permit limits.

I certify under penalty of law that all temporary discharge activities from the identified facility that are authorized by a SWD general permit have been eliminated or that I am no longer the operator of the facility. I understand that by submitting the Notice of Termination, I am no longer authorized to discharge from temporary discharge activities under this general permit, and that discharging pollutants from temporary discharge activities is unlawful under the South Dakota Water Pollution Control Act where the discharge is not authorized by a SWD permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the South Dakota Water Pollution Control Act. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

**NOTE:** NOT must be signed by the authorized chief elective or executive officer of the applicant, or by the applicant, if an individual.

Name (print) \_\_\_\_\_ Title \_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

Permittee: TransCanada Keystone Pipeline, L.P.

SOUTH DAKOTA SURFACE WATER DISCHARGE SYSTEM

**DISCHARGE MONITORING REPORT**

Permittee should complete all unshaded portions of this form

Permit #
SDG070629

From		To	
Year	Mo	Year	Mo
Day		Day	

Outfall #

Check Box if No Discharge Occurred During Monitoring Period

PARAMETER	Sample Measurement Permit Limit	Quantity or Concentration		No. of Exceedences	Frequency of Analysis	Sample Type	
		Minimum	Maximum				Units
Flow Rate 74060			Report		Daily	Instantaneous	
Flow Volume 74076			Report		Daily	Measure or Calculate	
pH 00400					Weekly	Grab	
TPH(Visual) 84066 "0" if no sheen observed "1" if sheen is observed		6.5	9		Daily	Visual	
TPH 82180			1		See permit	Grab	
Total Suspended Solids 00530			90		Weekly	Grab	
<p>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 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 revocation of the permit and the possibility of fine and imprisonment for knowing violations.</p>							
NAME/TITLE PRINCIPAL EXECUTIVE OFFICER (PRINT)					SIGNATURE		DATE

Permittee: TransCanada Keystone Pipeline, L.P.

SOUTH DAKOTA SURFACE WATER DISCHARGE SYSTEM

**DISCHARGE MONITORING REPORT**

Permittee should complete all unshaded portions of this form

Permit #	SDG070629
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From		To	
Year	Mo	Year	Mo
	Day		Day

Outfall #	
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Check Box if No Discharge Occurred  
During Monitoring Period

PARAMETER	Quantity or Concentration		No. of Exceedences	Frequency of Analysis	Sample Type
	Minimum	Maximum			
Benzene 34030	Sample Measurement Permit Limit	N/A		Weekly	Grab
Total BTEX 30383	Sample Measurement Permit Limit	N/A		Weekly	Grab
Total Residual Chlorine 50060	Sample Measurement Permit Limit	N/A		Daily	Grab
	Sample Measurement Permit Limit				
	Sample Measurement Permit Limit				
	Sample Measurement Permit Limit				
<p>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 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 revocation of the permit and the possibility of fine and imprisonment for knowing violations.</p>					
NAME/TITLE PRINCIPAL EXECUTIVE OFFICER (PRINT)				SIGNATURE	
				DATE	