

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR RULEMAKING**

AGENDA ITEM # III.B.1.

AGENDA ITEM SUMMARY - The department requests approval of amendments to ARM 17.30.201 to adjust the discharge permit fee schedule for applications, authorizations, and annual permit fees.

LIST OF AFFECTED RULES - ARM 17.30.201.

AFFECTED PARTIES SUMMARY - Persons or facilities holding permits, certificate, license or other authorizations issued pursuant to the Montana Water Quality Act, Title 75, chapter 5, MCA, and persons or facilities who wish to obtain a permit or authorization under the Act.

SCOPE OF PROPOSED PROCEEDING - The Board is considering final action on adoption of amendments to the above-referenced rule as proposed in the Montana Administrative Register.

BACKGROUND - Pursuant to 75-5-516, MCA, the board must prescribe fees to be assessed by the Department for water quality permit applications, annual permit renewals, review of petitions for degradation, and for other water quality authorizations required under the Montana Water Quality Act, Title 75, chapter 5, MCA. Subject to specific statutory fee caps, the Act requires the board to adopt permit fees that are sufficient to cover the board and department costs of administering the permits and other authorizations required under the Act.

Program administration costs have increased, but federal and state funding sources have not changed. EPA and state special funding for the program decreased 10% (\$40,000) from FY 2002 through FY 2009, and currently only \$71,053 state general fund appropriation is available. Consequently, an increase in fees is necessary to defray a portion of the state's costs of maintaining the program. For the biennium the annual budget for the program is approximately \$2.4 million. Revenues of approximately \$2 million must be raised by permit fees. The \$2 million in fees would affect approximately 1,900 permittees. The fee revenue will be supplemented by approximately \$400,000 in special revenue funds and grants to cover the remaining costs of program administration.

HEARING INFORMATION - Katherine Orr conducted a public hearing on September 3, 2009, on the proposed amendments. The Presiding Officer's Report and the draft Notice of Amendment, with public comments and proposed responses, are attached to this executive summary.

BOARD OPTIONS - The Board may:

1. Adopt the proposed amendments as set forth in the attached Notice of Public Hearing on Proposed Amendment and as modified in response to comments as shown on the draft Notice of Amendment;
2. Adopt the proposed amendments with revisions that the Board finds are appropriate and that are consistent with the scope of the Notice of Public Hearing on Proposed Amendment and the record in this proceeding; or
3. Decide not to adopt the amendments.

DEQ RECOMMENDATION – The Department recommends adoption of the proposed amendments as set forth in the attached Notice of Public Hearing on Proposed Amendment and as modified in response to comments as shown on the draft Notice of Amendment.

ENCLOSURES -

1. Notice of Public Hearing on Proposed Amendment
2. Presiding Officer's Report
3. HB521 and 311 Analysis
4. Public Comments
5. Draft Notice of Amendment

natural resource, together with any sewage that may be present;

(d) "major permit" means a Montana pollutant discharge elimination system permit for a facility that is designated by the department as a major facility pursuant to ARM Title 17, chapter 30, subchapter 13;

(e) "minor permit" means a Montana pollutant discharge elimination system permit for a facility that is not designated by the department as major pursuant to ARM Title 17, chapter 30, subchapter 13;

(f) "municipal separate storm sewer system" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, that discharges to surface waters and is owned or operated by the state of Montana, a governmental subdivision of the state, a district, association, or other public body created by or pursuant to Montana law, including special districts such as sewer districts, flood control districts, drainage districts and similar entities, and designated and approved management agencies under section 208 of the federal Clean Water Act, which has jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, and is:

(i) designed or used for collecting or conveying storm water;

(ii) not a combined sewer; and

(iii) not part of a publicly owned treatment works (POTW) as defined in ARM Title 17, chapter 30, subchapter 13;

(g) "new permit" means a permit for a facility or activity that does not have an effective permit;

(h) "non-traditional MS4" means a system similar to separate storm sewer systems in municipalities, such as systems at military bases, large educational, hospital, or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings;

(i) "other wastes," as provided in 75-5-103, MCA, means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters;

(j) "outfall" means a disposal system through which effluent or waste leaves the facility or site; and

(k) "renewal permit" means a permit for an existing facility that has an effective discharge permit.

~~(2)~~ (3) A person who applies for a permit, certificate, license, notice of intent, plan review, waiver, determination of significance, or other authorization required by rule under 75-5-201, 75-5-301, or 75-5-401, MCA, or for a modification or renewal of any of these authorizations, shall pay to the department a permit an application fee as determined under ~~(5)~~ of this rule (6).

~~(3)~~ (4) A person whose activity requires an application to degrade state waters under 75-5-303, MCA, and ARM Title 17, chapter 30, subchapter 7 of this chapter shall submit a degradation authorization fee with the application, as determined under ~~(6)~~ of this rule (7).

~~(4)~~ (5) A person who holds a permit, certificate, license, or other authorization

required by rule under 75-5-201 or 75-5-401, MCA, shall pay to the department an annual permit fee as determined under ~~(7)~~ of this rule (8).

~~(5)~~ (6) The fee schedules for new or renewal applications for, or modifications of, a Montana pollutant discharge elimination system permit under ARM Title 17, chapter 30, subchapter 11 or 13 of this chapter, a Montana ground water pollution control system permit under ARM Title 17, chapter 30, subchapter 10 of this chapter, or any other authorization under 75-5-201, 75-5-301, or 75-5-401, MCA, or rules promulgated under these authorities, ~~is~~ are set forth below as ~~S~~S~~chedules I.A, I.B, and I.C, and I.D.~~ Schedules I.A, I.B, and I.C, and I.D. ~~Payment of the permit application fee is due upon submittal of the application.~~ Fees must be paid in full at the time of submission of the application. For new applications under Schedules I.A or I.B, the annual fee from Schedule ~~III.A~~ III.A for the first year must also be paid at the time of application. For new applications under Schedule I.B, the annual fee is included in the new permit amount and covers the annual fee for the calendar year in which the permit coverage becomes effective.

(a) Under Schedules I.A and I.B, the department shall assess a fee for each outfall. An application fee for multiple outfalls is not required if there are multiple outfalls from the same source that have similar effluent characteristics, unless the discharges are to different receiving waters or stream segments, or result in multiple or variable (flow dependent) effluent limits or monitoring requirements.

(b) For purposes of (6) and (7), if a resubmitted application contains substantial changes or deficiencies requiring significant additional review, the department shall require an application resubmittal fee under Schedule I.D. The resubmittal fee must be paid before any further review is conducted. The department shall give written notice of the assessment within 30 days after receipt of the resubmittal and provide for appeal as specified in (11). If the department does not receive a response to a deficiency notice within one year, the applicant shall submit a new application and associated fees in order for application processing to continue.

(c) The department may assess an administrative processing fee under Schedule I.D when a permittee makes substantial alterations or additions to a sediment control plan, waste management plan, nutrient management plan, or storm water pollution prevention plan.

(d) Application fees are nonrefundable except, as required by 75-5-516(1)(d), MCA, if the permit or authorization is not issued the department shall return a portion of the application fee based on avoided enforcement costs. The department shall return 25% of the application fee if the application is withdrawn within 30 days after submittal.

(e) Facilities with an expired permit must pay the new permit application fee for individual permit coverage as specified in Schedule I. A.

(f) Applications for new permits or permit renewals for sources that constitute a new or increased source, as defined in ARM 17.30.702(18), must pay a significance determination fee for each outfall in addition to the application fee.

(g) Discharges composed entirely of storm water from industrial activities or from mining and oil and gas activities, as defined in ARM 17.30.1105, may be incorporated into a permit application submitted under Schedule I.A. The application fee for each storm water outfall must be submitted to the department with the

application.

(h) The application fee for an individual permit for a municipal separate storm sewer system (MS4) is determined by population based on the latest decennial census from the United States Census Bureau. Applications for MS4 permits with co-permittees will receive a 10% reduction in the application fee.

Schedule I.A Application Fee for Individual Permits

Category	<u>Renewal</u> Amount ⁽⁴⁾ <u>Fee</u>	<u>New Permit</u> <u>Fee</u>
Publicly owned treatment works - major <u>permit</u>	\$ 4,000 <u>4,800</u>	\$ <u>5,000</u>
Privately owned treatment works - major <u>permit</u>	4,500 <u>5,000</u>	<u>5,000</u>
Publicly owned treatment works - minor <u>permit</u>	1,000 <u>1,500</u>	<u>2,500</u>
Privately owned treatment works - minor <u>permit</u>	2,500 <u>3,000</u>	<u>4,200</u>
Ground water <u>permit</u> , domestic wastes <u>flow rate - gallons per day</u>	<u>1,200</u>	
<u>0-10,000 gpd</u>	<u>1,200</u>	<u>2,500</u>
<u>10,001 to 30,000 gpd</u>	<u>1,500</u>	<u>2,500</u>
<u>more than 30,000 gpd</u>	<u>2,500</u>	<u>4,000</u>
Ground water <u>permit</u> , industrial, or other wastes	<u>1,500</u>	
<u>0-1,000 gpd</u>	<u>1000</u>	<u>1,500</u>
<u>1,001 to 5,000 gpd</u>	<u>1,500</u>	<u>2,500</u>
<u>5,001 to 10,000 gpd</u>	<u>2,500</u>	<u>3,500</u>
<u>more than 10,000 gpd</u>	<u>4,800</u>	<u>5,000</u>
<u>Concentrated animal feeding operation permit</u>	<u>600</u>	<u>600</u>
<u>Storm water permit construction, industrial, and mining, oil, and gas activities</u>	<u>2,000</u>	<u>3,200</u>
<u>Traditional storm water municipal separate storm sewer system (MS4) permit</u>		
<u>population greater than 50,000</u>	<u>9,000</u>	<u>11,000</u>
<u>population 10,000 to 50,000</u>	<u>7,000</u>	<u>9,000</u>
<u>population less than 10,000</u>	<u>6,000</u>	<u>8,000</u>
<u>Non-traditional MS4 permit</u>	<u>5,000</u>	<u>7,000</u>
<u>Other MS4 permits</u>	<u>4,000</u>	<u>5,000</u>
<u>Significance determination</u>	<u>4,000</u>	<u>5,000</u>
<u>Storm water outfall - (integrated)</u>	<u>1,000</u>	<u>1,500</u>

⁽⁴⁾ ~~Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.~~

Schedule I.B Application Fee for Non-Storm Water General Permits

Category	Renewal Amount ⁽⁴⁾ Fee	New Permit Fee (includes initial annual fee)
Concentrated animal feeding operation, greater than 1,000 animal units	\$ 450 600	\$ 1,200
Concentrated animal feeding operation less than 1,000 animal units	300	
Construction dewatering	300 400	900
Fish farms	300 600	1,200
Produced water	450 900	1,200
Suction dredge	250	
<u>resident of Montana</u>	<u>25</u>	<u>25</u>
<u>nonresident of Montana</u>	<u>100</u>	<u>100</u>
Sand and gravel	450 900	1,200
Domestic sewage treatment lagoon	500 800	1,200
Disinfected water	500 800	1,200
Petroleum cleanup	500 800	1,200
Storm water associated with construction residential (single family dwelling)	250	
Storm water associated with construction commercial or public	450	
Storm water associated with industrial activities	500	
Storm water associated with mining, oil and gas	500	
Storm water municipal separate storm sewer system (MS4)	1,500	
Ground water remediation or dewatering	700 800	1,400
Ground water potable water treatment facilities	700 800	1,400
Other general permit, not listed above	400 600	1,200

⁽⁴⁾ ~~Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.~~

(i) Application fees in Schedule I.C for authorizations under the general permit for storm water associated with construction activities are based on the total acreage of disturbed land. Renewal application fees will not be required during the general permit renewal cycle, unless the authorization has been in effect for more than four years.

(j) Application fees in Schedule I.C for authorizations under the general permits for storm water associated with industrial activities and mining, oil, and gas activities are based on the total size of the regulated facility or activity in acres.

(k) Application fees in Schedule I.C for authorizations under a general permit for a municipal separate storm sewer system (MS4) are determined by population

based on the latest decennial census from the United States Census Bureau. Applications for MS4 permit coverage with co-permittees will receive a 10% reduction in the application fee.

(l) Modifications to authorizations under the general permit for storm water associated with construction activities will be processed under Schedule I.D as a minor modification if the modification is submitted within six months after the date of issuance of the authorization. Modifications, except for name changes, submitted six months or more after issuance of the authorization will be processed under Schedule I.C as a new permit application.

(m) Modifications, except for name changes, to authorizations under a general permit other than the general permit for storm water associated with construction activities must be processed under Schedule 1.B and I.C as a renewed application.

(n) A facility with a construction storm water no-exposure certification from the department must apply for and receive a new certification every five years in order to maintain a no-exposure status.

Schedule I.C Application Fee for Storm Water General Permits

<u>Category</u>	<u>Renewal Amount</u>	<u>New Permit Amount</u>
<u>Storm water associated with construction</u>		
<u>1 to 5 acres</u>	<u>\$ 900</u>	<u>\$ 900</u>
<u>more than 5 acres, up to 10 acres</u>	<u>1,000</u>	<u>1,000</u>
<u>more than 10 acres, up to 25 acres</u>	<u>1,200</u>	<u>1,200</u>
<u>more than 25 acres, up to 100 acres</u>	<u>2,000</u>	<u>2,000</u>
<u>more than 100 acres</u>	<u>3,500</u>	<u>3,500</u>
<u>Storm water associated with industrial activities</u>		
<u>small - 5 acres or less</u>	<u>1,200</u>	<u>1,500</u>
<u>medium - more than 5 acres, up to 20 acres</u>	<u>1,500</u>	<u>1,800</u>
<u>large - more than 20 acres</u>	<u>1,800</u>	<u>2,000</u>
<u>Storm water associated with mining, oil, and gas</u>		
<u>small - 5 acres or less</u>	<u>1,200</u>	<u>1,500</u>
<u>medium - more than 5 acres, up to 20 acres</u>	<u>1,500</u>	<u>1,800</u>
<u>large - more than 20 acres</u>	<u>1,800</u>	<u>2,000</u>
<u>Traditional storm water municipal separate storm sewer system (MS4)</u>		
<u>population greater than 50,000</u>	<u>7,000</u>	<u>10,000</u>
<u>population 10,000 to 50,000</u>	<u>6,000</u>	<u>8,000</u>
<u>population less than 10,000</u>	<u>5,000</u>	<u>6,000</u>
<u>County MS4 permit</u>	<u>4,000</u>	<u>5,000</u>
<u>Non-traditional MS4 permit</u>	<u>2,000</u>	<u>3,000</u>
<u>Storm water no-exposure certification required once every five years</u>	<u>300</u>	<u>500</u>
<u>Storm water construction waiver</u>		<u>400</u>

(o) The minimum application fee under Schedule I.D for federal Clean Water Act section 401 certification is \$4,000 or 1% of the gross value of the proposed project, whichever is greater, and the maximum fee may not exceed \$20,000.

Schedule I.G D Application Fee for Other Activities

Category	Amount ⁽⁴⁾
Short-term water quality standard, turbidity "318 authorization"	\$ 150 <u>250</u>
Short-term water quality standard, remedial activities and pesticide application "308 authorization"	250 <u>400</u>
Storm water no exposure certification	100
Storm water construction waiver	100
Federal Clean Water Act section 401 certification	Varies ⁽²⁾ <u>See ARM 17.30.201(6)(o)</u>
Review plans and specifications to determine if permit is necessary, pursuant to 75-5-402(2), MCA	½ Applicable Fee <u>2,000</u>
Major amendment <u>modification</u>	Application Fee <u>Renewal fee from Schedule I.A</u>
Minor amendment <u>modification</u> , includes transfer of ownership	200 <u>500</u>
<u>Resubmitted application fee</u>	<u>\$500</u>
<u>Administrative processing fee</u>	<u>\$500</u>

⁽¹⁾ ~~Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.~~

⁽²⁾ ~~Minimum fee is \$350, or 1% of gross value of proposed project, not to exceed \$10,000.~~

~~(a) An application fee for multiple discharge points is not required if there are multiple discharge points from the same source that have similar effluent characteristics, unless the discharges are to different receiving waters or stream segments, or result in multiple or variable (flow dependent) effluent limits or monitoring requirements.~~

~~(b) If a resubmitted application contains substantial changes causing significant additional review, the department may require an additional application fee to be paid before any further review is conducted. The additional fee must be calculated in the same manner as the original fee and based on those parts of the application that must be reviewed again because of the change. The department shall give written notice of the assessment within 30 days after receipt of the resubmittal and provide for appeal as specified in (10) below.~~

~~(6) (7) The fee schedule for new or renewal authorizations to degrade state waters under ARM Title 17, chapter 30, subchapter 7 of this chapter is set forth in Schedule II. Payment of the degradation authorization fee is due upon submittal of the applications. For the domestic sewage treatment and industrial activity categories, the department shall assess a fee for each outfall. If an application for~~

authorization to degrade state waters is denied, the department shall return any portion 15% of the fee that it does not use to review the application submitted.

Schedule II Review of Authorizations to Degrade

Category	Amount
Domestic sewage treatment	\$2,500 ⁽⁴⁾ <u>5,000</u>
Industrial activity	5,000 ⁽⁴⁾
Subdivision, 1-9 lots	120/lot
Subdivision, 10+ lots	200/lot ⁽²⁾

~~(4) Per outfall, limited to a maximum of five falls.~~

~~(2) Maximum fee is \$5,000 per subdivision.~~

~~(a) For purposes of (5) and (6) above, if a resubmitted application or petition contains substantial changes potentially causing additional or different sources of pollution that require the application or petition to be reviewed again, the department may require an additional application fee to be paid before any further substantive review. The additional fee must be calculated in the same manner as the original fee and based on those parts of the application that must be reviewed again because of the change. The department shall give written notice of the assessment within 30 days after receipt of the resubmittal and provide for appeal as specified in (10) below.~~

~~(7) (8) The annual permit fees is are set forth in Schedules III.A, and III.B, and III.C. No annual fee is required for activities listed in Schedule I.CD under (5) of this rule.~~

(a) Under Schedules III.A and III.B, the department shall assess a fee for each outfall. An annual fee for multiple outfalls is not required if there are multiple outfalls from the same source that have similar effluent characteristics, unless the discharges are to different receiving waters or stream segments, or the discharges result in multiple or variable (flow dependent) effluent limits or monitoring requirements. For ground water permits, the department shall assess a fee based on the annual average daily flow in gallons per day for each outfall.

Schedule III.A Annual Fee for Individual Permits

Category	Minimum Fee ⁽⁴⁾	Fee Per Million Gallons of Effluent per Day (MGD)
Publicly owned treatment works - major <u>permit</u>	\$2,000 <u>3,000</u>	\$2,500 <u>3,000</u>
Privately owned treatment works - major <u>permit</u>	3,000	3,000 ⁽²⁾
Publicly owned treatment works - minor <u>permit</u>	4,000 <u>1,500</u>	\$2,500 <u>3,000</u>
Privately owned treatment works - minor <u>permit</u>	4,000 <u>1,500</u>	3,000 ⁽²⁾
<u>discharge of non-contact cooling water</u>	<u>800</u>	<u>800</u>

<u>only</u>		
Privately owned treatment works—minor ⁽³⁾	750	750
Ground water permit, domestic wastes annual average daily flow - gallons per day	750	3,000
<u>0 to 10,000 gpd</u>	<u>1,300</u>	
<u>10,001 to 30,000 gpd</u>	<u>2,000</u>	
<u>more than 30,000 gpd</u>	<u>3,000</u>	
Ground water permit, industrial, or other wastes	4,500	3,000 ⁽²⁾
<u>0 to 1,000 gpd</u>	<u>2,000</u>	
<u>1,001 to 5,000 gpd</u>	<u>2,500</u>	
<u>5,001 to 10,000 gpd</u>	<u>2,800</u>	
<u>more than 10,000 gpd</u>	<u>3,000</u>	
<u>Concentrated animal feeding operation permit</u>	<u>600</u>	
<u>Storm water permit construction, industrial, and mining, oil, and gas activities</u>	<u>2,000</u>	
<u>Traditional storm water municipal separate storm sewer system (MS4) permit</u>		
<u>population greater than 50,000</u>	<u>3,000</u>	
<u>population 10,000 to 50,000</u>	<u>2,500</u>	
<u>population less than 10,000</u>	<u>2,000</u>	
<u>Non-traditional MS4 permit</u>	<u>1,500</u>	
<u>Other MS4 permits</u>	<u>1,500</u>	
<u>Storm water outfall - (integrated)</u>	<u>1,000</u>	

⁽¹⁾ ~~Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.~~

⁽²⁾ ~~Except \$750 per MGD if effluent is noncontact cooling water.~~

⁽³⁾ ~~Noncontact cooling water only.~~

Schedule III.B Annual Fee for Non-Storm Water General Permits

Category	Amount ⁽⁴⁾
Concentrated animal feeding operation, greater than 1,000 animal units	\$300 600
Concentrated animal feeding operation, less than 1,000 animal units	250
Construction dewatering	250 <u>450</u>
Fish farms	250 <u>450</u>
Produced water	450 <u>750</u>
Portable suction dredges	200
<u>resident of Montana</u>	<u>25</u>
<u>nonresident of Montana</u>	<u>100</u>

Sand and gravel production	450 <u>750</u>
Domestic sewage treatment lagoon	500 <u>850</u>
Disinfected water	450 <u>750</u>
Petroleum cleanup	450 <u>750</u>
Storm water associated with construction, residential (single family dwelling)	NA
Storm water associated with construction, commercial or public	450
Storm water associated with industrial activities	650
Storm water associated with mining, oil and gas	650
Storm water municipal separate storm sewer system (MS4)	650
Ground water remediation or dewatering	450 <u>800</u>
Potable water treatment facilities	450 <u>800</u>
Other general permit, not listed above	350 <u>800</u>

~~(4) Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.~~

(b) Annual fees in Schedule III.C for authorizations under the general permit for storm water associated with construction activities are based on the total acreage of disturbed land.

(c) Annual fees in Schedule III.C for authorizations under the general permits for storm water associated with industrial activities and for mining, oil, and gas activities are based on the total size of the regulated facility or activity in acres.

(d) Annual fees in Schedule III.C for authorizations under the general permit for municipal separate storm sewer systems (MS4s) are determined by population in an urbanized area as defined by the United States Census Bureau. The fees must be based on the latest available decennial census data.

Schedule III.C Annual Fee for Storm Water General Permits

<u>Category</u>	<u>Amount</u>
<u>Storm water associated with construction</u>	
<u>1 to 5 acres</u>	\$ <u>700</u>
<u>more than 5 acres, up to 10 acres</u>	<u>800</u>
<u>more than 10 acres, up to 25 acres</u>	<u>1,200</u>
<u>more than 25 acres, up to 100 acres</u>	<u>2,000</u>
<u>more than 100 acres</u>	<u>3,000</u>
<u>Storm water associated with industrial activities</u>	
<u>small - 5 acres or less</u>	<u>1,000</u>
<u>medium - more than 5 acres, up to 20 acres</u>	<u>1,200</u>
<u>large - more than 20 acres</u>	<u>1,500</u>
<u>Storm water associated with mining, oil, and gas</u>	
<u>small - 5 acres or less</u>	<u>1,000</u>
<u>medium - more than 5 acres, up to 20 acres</u>	<u>1,200</u>
<u>large - more than 20 acres</u>	<u>1,500</u>

Traditional storm water municipal separate storm sewer system (MS4)

<u>population greater than 50,000</u>	<u>5,000</u>
<u>population 10,000 to 50,000</u>	<u>4,000</u>
<u>population less than 10,000</u>	<u>2,500</u>
<u>County MS4 permit</u>	<u>1,200</u>
<u>Non-traditional MS4 permit</u>	<u>1,200</u>

~~(a) (e)~~ A facility that ~~consistently discharges effluent at less than or equal to one-half of its effluent limitations and is in compliance with other permit requirements, using~~ maintains compliance with permit requirements, including effluent limitations and reporting requirements, as determined by the previous year's discharge and compliance monitoring data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions in annual fee of up to 25% may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their permit effluent limitations. The annual average of the percentage of use of each parameter limit will be used to determine an overall percentage. A new permittee is not eligible for fee reduction in its first year of operation. A permittee with a violation of any effluent limit permit requirement during the previous year is not eligible for fee reduction.

~~(b) (f)~~ The annual permit fee is assessed for each ~~state fiscal~~ calendar year or portion of the calendar year in which the permit is effective. The fee for the ~~fiscal previous calendar year~~ must be received by the department by no later than March 1 following the commencement of the fiscal year not later than 30 days after the invoice date. The fee must be paid by a check or money order made payable to the state of Montana, ~~d~~Department of ~~e~~Environmental ~~q~~Quality.

~~(8) (9)~~ If a person who is assessed a renewal or annual fee under this rule fails to pay the fee within 90 days after the due date for payment, the department may:

(a) impose an additional assessment consisting of ~~15~~ 20% of the fee plus interest on the required fee beginning the first day after the payment is due. Interest must be computed at the rate of 12% per year, established under 15-31-510(3) 15-1-216(4), MCA; or

(b) suspend the processing of the renewal application for a permit or authorization or, if the nonpayment involves an annual permit fee, suspend the permit, certificate, license, or other authorization for which the fee is required. The department may lift the suspension at any time up to one year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under this ~~subsection~~ rule.

~~(9) (10)~~ The department shall give written notice to each person assessed a fee under this rule of the amount of the fee that is assessed and the basis for the department's calculation of the fee. ~~This notice must be issued at least 30 days prior to the due date for payment of the assessment. The fee is due 30 days after receipt of the written notice.~~

~~(10) (11)~~ Persons assessed a fee under this rule may appeal the department's fee assessment to the board within 20 days after receiving written

notice of the department's fee determination. The appeal to the board must include a written statement detailing the reasons why the permit holder or applicant considers the department's fee assessment to be erroneous or excessive.

(a) If part of the department's fee assessment is not in dispute in an appeal filed under (10) above, the undisputed portion of the fee must be paid to the department upon written request of the department.

(b) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this ~~section~~ rule.

AUTH: 75-5-516, MCA

IMP: 75-5-516, MCA

REASON: Pursuant to 75-5-516, MCA, the board must prescribe fees to be assessed by the department for water quality permit applications, annual permit renewals, review of petitions for degradation, and for other water quality authorizations required under the Montana Water Quality Act, Title 75, chapter 5, MCA. Subject to specific statutory fee caps, the Act requires the board to adopt permit fees that are sufficient to cover the board and department costs of administering the permits and other authorizations required under the Act. Application fees are capped at \$5,000 per discharge point, and annual fees are capped at \$3,000 per million gallons per day. Section 75-5-516(1) and (2), MCA. The Act requires that annual fees cover department costs of administering the program after subtracting application fees, state general fund appropriations, and federal grants. Section 75-5-516(2), MCA.

Program administration costs have increased, but federal and state funding sources have not changed. EPA and state special funding for the program decreased 10% (\$40,000) from FY 2002 through FY 2009, and it is currently unknown if a \$60,000 state general fund appropriation will be available. Consequently, an increase in fees is necessary to defray a portion of the state's costs of maintaining the program. For the biennium the annual budget for the program is approximately \$2.4 million. Revenues of approximately \$2 million must be raised by permit fees. The \$2 million in fees would affect approximately 1,900 permittees. The fee revenue will be supplemented by approximately \$400,000 in special revenue funds and grants to cover the remaining costs of program administration.

Total fee revenue generated annually by the revised fees would be approximately \$2 million. Applications are projected to generate approximately \$255,000, and annual fees are projected to generate approximately \$1.7 million. The \$2 million in fees would affect approximately 1,900 permittees. The fee revenue will be supplemented by approximately \$400,000 in special revenue funds and grants to cover the remaining costs of program administration.

In this rulemaking, the board is proposing to amend the current fee schedules in ARM 17.30.201. The four major proposed amendments to ARM 17.30.201 are: (1) increasing both the application and annual fees for permits and authorizations; (2) establishing fees based on volume discharged for ground water discharges; (3) establishing fees for administrative processing of permit related submittals; and (4)

adding explanatory text in the rules to clarify how fees are assessed under the fee schedules. The proposed amendments are necessary to implement the statutory requirement that fees recover costs of program administration, move the fee schedule toward a system that has more equity among fee payers than the current structure, and improve the readability of the rule and schedules.

In this statement of reasonable necessity, changes to the rule text are discussed first, followed by discussion of the amendments to the fee schedules.

The proposed amendments to (1) would make minor clerical changes and conform (1) to the new schedule format.

Proposed new (2) would add definitions associated with fee assessment. The definitions are necessary to clarify how the fee schedules apply.

The proposed amendments to existing (2), (3), and (4), (renumbered (3), (4), and (5)) would make minor clerical changes and add to the list of types of application for which fees are provided in the revised schedules. These amendments are necessary for clarity.

The proposed amendments to existing (5) (renumbered (6)) would make minor clerical revisions and provide that applications are incomplete without fees. The amendments clarify that the first annual fee is included in the new permit fee listed in Schedule I.B application fees.

Proposed new (6)(a) would clarify that the application fees in Schedules I.A and I.B are based on the number of outfalls and describes when multiple outfalls can be combined under a single fee. These provisions are necessary to provide clarity in the rule about the assessment process.

Proposed new (6)(b) would establish a review fee for resubmitted applications that have substantial changes or deficiencies requiring significant additional review. As set out in Schedule I.D, the resubmittal fee is \$500. This new fee is necessary to recover additional review costs caused by changes or deficiencies in applications. This new subsection would also provide that a new application fee is required if an application has been denied for a year or more. In those situations, a complete re-review is often required, and the additional fee is necessary to recover the additional review costs.

Proposed new (6)(c) would provide for an administrative processing fee for review of substantial changes to certain management plans. As set out in Schedule I.D, the fee is \$500. This new fee is necessary to address additional review and public notice costs pertaining to changes in management plans.

Proposed new (6)(d) would provide that application fees are nonrefundable except as provided by 75-5-516(1)(d), MCA. The statute provides that a partial refund, based on avoided enforcement costs, must be made for applications that are not issued. This proposed new subsection would establish the refund amount at 25% of the fee. This reflects the approximate average per-permit cost of enforcement actions. The proposed new subsection would also limit the refund to cases in which the permit application is withdrawn within 30 days. This provision is necessary to recover review costs, beyond those recovered in the application fee, for applications that are active more than 30 days but subsequently withdrawn.

Proposed new (6)(e) would require facilities with an expired individual permit to pay the new permit application fee upon reapplication. This is necessary to create an incentive for facilities to timely apply for renewal of permits, which avoids

administrative and enforcement costs associated with processing expired permit renewals.

Proposed new (6)(f) would require a fee for significance review of discharges from new or increased sources, as defined in water quality nondegradation requirements. Significance review is currently required in order to comply with the requirements of the Water Quality Act nondegradation provisions, but a separate fee is not currently in effect. The proposed review fee is necessary to recover review costs.

Proposed new (6)(g) would allow storm water discharges from industrial activities, or mining or oil and gas activities, to be incorporated into a non-storm water discharge permit application, at a lower fee. This new subsection is necessary to describe current practices that simplify the application process.

Proposed new (6)(h) and (k) clarify that fees for MS4 individual permits are based on population as determined by the latest U.S. decennial census. These new subsections are necessary to describe current fee calculation procedures and to comply with federal rules pertaining to MS4 permits.

Proposed new (6)(i) clarifies that application fees for authorizations under the general permit for storm water associated with construction activities are based on the total acreage of disturbed land. Renewal fees are not required when the general permit is reissued unless the facility's authorization has been in effect for more than four years. This new subsection is necessary to describe current procedures for fee assessment, to comply with federal rules pertaining to construction storm water permits, and to avoid unnecessary renewal fees for facilities who are authorized under a general permit and who are required to reapply when a new general permit is issued.

Proposed new (6)(j) clarifies that application fees for authorizations under the general permits for storm water associated with industrial activities and mining, oil, and gas activities are based on the total acreage of the regulated facility or activity. This new subsection is necessary to describe current procedures for assessing fees for these applications.

Proposed new (6)(l) and (m) explain how fees are assessed for modifications of general permit authorizations. Modifications to authorizations under the construction storm water general permit can be processed as a minor modification under Schedule I.D if submitted within six months of the authorization. Modifications after that, other than name changes, are subject to the new permit fee. The reason for this is that construction storm water modifications after six months tend to involve significant project extensions, which require the additional processing fee. For authorizations under the other storm water general permits, modifications are processed as renewal applications.

Proposed new (6)(n) would provide that a storm water no-exposure certification must be renewed every five years to remain effective. This new subsection is necessary to describe current procedures and to comply with federal rules pertaining to industrial storm water permits.

Proposed new (6)(o) would replace the former footnote for Schedule I.C pertaining to fees for 401 certifications. The minimum fee is proposed to be increased from \$350 to \$4,000. The new subsection is necessary to describe how fees are assessed for 401 certifications, and the fee increase is necessary to

recover review costs.

Existing (6) is being renumbered (7) and is proposed to be amended to make minor changes for clarity and to incorporate a former footnote. The amendments also propose that 15% of the application fee for applications to degrade will be returned if the application is denied. This percentage is necessary based on the expectation that applications to degrade will be complex and will require extensive department review time even if the application is ultimately denied.

Existing (7) is being renumbered (8) and is proposed to be amended. The proposed amendments are necessary to make minor changes for clarity and to incorporate a former footnote regarding outfalls.

The provisions in new (8)(a) regarding multiple outfalls are from the current rules and are not substantively altered.

Proposed new (8)(b) would clarify that annual fees for authorizations under the general permit for storm water associated with construction activities are based on the total acreage of disturbed land. This new subsection is necessary to describe current fee assessment procedures and to comply with federal rules pertaining to construction storm water permits.

Proposed new (8)(c) would clarify that annual fees for authorizations under the general permits for storm water associated with industrial activities and mining, oil, and gas activities are based on the total acreage of the regulated facility or activity. This new subsection is necessary to describe current procedures for assessing annual fees for these authorizations.

Proposed new (8)(d) would clarify that annual fees for MS4 general permit authorizations are based on population as determined by the latest U.S. decennial census. This new subsection is necessary to describe current procedures and to comply with federal rules pertaining to MS4 permits.

Existing (7)(a) is being renumbered (8)(e) and is proposed to be amended to modify the current provisions pertaining to reduction in annual fees for permit compliance. The current subsection provides a 25% reduction to facilities that discharge at half or less than half of their permitted limits. The amendments propose to provide the 25% reduction to all facilities that maintained compliance with all permit requirements in the previous calendar year. Administration of the current subsection has proven to be difficult and unfairly penalizes facilities that reduce pollutants by less than half the effluent limit, even if the reduction is achieved at a large cost. The current subsection is based on the statute at 75-5-516(2)(b)(ii), MCA. The proposed amendments are necessary to make administration of the fee reduction simpler. The proposed amendments meet the statutory requirement for fee reduction but extend the reduction to other permittees as well.

Existing (7)(b) is being renumbered (8)(f) and is proposed to be amended to change the annual fee assessment period from the fiscal year to the calendar year. This would not lead to a change in department practice. Annual fees are currently assessed on a calendar year basis. The reason for this is that annual fees are based on the volume and concentration of waste discharged into the state waters based on discharge data, and the discharge data is collected on a calendar year basis. Also, 75-5-516(2)(b)(ii), MCA, requires that the 25% reduction in the annual permit fee be based on the previous calendar year's discharge data. The amendment to the subsection is necessary to reflect current fee assessment

practices and to provide for more efficient administration of the annual fees.

Existing (8) and (9) are being renumbered (9) and (10) and are proposed to be amended to make minor changes to the existing rules pertaining to late fees and interest for unpaid permit fees. The amendments are for clarification and to correct an erroneous statutory reference. Section 75-5-516(5)(a), MCA, requires that interest be computed on unpaid fees as provided in 15-1-216, MCA. The current section erroneously refers to 15-31-510(3), MCA, which does not exist. The amendments also raise the late fee from 15% to 20%, which is the maximum allowed by the statute, and clarify that the late fees and interest apply to both permit renewal and permit annual fees that are overdue. The amendments are necessary to clarify how late fees and interest are assessed, and to conform the rule to the statute.

Existing (10) is being renumbered (11) and is proposed to be amended to correct an erroneous cross-reference, and make a minor clerical change. As provided by 75-5-516(8), MCA, the appeal process set out in this section applies to any fee assessed under this section. The proposed deletion of references elsewhere in this rule to the appeal process is intended to avoid duplicative language, and is not intended to limit the availability of appeals.

Fee Schedules

The proposed amendments to the fee schedules are necessary to implement the statutory requirement that fees recover costs of administration after special revenue and federal grant funds are used, and to move the fee schedule toward a system that has more equity among fee payers than the current structure.

The proposed amendments to the schedules delete the footnotes and replace them with new subsections. The reformatting does not change the meaning of the schedules or the rule.

The revisions to Schedule I.A increase the application fees for individual permits as shown and propose to add specific categories for ground water dischargers. Individual ground water discharge permit holders would be grouped, for fee purposes, by discharge volume. A fee for significance review is added, which is necessary to recover costs of determining whether permitted activities will result in nonsignificant changes in existing water quality.

The revisions to Schedule I.B, pertaining to general permit authorizations, increase the existing fees as shown. The new schedule includes a renewal amount for facilities with effective permit coverage and a slightly higher rate for facilities that have never had permit coverage. A new column has been added to address new permit coverage. This column includes the annual fee for the first year the permit coverage is effective. The existing categories for storm water general permits are deleted and moved in modified form to new Schedule I.C.

A new Schedule I.C is proposed that addresses application fees for storm water general permits. The proposed new fees are higher and are based on the size of the project or regulated activity. Larger facilities will pay a higher fee than smaller facilities. As provided in the proposed amendments to (6)(i), when a construction storm water general permit is reissued, renewal fees will not be required from authorization holders if their coverage has not been effective for more than four

years. The proposed new fee schedule eliminates the categories of commercial, public and residential storm water discharges. This amendment is necessary because review fees vary with acreage rather than the type of development.

The revisions to Schedule I.D increase application fees for other activities as shown and propose to move the storm water fees to new Schedule I.C.

The revisions to Schedule II propose to increase fees for review of domestic authorizations to the same level as for industrial authorizations. The amendments also eliminate differentiation based on the number of lots in a subdivision. Although no applications to degrade have been received since the process was created, these amendments are necessary because applications are expected to be complex and expected to require extensive department review time regardless of the type or size of the discharge.

The amendments to Schedule III.A increase annual fees for individual permits as shown. Fees for ground water discharge permits are based on the amount of the discharge.

The amendments to Schedule III.B increase annual fees for non-storm water general permits as shown. The amendments move storm water annual permit fees to the new Schedule III.C.

A new Schedule III.C is proposed that addresses annual fees for storm water general permits. The proposed new fees are higher than previous annual fees and are based on the size of the project or regulated activity.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., September 10, 2009. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered

to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

BY: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State, August 3, 2009.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) PRESIDING OFFICER'S REPORT
17.30.201 pertaining to permit fees)

On September 3, 2009, the undersigned presided over and conducted the public hearing held in Room 35 of the Metcalf Building, Helena, Montana, to take public comment on the above-captioned proposed amendments of existing rules. The amendments propose revisions to ARM 17.30.201 to adjust the discharge permit fee schedule for applications, authorizations and annual permit fees.

Pursuant to Mont. Code Ann. § 75-5-516, the Board of Environmental Review (“Board”) must prescribe fees to be assessed by the Department of Environmental Quality (“Department”) for water quality permit applications, annual permit renewals, review of petitions for degradation and for other water quality authorizations required under the Montana Water Quality Act, Mont. Code Ann. § Title 75, Chapter 5. Subject to specific statutory fee caps, the Montana Water Quality Act requires the Board to adopt permit fees that are sufficient to cover the Board and the Department of Environmental Quality’s costs of administering the permits and other authorizations required under the Montana Water Quality Act.

The four major proposed amendments to ARM 17.30.201 are:

- (1) to increase both the application and annual fees for permits and authorizations;
 - (2) to establish fees based on volume discharged for ground water discharges;
 - (3) to establish fees for administrative processing of permit related submittals;
- and
- (4) to add explanatory text in the rules to clarify how fees are assessed under the fee schedules.

The Notice of Public Hearing on Proposed Amendment was contained in the 2009 Montana Administrative Register (MAR) No. 15, MAR Notice No. 17-290, published on August 13, 2009 at pages 1335 through 1352. A copy of the notice is

attached to this report. (Attachments are provided in the same order as they are referenced in this report.).

The hearing began at 1:30 p.m. and was transcribed by Ms. Laurie Crutcher of Helena, MT.

The Presiding Officer announced that persons at the hearing would be given an opportunity to submit their data, views, or arguments concerning the proposed action, either orally or in writing. At the hearing, the Presiding Officer also identified and summarized the MAR notice, stated that copies of the MAR notice were available in the hearing room, and read the Notice of Function of Administrative Rule Review Committee as required by Mont. Code Ann. § 2-4-302(7). The rulemaking interested persons list and the opportunity to have names placed on that list was addressed.

SUMMARY OF HEARING

Ms. Jenny Chambers, Chief of the Water Protection Bureau of the Department of Environmental Quality (“Department”) presented written and oral testimony explaining the rule amendments. She recommended that the rule amendments be adopted as proposed in the MAR notice. (Ms. Chambers’ comments are attached.)

There were nine members of the public who presented oral testimony. The individuals who provided testimony were:

(1) Mr. Albert Molignoni, on behalf of the County Water & Sewer District of Rocker. He said the new fees penalize smaller communities in that they have to pay much more per customer for a minor permit cost than a larger community would pay per customer.

(2) Mr. Mac M. Mader, from Montana Gold and Sapphires, Inc., stated that for the discharge permit, this is not the time to increase fees.

(3) Mr. Louie Bouma stated that his (post and pole) business is in Lincoln, Montana and in Montana there is discrimination regarding storm water discharge permits. More people are required to obtain these permits.

(4) Mr. Mike Newton, of Livingston, Montana with Fischer Sand and Gravel stated that, as to the storm water discharge permits his company applies for, it can't afford the triple or quadruple increase in costs.

(5) Jon Metropoulos, an attorney in Helena, Montana speaking for Fidelity Exploration, Montana Petroleum Association, and WBI Holdings, stated that there should be more time to provide comments, that fee increases are high and that 401 consultation fees are extremely high. He stated further written comments would be submitted.

(6) Mr. Don Allen of the Western Environmental Trade Association stated that he would submit written comments. He stated review, for purposes of determining fee increases, should occur every year, not every three years. The reason for the size of the increase should be better explained. In the review fee, the terms "substantial" and "significant" in reference to alterations should be defined. Fees are not to be used for enforcement but for the permitting program.

(7) Mr. Cary Hegreberg of the Montana Contractors' Association stated there is a substantial increase in fees for storm water permits. He questions whether the value of the project is a good basis for a fee especially if water quality impacts are small. He questions what "variable flow effluent limits" are and what a "substantial alteration." is. The more of a burden that is placed on projects, the less infrastructure the public receives for its tax dollars.

(8) Mr. John Camden of Montana Rural Water Systems in Great Falls Montana stated that the fees are large and are not based on population but on the number of septic connections including for seniors and the unemployed (who are unable to afford the increase).

(9) Mr. Ed James with Sugarloaf Wool in Hall, Montana stated that other facilities don't pay fees. It takes one to one and one-half years to get a renewal done. The process should be more timely.

SUMMARY OF WRITTEN MATERIALS

After the hearing, written comments were timely received from the Montana Contractors' Association (Cary Hegreberg), Gail Faber; the Montana Petroleum

Association, Inc. (David Galt), Al Towleron, Stacy Hill, County Water & Sewer District of Rocker (Albert Molignoni), Spurling Feedyard, LLC (Warren Frank), Fidelity Exploration & Production Company (David Olson), Western Environmental Trade Association (Don Allen); Montana Department of Transportation (Tom Martin) Columbia Falls Aluminum Company, LLC (Haley Beaudry). The written comments are attached.

The Department also submitted a Memorandum from DEQ staff attorney, Mr. Jim Madden, with HB 521 and HB 311 reviews of the proposed amendments together with a Private Property Assessment Act Checklist. Mr. Madden's Memorandum is attached to this report.

Mr. Madden concluded that no special findings concerning comparative stringency of federal and state rules are required under HB 521 because there are no comparable federal fee rules.

With respect to HB 311 (the Private Property Assessment Act, Mont. Code Ann. §§ 2-10-101 through 105), the State is required to assess the taking or damaging implications of a proposed amendments affecting the use of private real property. A Private Property Assessment Act Checklist was prepared, which shows that the proposed amendments do not have taking or damaging implications. Therefore, no further assessment is required.

The period to submit comments ended at 5 p.m. on September 10, 2009.

PRESIDING OFFICER COMMENTS

The Board and the Department have jurisdiction to adopt the amendments referenced in this rulemaking pursuant to Mont. Code Ann § 75-5-516.

House Bill 521 (1995), codified at Mont. Code Ann. §§ 75-5-203 and 75-5-309 generally provides that the Board may not adopt a rule that is more stringent than comparable federal regulations or guidelines, unless the Board makes written findings after public hearing and comment. The proposed amendments are not comparable to federal regulation or guidelines. Therefore written findings are not necessary.

House Bill 311 (1995), the Private Property Assessment Act, codified at Mont. Code Ann. § 2-10-101 through -105, provides that a state agency must complete a

review and impact assessment prior to taking an action with taking or damaging implications. A Private Property Assessment Act Checklist was prepared in this matter. The proposed amendments do not have direct taking or damaging implications for property. Therefore, no further HB 311 assessment is necessary.

The procedures required by the Montana Administrative Procedure Act, including public notice, hearing, and comment, have been followed.

The Board may adopt the proposed rule amendments or reject them, or adopt the rule amendments and new rule with revisions not exceeding the scope of the public notice.

Under Mont. Code Ann. § 2-4-305(7), for the rulemaking process to be valid, the Board must publish a notice of adoption within six months of the date that the Board published the Notice of Public Hearing On Proposed Amendment in the Montana Administrative Register, or by February 13, 2010.

Dated this ___ day of December, 2009.

KATHERINE J. ORR
Presiding Officer



**Montana Department of
ENVIRONMENTAL QUALITY**

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

MEMORANDUM

To: Board of Environmental Review

From: Jim Madden
DEQ Legal Counsel *JM*

Re: **In the matter of the amendment of ARM 17.30.201 pertaining to permit fees.**
MAR Notice No. 17-290: HB 521 Analysis and Takings Checklist

Date: September 3, 2009

Background

In this rulemaking, the Department has requested that the Board amend the fee rules pertaining to water quality discharge permits. The four major proposed amendments to ARM 17.30.201 are: (1) to increase both the application and annual fees for permits and authorizations; (2) to establish fees based on volume discharged for ground water discharges; (3) to establish fees for administrative processing of permit related submittals; and (4) to add explanatory text in the rules to clarify how fees are assessed under the fee schedules.

HB 521 Analysis

The Board's authority to adopt the proposed rules is found in the water quality statutes, §§ 75-5-301 and 75-5-303, MCA. Pursuant to § 75-5-203, MCA, the Board may not adopt a rule to implement Title 75, Chapter 5, that is more stringent than comparable federal regulations or guidelines that address the same circumstances, unless the Board makes certain written findings establishing the need for the rule. Section 75-5-309, MCA, requires similar written findings before the Board may adopt rules to implement Title 75, Chapter 5, MCA, that are more stringent than corresponding draft or final federal regulations, guidelines, or criteria.

The United States Environmental Protection Agency does not charge fees for issuance of discharge permits under the federal Clean Water Act, and there are no comparable federal fee rules. Consequently, no special findings are required under HB 521 for the Board to adopt the proposed rules.

Private Property Assessment Act

Section 2-10-101, MCA, requires that, prior to adopting a proposed rule that has taking or damaging implications for private real property, an agency must prepare a taking or damaging impact statement. "Action with taking or damaging implications" means:

[A] proposed state agency administrative rule, policy, or permit condition or denial pertaining to land or water management or to some other environmental matter that if adopted and enforced would constitute a deprivation of private property in violation of the United States or Montana Constitution.

Section 2-10-103, MCA.

Section 2-10-104, MCA, requires the Montana Attorney General to develop guidelines, including a checklist, to assist agencies in determining whether an agency action has taking or damaging implications. A completed Attorney General checklist for the proposed rules is attached. Based on the guidelines provided by the Attorney General, the proposed rule amendments do not constitute an "action with taking or damaging implications" in violation of the United States or Montana Constitutions.

Attachment: Attorney General HB 311 Checklist

**Board of Environmental Review
MAR Notice No. 17-290**

In the matter of the amendment of ARM 17.30.201 pertaining to permit fees.

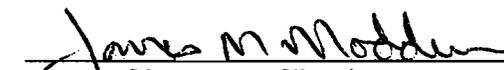
PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

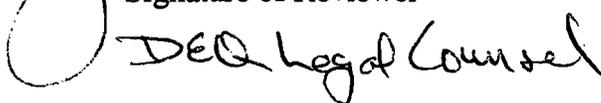
**DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS OR DAMAGINGS IMPLICATIONS
UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?**

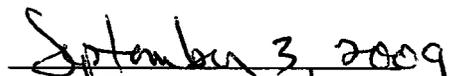
YES NO

X		1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
	X	2. Does the action result in either a permanent or indefinite physical occupation of private property?
	X	3. Does the action deny a fundamental attribute of ownership? (ex.: right to exclude others, disposal of property)
	X	4. Does the action deprive the owner of all economically viable uses of the property?
	X	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If no, go to (6)].
		5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
		5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
	X	6. Does the action have a severe impact on the value of the property? (consider economic impact, investment-backed expectations, character of government action)
	X	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally?
	X	7a. Is the impact of government action direct, peculiar, and significant?
	X	7b. Has government action resulted in the property becoming practically inaccessible, waterlogged or flooded?
	X	7c. Has government action lowered property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?
	X	Takings or damaging implications? (Taking or damaging implications exist if YES is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if NO is checked in response to questions 5a or 5b; the shaded areas)

If taking or damaging implications exist, the agency must comply with §5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, preparation of an impact assessment will require consultation with agency legal staff.



 Signature of Reviewer




 Date

Johnson, Elois

From: Olson, Dave [Dave.Olson@fidelityepco.com]
Sent: Thursday, September 10, 2009 2:32 PM
To: Johnson, Elois
Cc: Joe.Icenogle@fidelityepco.com
Subject: comments MAR Notice No. 1-290
Attachments: BER comment LTR fee increase 9-9-09.pdf

Please find attached a comment letter for MAR Notice No. 17-290 due 9/10/09 @ 1700.

Thank you
Dave Olson
Fidelity E&P


Exploration & Production Company

September 9, 2009

Elois Johnson
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

RE: Comments on Proposed Administrative Rule amendment: MAR 17-290

Dear Ms Johnson:

Fidelity Exploration & Production Company (Fidelity) is providing this letter as formal comment to the Proposed Administrative Rule amendment: MAR 17-290. Fidelity has received, reviewed and agrees with the Montana Petroleum Association's (MPA) comments submitted to the Montana Department of Environmental Quality September 10, 2009. Fidelity offers the following additional comments:

- Stormwater permit proposed fees are excessive and need to be brought in line with other proposed fee increases. In some cases, the stormwater fee increase is over 300%. Fidelity agrees with the Montana Petroleum Association's views that proposed fee increases should commensurate with level of effort necessary to issue the permit and the cost. Fidelity further agrees with the Montana Petroleum Association's comments that the Department undertakes an analysis of the entire program funding issue including equity between permit types. This approach would help justify the level of the fee increase and may provide more insight into permit program funding at the Department. Fidelity further suggests that the water program fee increases be suspended pending this analysis.
- Section 17.30.201 (6) (a) significantly increases the fees for Section 401 consultation wherein the minimum fee goes from \$350 to \$4,000 and the maximum fee is doubled from \$10,000 to \$20,000. MDEQ has not provided any justification for such a fee increase for a paper process. MPA members are required to get a 401 certification or waiver on any surface discharge related to a federal permit or license. Generally, a waiver is granted because the respective discharge is already subject to an issued MPDES permit. These fees increase are unwarranted. MDEQ's informal response to comments dated June 22, 2009 states (pg. 4, 8.): "Response: No; pursuant to the Administrative Rules of Montana, Title 17, Chapter 30, paragraph 105(2) the Department may waive certification if the activity will require an MPDES permit. The Department would not require a \$20,000 fee to confirm permit coverage." This verbiage needs to be incorporated into the proposed Administrative Rule amendment MAR 17-290.

We appreciate your consideration of these issues. Should you have any questions or comments, please feel free to give me a call at (307) 675-4918.

Sincerely,



David Olson
Senior Environmental Engineer

2009-08-19
11:00 AM
11:00 AM

Spurling Feedyard L.L.C.
1103 South Hart Road
Laurel, Montana 59044
Warren Frank member

August 19, 2009

Department of Environmental Quality
Water Protection Bureau
P. O. Box 200901
Helena, Montana 59620-0901

Re: Amendment of ARM 17.30.201 permit fees.

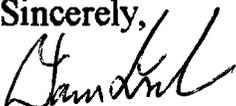
Dear Sirs:

Since my interest is in the fees charged to a CAFO under 1000 head, I will only address the proposed change in fees for that specific category.

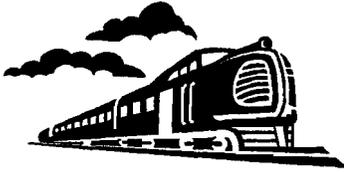
My concerns about the change in fees are:

1. The fees for a CAFO under 1000 head is doubled. If the reason to increase fees is to meet increased costs of administration, I find it hard to believe that administration costs have doubled since the inception of the original fees.
2. The doubling of rates for a CAFO under 1000 head is far greater than the increase for a CAFO over 1000 head. I find this to be discriminatory and also counterproductive to protecting water quality. It forces a CAFO to become bigger in order to justify the expense of a permit. This leads to fewer and larger and potentially more environmentally damaging CAFOs.
3. As has been pointed out by many economists and commentators, raising fees and taxes during a severe recession such as the one we are now facing is a dangerous path concerning the recovery of our economy.

Sincerely,



Warren Frank



County Water & Sewer
District of Rocker
1108 Grizzly Trail
Butte, MT 59701

August 20, 2009

Elois Johnson, Paralegal
Dept. of Environmental Quality
P.O. Box 200901
Helena, MT 58620-0901

Re: New Fee Schedule

Dear Ms. Johnson:

Upon reviewing your new fee schedule document at our most recent Board meeting, the Board unanimously agreed that the new fees are highly unjust. We feel like these new fees penalize the smaller communities to the point where users may no longer be able to afford the system. Following is an example: Under your new schedule a major permit costs \$5,000 with 10,000 sewer connections, which averages out to a cost of \$.50 per customer, per year. On the other hand, a minor permit cost of \$2,500 with 50 sewer connections averages out to a cost of \$50.00 per customer, per year. This is **one hundred (100) times more** per year for the customers in the smaller district.

We feel that this new schedule is highly discriminatory to the smaller districts in the State of Montana. In your document on page 1350, in the first paragraph under Fee Schedules it states "The proposed amendments to the fee schedules are necessary to implement the statutory requirement that fees recover costs of administration after special revenue and federal grant funds are used, and to move the fee schedule toward a system that has more equity among fee payers than the current structure." This is definitely not so according to my example in paragraph one.

We feel that the DEQ should, at this time, abandon this type of fee schedule and research other means of producing money for these waste water fees. Perhaps an Attorney General's opinion should be sought out on this matter, or maybe the courts, to determine whether there is a discrimination factor regarding this fee schedule.

Sincerely yours,

Albert Molignoni
Chairman

Am/sw



Montana Contractors' Association
PO Box 4519
Helena, MT 59604
Ph: 406.442.4162
F: 406.449.3199

September 10, 2009

Elois Johnson
Montana DEQ
PO Box 200901
Helena, MT 59620-0901

Concerning: MAR Notice No. 17-290

On behalf of the member companies of the Montana Contractors' Association, I am submitting the enclosed comments regarding the proposed amendments of ARM 17.30.201 pertaining to permit fees. We appreciate the opportunity to follow up on our previous oral testimony during the Sept. 3 public hearing.

We are concerned primarily with the substantial increases in fees for stormwater permits, which our member firms procure on a routine and frequent basis. While we have not reviewed the Department's spreadsheets that project revenues based on various fee schedules, it appears difficult to justify the proposed increases based on DEQ's budget shortfalls. If you double/triple the fee, you will double/triple the revenue, which does not mesh with our understanding of the revenue shortfall.

Currently, a new stormwater permit fee totals \$450/year, regardless of the disturbed acreage. Under the new proposal, it appears the initial application fee is \$950, plus a \$450 annual fee for the smallest acreage permits, which doubles the first year's fees. However, for sites larger than 25 acres, the fee increases nearly fourfold. We do not believe the fees fairly reflect actual administrative costs for the program. The application forms and data entry time for general permits are identical whether for a two acre project or a 90 acre project—so why is the application fee different?

Permits for sand and gravel (open cut mines) go from a \$450 one-time fee to a \$1200 application fee and a \$900 annual fee thereafter. This is excessive and unduly penalizes small operations, especially those located in dry sites with no possible drainage to receiving waters. Similarly, construction sites located in dry, remote areas of Montana with no perennial or even intermittent stream anywhere nearby, do not pose a threat to water quality. DEQ indicates that EPA requires fees to reflect pollutant loading, but sediment particles are not "pollutants" unless they enter the water, which in the above case, clearly never will.

It appears to us that construction activities are bearing an unfair burden because sediment is normally the only "pollutant" of concern, yet the fee schedule for other activities that involve numerous pollutants of concern, does not adequately reflect the different risks.

We are also perplexed by the proposed language on p. 1341 which states, "the minimum application fee under schedule I.D for federal clean water act section 401 certification is \$4,000 or 1% of the grow value of the proposed project, whichever is greater and the maximum fee may not exceed \$20,000." How does the value of the project relate to DEQ's cost of administering the program? Renovating/upgrading a hydroelectric power plant might cost the owner \$100 million but involve relatively little risk to water quality. Fees should be tied to potential risk and the Department's administrative burden, not value of the project.

In section 6 on p. 1337, the proposal says the new permit fee amount covers "the annual fee for the calendar year which the permit coverage becomes effective." The way we read this statement, an applicant could pay the new fee amount in December of one year and be subject the annual renewal fee a month later. This was addressed during the Q&A at the hearing, but we would like clarification or modification of this issue.

Under section 6(a) on p. 1337, we do not understand what is intended. Especially confusing is the statement, "...or result in multiple or variable (flow dependent) effluent limits or monitoring requirements." While this section might be warranted and justified, we request that it be clarified.

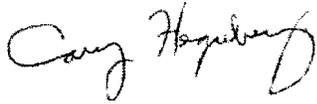
Section 6(c) on that same page authorizes the Department to assess an administrative processing fee "when a permittee makes substantial alterations or additions to a sediment control plan, waste management plan, nutrient management plan, or storm water pollution prevention plan." How much is the fee, and what constitutes a "substantial alteration?" Further, because permittees are encouraged to actively monitor and amend these plans, it seems that dinging them with administrative fees is a deterrent to "doing the right thing."

There were several statements made during the Sept. 3 hearing indicating that EPA is forcing some of the proposed changes and that DEQ senses a threat that EPA could take over the program if significant changes, such as fee increases, are not made. We would appreciate receiving any correspondence, minutes from meetings, or notes from phone conversations in which EPA has asserted that DEQ is deficient or negligent in its administration of the stormwater program.

Finally, we would point out that in most cases, contractors who secure stormwater permits simply pass these fees on to the owner of a construction project. That owner is often another taxpayer-funded public entity that is attempting to build as much infrastructure as its budget will allow. The more overhead and administrative burden placed on these projects, the less infrastructure the public receives for its tax dollars. Private owners of construction projects similarly get less construction and more bureaucracy for their money—hardly conducive to "economic stimulus."

We request that our concerns be addressed in a re-write of the proposed fees. Thank you for the opportunity to comment.

Respectfully,

A handwritten signature in cursive script, appearing to read "Cary Hegreberg".

Cary Hegreberg
Executive Director

David A. Galt
Executive Director

OFFICERS

Brian Cebull, President
Nance Resources

Geoff Craft, Vice President –
Down Stream, ExxonMobil

Shawn Heringer, Vice President
Up Stream, St. Mary Land & Exp

Chip Youlden, Treasurer
Helis Oil & Gas Company

BOARD OF DIRECTORS

Bill Ballard
Ballard Petroleum Holdings LLC

Dave Ballard, President
Ballard Petroleum Holdings LLC

Colby Branch
Crowley Fleck

Cole Chandler
NFR Energy LLC

John Evans
Oilfield Consultants, Inc.

Bob Fisher
Augustus Energy Partners, LLC

Leo Heath
Montana Tech

Dan Hickman
Jefferson Energy Trading LLC

Terry Holzwarth
Sequel Energy

Dana Johnson
Enerplus Resources

Pat Kimmet
CHS Inc.

Jack King
Hancock Enterprises

Dana Leach
Montana Refining Company

Perry Pearce
ConocoPhillips

Ron Santi
St. Mary Land & Exploration Co.

Dave Schaaenen
DLD Enterprises

Sam Sitton
Devon Energy Corp.

John Smith
NorthWestern Energy

Steve Steach
ConocoPhillips

Keith Tiggelaar
WBI Holdings, Inc.

Kevin Treadway
Encore Operating LP

Dana Warr
Fidelity Exploration & Production

Bruce Williams
Foresight Consulting, LLC

Lisa Wynn
XTO Energy

September 10, 2009

Elois Johnson
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Subject: Comments on Proposed Administrative Rule amendment: MAR 17-290

The Montana Petroleum Association (MPA) appreciates the opportunity to offer these comments. The Montana Petroleum Association represents all segments of the petroleum industry in Montana including oil and gas exploration and production and all four Montana petroleum refineries.

MPA would like to offer a general statement for consideration of the Board regarding storm water permitting and its applicability to oil and gas. While we are aware of the potential to impact water quality if we are not vigilant with our site practices, this regulatory program is very difficult to apply to the planning and development of our business. Our work is essentially a repetitive process based on the number of wells in a field. Once control procedures are developed for a well location, pipeline, or road, we apply those same procedures to every new construction project from water's edge to several miles away.

When we originally complete a plan for the development of an area we are simply unable to predict the exact number of wells required for maximum resource extraction. Currently, the addition or subtraction of a well from a plan requires a reapplication for a new permit with a new fee, because this change is considered a significant modification. Drilling fewer wells in a plan of development should not be considered a significant modification (as proposed in 17.30.201 (6) (I)). MPA asks the board to consider analysis of storm water permitting regulations to oil and gas development with the goal of developing program regulations that ease the workload on both MPA members and DEQ staff. Since the pending action on these rules would not afford the time necessary to revise the permitting program we request objective definitions to the following words:

- Major and minor modification (17.30.201(6)(I))
- Flow dependent (17.30.210(6)(a))
- Major facility (17.30.201(2)(d))
- Significant additional review 17.30.201 (6) (b)
- Stream segments (17.30.201 (6) (a))
- Substantial
 - Changes (17.30.201 (6) (b))
 - Alterations (17.30.210 (6) (c))
 - Additions (17.30.201 (6) (c))

During the stakeholder review process MPA submitted comments to the draft permit fee rule. We received conflicting answers to two questions regarding the effect of additional or reduced wells in a plan of development. This is a MAJOR source of our concern with this rule, and clarification is needed to provide clarity regarding which changes trigger a new permit application.

The cost increases are significant; in fact they are severe. While we understand the concept that the program should be funded by user fees; we question the individual cost increases on certain permits. MPA questions the relationship between the Department's staff effort necessary to issue the permit and the permitting costs. We understand that the Air Quality Permit Bureau is undertaking an analysis of the entire program funding issue, including equity between permit types. The Air Bureau approach appears to help justify the level of the fees and may provide more insight into permit program funding at the Department.

It appears that the increases of individual fees have been based on some numerical analysis developed to balance the budgetary shortfall in the program. MPA suggests that fee increases be commensurate with the level of effort and associated expense for that effort. MPA believes the air program approach, which incorporates stakeholder input, is more appropriate. MPA further suggests that the water program fee increases be suspended pending similar analysis.

MPA submits the following specific comments regarding the proposed rule changes:

17.30.201 (3). We have noticed a word change between the draft used in stakeholder meetings and the noticed rule on the determination of significance. We question if there any substantive difference between using "determination of no significance" or "determination of significance"? If the change is grammatical we have no issue, but if there is a reason we would like that reason explained.

17.30.201 (6) (a) Please define how you determine a different outfall per stream segment.

17.30.201 (6) (c) Our general comment above applies here. MPA is concerned that improvements to field operations, such as a determination on our part of fewer wells, or additional wells, will result in the requirement to make a new permit application. This should be accepted by the Department as an amendment for notification purposes with no requirement for a new application and associated fees.

17.30.201 (6) (g) This section appears to conflict with 201 (6)(a). Can these be combined to avoid confusion?

17.30.201 (6) (l) Please refer to MPA's comments and concerns above regarding the implementation of the common plan of development throughout the year. Currently, the addition or subtraction of a well in a plan requires a reapplication for a new permit with a new fee because it is considered a significant modification. Drilling fewer wells in a plan of development should not be considered a significant modification. MPA asks the board to consider analysis of storm water permitting regulations to oil and gas development with the goal of developing program regulations that ease the workload on both MPA members and DEQ staff.

17.30.201 (8) (a) Please remove the indentation and capitalize "discharge" on the sentence "Discharge of non-contact cooling water". Failure to make this change would limit contact water discharge to minor sources and raise the non-contact cooling water fee to \$3000/MGD. An increase of that level is extremely severe.

MPA is gravely concerned about the increase in permit fees and the lack of objective standards in the proposed rule. Economic conditions outside the control of either of us will dictate our capital investment decisions and our decisions are clearly tied to the Department's cost recovery plans, which could impact your decision making process on the proposed rules. MPA believes that it is in our mutual interest to examine ways the storm water permit program for oil and gas can be changed to maintain or improve our environment and reduce our mutual work load. Also, we offer our expertise in assisting with an examination of fee equity and program cost allocation.

MPA recognizes the difficulty the Department has with these issues and the outreach that the Department has done. In the case of this proposed rule, we feel the Board and the Department must step back and do more analysis to develop an equitable funding solution.

Best Regards:

A handwritten signature in black ink, appearing to read "David A. Galt", with a large, sweeping flourish extending to the right.

David A. Galt
Executive Director



Western Environmental Trade Association

September 10, 2009

Elois Johnson
Montana DEQ
1520 E. Sixth Ave.
PO Box 200901
Helena, MT 59620-0901

RE: Amendment of ARM 17.30.201

On behalf of the Western Environmental Trade Association I am writing to re-iterate some of the comments I made at the September 3, 2009 hearing as well as offer additional comments. WETA, organized in 1976, is a coalition of representatives of agriculture, labor, timber, mining, oil and gas, business, manufacturing, utilities, recreation, transportation and 23 trade associations whose members have an interest in promoting the responsible use and development of our natural resources, while protecting the environment.

In the days since the hearing on this rule, I have been contacted by several of our members expressing strong objections to the proposed huge increases in the fees. There is a real gap in understanding the relationship between the level of fee increases and what is required to issue the various permits and all that is required to cover the annual fees.

The term "substantial alterations or additions" in schedule 1.D is not defined. New (6) (b) would establish a review fee for resubmitted applications that have "substantial changes or deficiencies requiring significant additional review." "Substantial" or "significant" are not defined. In this same subsection a new application fee is required if an application has been denied for a year or more. It is not clear why it would be necessary to automatically charge this additional fee. It should only reflect the actual new issues to be reviewed.

One of the reasons given for adopting the new rules is that it "is currently unknown if a \$60,000 state general fund appropriation will be available." In checking on the appropriation to the program, I found that these dollars will be available and were not part of the 2% agency cut in appropriations.

One concern is that in some instances, such as the Section 401 certifications either a set amount or a percent of the value of a proposed project can be applied. It is not clear what the relationship is between the value of the project and the applicable fee. It seems that fees should reflect the amount of effort necessary to do the required permitting.

We appreciate the effort the Water Protection Bureau has made to explain the reasons for the fee increases but there is real concern that the large increases proposed will have a chilling effect on many involved in the natural resource industries. While we support the Department having adequate funds to do its required tasks, it would be better to hold off on going forward with this rulemaking until there is an opportunity to gain a more complete understanding of what the additional funds will be used for. It appears that the appropriation from last session would be adequate to allow time for some serious discussions on the need for the level of fee increases before proceeding. As the Board and DEQ know, I have advocated the establishment of an informal advisory group, similar to the CAAAC to work with the Water Protection Bureau on finding mutually beneficial approaches to water protection in the State.

WETA and its members look forward to assisting with that effort.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Allen", with a large, stylized initial "D" and a long, sweeping horizontal stroke extending to the right.

Don Allen
Executive Director



Columbia Falls Aluminum Company, LLC

2000 Aluminum Drive
Columbia Falls, Montana 59912
(406) 892-8403
(Fax) 892-8201
(Cell) 560-5404

HALEY BEAUDRY, P.E.
Manager, External Affairs

September 8, 2009

Ref: Amendment of ARM 17.30.201 pertaining to permit fees

Elois Johnson, Paralegal
Department of Environmental Quality
1250 E. Sixth Avenue
P. O. Box 200901
Helena, MT 59620-0901

Dear Ms. Johnson:

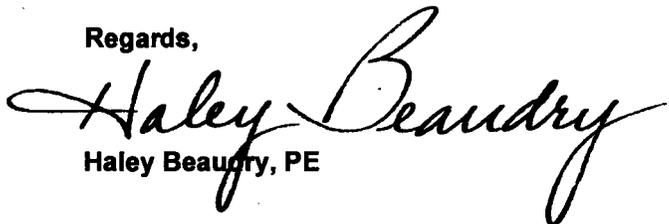
On behalf of Columbia Falls Aluminum Company, LLC (CFAC), I oppose the Amendment of ARM 17.30.201 pertaining to permit fees. Specifically, I oppose the fee increases that would pertain directly to CFAC.

I believe it is contrary to the Governor's stated goals for Montana to increase fees at such rates and in such amounts as to jeopardize high-quality jobs at a time we need them the most.

As you know, CFAC produces aluminum metal, which is a true "commodity" in that the marketplace establishes the price: CFAC has no control over the price at which we sell our product. In the current world economy, CFAC has found it necessary to take strong measures to maintain operations, including reducing the workforce to trim down costs as much as possible. Paying some significant portion of those resulting savings in fee increases is counter to the very intent of the painful workforce reductions.

Please, consider the broad effects of the fee increases prescribed in the proposed amendment to ARM 17.30.201 and reject the amendment. Montana needs good jobs!

Regards,


Haley Beaudry, PE



Montana Department of Transportation

2701 Prospect Avenue
PO Box 201001
Helena MT 59620-1001

Jim Lynch, Director
Brian Schweitzer, Governor

September 10, 2009

Jenny Chambers
Chief, Water Protection Bureau
MT Dept. of Environmental Quality
1520 East 6th Avenue
Helena MT 59620

RECEIVED

SEP 16 2009

Subject: Proposed DEQ Fee Rules Amendments

DEQWPB
PERMITTING & COMPLIANCE DIV.

Dear Jenny Chambers:

Thank you for the opportunity to review and comment on the Draft Fee Rule Amendments. The Montana Department of Transportation (MDT) appreciates your agency's having considered and responded to our previously submitted, informal comments and the stakeholder outreach efforts you have made to date.

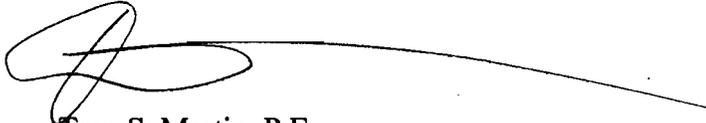
As a sister agency, we are sympathetic to your agency's revenue and funding concerns. That said, as your sister agency, we too have a responsibility to the public to manage our program in the most environmentally sensitive, yet cost-effective manner possible. To meet our responsibility to the public we serve, MDT has continued our review of the proposed fee rule amendments and we respectfully offer the following additional brief comments.

In your July 28, 2009, email correspondence you graciously replied to all informal comments your agency had received to date. Page five of the DEQ Informal Draft Fee Rules Responses summarizes the results of the proposed fee rates by stating that, "The overall increase to the annual revenue for the program is approximately 40%." Elsewhere in the responses you provide logical explanation for why that revenue increase is necessary. MDT does not argue the necessity of the increase. You are best able to assess the funding needs of your program. We do, however, question whether the revenue shortfall has been distributed equitably amongst the regulated community.

Logically, if the fee increases were equitably distributed, MDT would expect an approximately 40% increase in our MPDES Construction Permit fees. We have performed data analysis for four of our five districts. That data analysis tells us that our total fees (application and annual fees) will approximately double and could be up to 2.7 times higher. This value is lower than our initial assessment (of a three to four times increase in fees as submitted in our informal comments); however, we conclude that the transportation industry's contribution to funding your program is still disproportionate when compared to other industries. As a result, we are compelled to again respectfully request that DEQ reconsider its funding structure. Absent a restructuring of the fee schedules, we respectfully request some background data explaining the fee increase distribution amongst the regulated community.

Thank you again for the opportunity to review and comment on this draft rule amendment. We offer these comments intending for them to serve as constructive assistance for setting in place a process that will best serve the citizens of Montana. If you or your staff has any questions or concerns regarding these comments, please contact me at 406.444.7228. I will be pleased to provide any additional explanation or clarification that will be useful in the development of the rule amendment.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal line that tapers to the right.

Tom S. Martin, P.E.
Environmental Services Bureau Chief
Montana Department of Transportation

Copies:

Lynn Zanto, Planning Division Administrator
Loran Frazier, P.E., Engineering Division Administrator
Jim Walther, P.E., Preconstruction Engineer
Kevin Christensen, P.E., Construction Engineer
Paul Ferry, P.E., Highways Engineer
Kent Barnes, P.E., Bridge Engineer
Tim Conway, P.E., Consultant Design Engineer
Tom Martin, P.E., Environmental Services Bureau Chief
Heidy Bruner, P.E., Environmental Engineering Section Supervisor
MDT Agency Correspondence File

Johnson, Elois

From: Stacy Hill [stacyjo51@yahoo.com]
Sent: Wednesday, September 09, 2009 9:21 PM
To: Johnson, Elois
Cc: Orr, Katherine
Subject: Public Comment on DEQ Proposed Rule Changes for Permit Fees

As a private citizen of Montana, I would like to respectfully offer the following comments regarding the subject rule change proposal.

I attended the Public Hearing held on September 3, 2009. I agree with the comments presented by the attendees who provided opposing testimony. I've summarized the comments below:

- The fee changes are too drastic - 2 to 3 times current levels. This appears to be the case for my current employer as well, resulting in a 6-figure increase in fees.
- With the current economy, these changes present a huge burden to the citizens of MT
- The changes are not fair and equitable among the affected community (the representative of the Rocker Water & Sewer District offered that the cost of the permit to a resident of a large community is about \$0.50 where a small community resident was looking at \$50)
- One of the fees (401 certification) is based on the value of the project. What does that have to do with administration costs?
- There is a feeling by some of the permit holders of being punished for complying. The regulated community is literally paying a price and covering for those people that are operating without permits.
- The representative of the Montana Contractor's Association mentioned that the contractors tend to pass along the fee increases to the owner, which means we get less infrastructure improvement for our money, especially taxpayer money.
- DEQ has included instances of vague, subjective language that was not defined (e.g. words such as "substantial"). Clarification was requested for several references within the rule changes.
- DEQ references that they're doing this to comply with federal rules. Federal rules do not address fees and would not require a direct increase. Proposed rule language should be corrected as it implies something different than the actual fact.
- The public comment period should be extended because Aug. 13-Sept. 10 does not allow adequate time for the regulated community to properly respond..
- DEQ's fees already exceed those administered by surrounding states, many of which don't even charge fees (especially for general storm water permit coverage). It seems many of the figures DEQ tried citing during the public hearing involved west coast or New England permitting statistics.

Public hearing attendees didn't disagree that some fee changes may be warranted and necessary. But DEQ is not able to support the significance of the increases with facts and program studies, comparisons with other states in our own region, and certainly have questionable timing given the state of the economy and the burden to the citizens of Montana.

I would offer the following comments in addition to those the hearing participants brought forward:

9/10/2009

- Public perception is that the fee increases are not supported by the services provided by DEQ. Since the previous fee review in 2002 and even before, the services from DEQ appear to continually decrease. In the case of stormwater as an example, Storm Water Pollution Prevention Plans are no longer reviewed by DEQ staff. NOIs are also not reviewed for content and environmental protection but only completeness, and by administrative/data entry staff not permit writers or program staff. DEQ does not provide training and compliance assistance as in the past. What are we, the regulated community, getting for the additional funds we're providing?
- DEQ cites the fees are based on costs of administering the program. However, they have done no financial studies of the costs among the different program areas to show that the fees are equitable and actually reflect the specific program costs. For example, a large construction site obtaining coverage under a general permit (meaning every single applicant during the 5 year term of that permit shares coverage under that same permit) may pay the same application fees as a major wastewater treatment facility whose permit is developed specifically for that entity (taking months of DEQ staff time to develop) and has far greater administrative requirements, such as yearly inspections and monthly monitoring report form submittals. The large majority of permitted construction sites don't receive a DEQ inspection, so administration is limited to initial writing of the permit and then data entry of the NOI info.
- The fees also don't fairly reflect administration within a program. Under a general permit, the application form is identical and the data entry time is exactly the same whether a project is one acre or one hundred acres. Why is the application fee different?
- DEQ also cites that the fees are required by federal government to reflect the pollutant loading. However, a particle is not a pollutant until it enters either water or air. A large construction site located in a remote area of Montana with hardly an ephemeral drainage, let alone a perennial or intermittent stream, does not pose an equitable pollution potential to a small bridge project spanning a fishery or impaired waterbody.
- The same point above about pollutant loading also stresses the discrepancy between construction and other permitted activities. Construction typically has only one pollutant of concern, sediment. Where other industries, mines, and even municipal waste treatment facilities have numerous pollutants of concern and impact potential. This is not reflected in the fee schedule, as construction will pay the same or greater fees than many of these facilities.
- In relation to the Municipal Separate Storm Sewer System (MS4) Permit, DEQ is essentially delegating administration of the construction permit program to the local entities designated under the MS4 program. However, there are no plans for transfer of the fees collected to these local entities. In order for the local entities to administer the program, they must then raise fees or create utilities. This means a double burden to the construction industry in those urban areas, and a public relations quandary for the local entities.
- It seems that the construction industry carries the weight of financing DEQ's programs when the storm water program itself, due to general permits and the temporary nature of the activity, is relatively inexpensive to operate. This contradicts the desire to "move the fee schedule toward a system that has more equity among the fee payers" and recover the costs of the respective program

Thank you for your time and consideration in reviewing my comments. I appreciate the hard work that the staff at DEQ put forward; I just feel that more evaluation and justification is needed before the regulated community can trust that a truly fair fee system has been developed.

Sincerely,
 Stacy J. Hill
 PO Box 313
 Black Eagle, MT 59414

9/10/2009

Johnson, Elois

From: Towlerton, Al [TowlertonA@ci.billings.mt.us]
Sent: Thursday, September 10, 2009 8:46 AM
To: Johnson, Elois
Cc: Mumford, David; Heisler, Vern; Krizek, Boris; Stanley, Susan; Meling, Debi
Subject: Comments on Proposed Rulemaking - ARM 17.30.201

IN THE MATTER OF THE AMENDMENT OF ARM 17.30.201 PERTAINING TO PERMIT FEES

We offer the following comments:

17.30.201(1) – The definition of “outfall” in this section is different than that contained in the draft MS4 General Permit. We suggest the definitions be similar.

Schedules 1.A, 1.C, III.A & III.C – With the language as proposed it is very difficult, if not impossible, to determine whether MS4’s will fall under the general permit schedule or individual permit schedule. We’ve posed this question to two different individuals in DEQ and have gotten different answers. We request that language be included that will clarify this issue.

Proposed 17.30.201(6)(a) & (8)(a) – The **REASON** section indicates that you merely incorporated previous footnote language into the body of the rules. However, it appears the proposed language does not include the five outfalls maximum that is in the current footnotes. In discussion with DEQ personnel, we were told that there is confusion on this footnote and that it was intended to apply only to construction-related permits. It appears to us that, in the current administrative rules, this footnote clearly applies to the entire fee column and not just one category. We request that this maximum be included in the proposed language. Additionally, we request clarifying language as to how this per outfall fee is intended to apply to MS4’s under the individual permit schedules, if applicable. For example, if a MS4 with a population over 50,000 has 5 outfalls, would the renewal fee be \$45,000?

Proposed 17.30.201(8)(f) & (10) – Proposed section (f) indicates that the annual permit fee is due “not later than 30 days after the invoice date.” Proposed section (10) indicates “The fee is due 30 days after receipt of the written notice.” Assuming these sections are referring to the same fee, we believe the language is confusing and should be clarified. Is the due date from the invoice date or from the notice date? In addition, 30 days is generally not sufficient time for most municipalities to process payments depending on when they receive the invoice or notice. We suggest a minimum of 45 days, preferably 60 days.

We oppose the proposed fees for the MS4 stormwater permit program, particularly if the fees are based on the number of outfalls, which we understand may be the case once a TMDL is established. We believe the fees are excessive given that the majority of the effort for carrying out the programs rests with local jurisdictions at considerable expense. We believe there is minimal effort expended and resource needs at the state level. We suggest you reevaluate the effort expended in these areas versus the fees proposed for the MS4 permits. In addition, we suggest reevaluation of the construction-related permit fees as the burden for inspection and compliance falls to the local jurisdiction with minimal involvement at the state level.

You can contact me with any questions.

Cordially,

Alan Towlerton
 Deputy Public Works Director
 City of Billings
 towlertona@ci.billings.mt.us
 406-57-8314

Permit Fees

Johnson, Elois

From: critter@midrivers.com
Sent: Thursday, September 10, 2009 12:27 PM
To: Johnson, Elois
Subject: BER-WPB-Proposed Fee Rule Changes

Attachments: WPB Fee Testimony.doc



WPB Fee
imony.doc (45

Please find attached, my testimony and comments regarding the proposed fee rule changes.

Thank you.

Gail M. Faber
151 Seven Mile Dr
Glendive, MT 59330

Dear members of the Board of Environmental Review and other interested parties.

Please know that I represent no other than myself as a concerned citizen of this great State of Montana. I formerly was employed by the DEQ from April of 2000 until May of 2007. My employment at DEQ was entirely in the Water Protection Bureau (WPB) conducting permitting and compliance in the Storm Water Program. However I did work in the Concentrated Animal Feeding Operations Program and Construction Dewatering Permit Program. Meetings within the WPB were held all inclusive and therefore, I have knowledge of the inner workings of the WPB and all Programs and permits administered by the WPB. My comments here will primarily concern the Storm Water Program as I am most familiar with it, and due to the proposed fee increases for this program I am most alarmed. Please note that I am not a disgruntled DEQ former employee. It was my choice to move on from DEQ for increased wages and what I deemed a better location for raising my daughter.

The proposed amendment of ARM 17.30.201 (Permit Fee Rule) is capricious. There is no substantive argument to support raising fees. Pay for employees have been essentially frozen. Economic times are such that development is limited, funds are limited in the regulated community, and additional output in fees may preclude these activities. I can foresee the possibility of such drastic increases in costs creating conditions where development proceeds unpermitted. The chance of getting caught may be minimal and the costs of getting caught may be worth the risks. Bear in mind when considering these fee increases that your own personal property may require a Storm Water Permit authorization if you have already, or will exceed one acre of construction disturbance. This would include your home, yard, driveway, utilities, garage, barn, or anything else that has required soil disturbance. Because I have horses I also have corrals, an arena, and outbuildings which total around 2.5 acres. At some point in the future I will need to level an area for a hay corral. That activity will require a Storm Water Permit authorization in accordance with Part I.B. of the General Permit for Storm Water Discharges Associated with Construction Activity which states "for determining whether coverage under this General Permit is required, the total land area of disturbance that is part of a larger common plan of development or sale must be used". Under the proposed fee rule I will be required to pay \$1600 for the soil disturbance, for a hay corral. This is absurd.

The Storm Water fees, under this amended rule will be based on acreage. There is absolutely no basis or thought to this. What and how does acreage pertain to controlling pollutants? These WPB permits and their intent are to protect water quality and not acreage. These are still Water Protection Bureau administered permits are they not? In eastern Montana a project covering vast acreage may only have one coulee, ephemeral drainage, within the entire project. This drainage may go for miles before discharging into an intermittent drainage which may be miles from its confluence with a perennial stream. Bear in mind that generally these ephemeral and intermittent drainages have vegetative coverage which filters the sediment out long before it reaches the perennial, aquatic life sustaining stream. Yet a project contained within the bed and bank of that same perennial stream, discharging sediment immediately into that stream will generally be one to two acres in size. I do not believe that it will be fair and equitable that these two projects will pay vastly different fees. It seems that the smaller project discharging directly to the waterbody has the potential to be far more detrimental to the aquatic organism and health of the stream. This project will pay far less in fees than the large project. This makes no sense. Please bear in mind that 75-5-103 (29) (a) of the Water Quality Act defines "State waters" as "a body of water, irrigation system, or drainage system". What I was directed when working in the WPB was that anything that could flow water, or pond water was considered "state water". Exception to this was irrigation water that did not return to "state water", or water that was used as a treatment system.

Processing of the General Permit for Storm Water Discharges Associated with Construction Activity documents is not an extensive process. I used to process these documents prior to the ICIS computer tracking system and shift of these activities to administrative staff. After this shift of duties there was no longer a full review of the documents. This position ensures that the Notice of Intent (NOI), Storm Water Pollution Prevention Plan (SWPPP) and fees are submitted. The NOI is the only document reviewed and that is reviewed to the point that all of the data necessary for entry into ICIS is present. I recently contacted the WPB staff member assigned these tasks for confirmation that these processes have not changed. Statements in these proposed fee rules are inaccurate and misleading. Please note that this administrative staff member is working as no more than a Pay Band 4 but I suspect a lesser Pay Band. I was working at a significantly higher Pay Band and they seemed to be able to afford to pay me. In other words the administration of the Storm Water permit applications is not as costly as stated.

Additionally, these proposed fee rules do not fit nor do they comply with requirements in the General Permit for Storm Water, the Notice of Intent required information, and the Administrative Rules of Montana. They all refer to, and stress discharges to water bodies and outfalls.

There are many terms of significance used in this document that have no definition and are left to the WPB for interpretation. It has been my, and many others experiences that the WPB changes interpretation frequently and their interpretation could now mean a tremendous difference in fees owed. For instance (6) (c) on page 1337 uses the term substantial. What does the WPB consider to be substantial?

(6) (d) on Page 1337 states that a portion of the fees will be returned should an application be withdrawn. I have knowledge of a contractor during this construction season who attempted to do this and it was denied.

(6) (l) on Page 1340 concerns me due to the time stipulation. There is no further review, work, or expense to the WPB involved with processing modifications no matter the time frame. It is necessary for explanation and justification for this change.

It is noted that both of the other two Storm Water general permit authorizations, for large locations, pay less in fees than the large sized Construction permit authorizations. Construction sites have potential to discharge sediment and prohibited from discharging any other pollutants. Common sense dictates that Industrial sites and Mining, Oil, and Gas sites will discharge additional pollutants or at the minimum sediment containing other pollutants. Please note that many Mining locations fit the category requiring permit coverage for large acreages. An example of a Mine location that I am intimately familiar with is a Talc Mine in the Ruby Range near Dillon, MT is nearly, or exceeds 100 acres in size. This is a "hard rock" mine. It is at the headwaters of Stone Creek which is a Cutthroat Trout stream that has received extensive reclamation effort by the Bureau of Land Management. Reclamation included livestock exclusion fencing, revegetation by planting, and other measures. The Talc Mine waste rock dump site is located on the ridge above the reclamation site, as is the mine, haul roadways, and access road. There are numerous discharge locations throughout this area. Vegetation in the very narrow stream valley is mostly timber with minimal undergrowth. Thus, filtering of sediment laden pollutants carried by Storm Water is minimal. Discharges to this Cutthroat Trout stream can carry many and varied heavy metals which are detrimental to aquatic life. Yet, Storm Water Permit fees are less than construction sites having the potential to discharge non heavy metal laden sediment into coulees, ephemeral drainages, and intermittent drainages.

Where is the reasoning that modifications, in particular “minor modifications” require such a substantial increase in fees? This includes transfer of ownership? Activity for matters such as these are minimal, and requires a few computer strokes in ICIS. Any review of documents is minimal at most.

(8) (f) on page 1345 is not consistent with the DEQ ability to pay fees with “ebill”. The WPB requires payment by check or money order. Why this discrepancy? I also believe that the requirement of 30 days after the invoice date is too restrictive for entities with complicated accounting procedures. The WPB stipulation of receiving the fees on the 30 required days is dependent on an unreliable postal system in remote locations of this State and others. Post marked by that 30 day requirement should be adequate and is desirable.

Under “Reason” beginning on page 1346 I have discovered many issues. There is a constant, really throughout the entire document, referral to the entire WPB as “program” when in fact the WPB is broken into many and varied “programs”.

Paragraph number one states “*the act requires that annual fees cover department costs of administering the program after subtracting application fees, state general fund appropriates, and federal grants*”. It is my experience that the WPB has historically applied for few grants and should probably apply for more if their costs require additional funds. Please note that the Storm Water Program is quite inexpensive to operate as there is no review of submittals other than to ensure that the NOI, SWPPP and fees are present and the NOI information for data entry is complete. Historically, the Storm Water Program has been utilized to pay for other programs in the WPB. The WPB reasoning is that municipalities and others cannot afford to support the expenses involved with their permitting processes. For instance, a sewage treatment plant in Wibaux, MT may require months of a WPB permit writers time to complete. It may require site visits. The expense of driving from Helena to Wibaux and necessary per diem is great. The cost of issuing a permit for Wibaux is significant. Because the Storm Water, and particularly the Storm Water Construction Program, have had the “deep pockets” these funds have been utilized for other programs within the WPB. Currently there are approximately 1085 active Storm Water Construction authorizations being administered by the WPB. Consider the substantial influx of funds to the WPB, even under the current fee structure, with a program requiring minimal time and effort from WPB personnel.

Paragraph number 11 on page 1347 includes the term *substantial*. There is no definition for this term and we are left with relying on the WPB for interpretation. It has been my, and many others experiences that the WPB changes interpretations frequently. This paragraph also states “*this new fee is necessary to recover additional review costs caused by changes or deficiencies in applications*”. Storm Water NOI document packages are not reviewed. According to my recent conversation with WPB administrative staff, any deficiency is handled by this person with a telephone call.

Paragraph 13 on page 1347 contains the statement, when limiting the refund of fees for withdrawal of an application within 30 days, “*this provision is necessary to recover review costs*”. Storm Water NOI document packages are not reviewed.

Paragraph 15, page 1348 utilizes the term *significance*. What does the WPB define as significance?

Paragraph 16 on page 1348 states *“Proposed new (6)(g) would allow storm water discharges from industrial activities, or mining or oil and gas activities, to be incorporated into a non-storm water discharge permit application, at a lower fee”* and *“this new subsection is necessary to describe current practices that simplify the application process”*. Where is the rationale for this? Why can storm water discharges be allowed to utilize a non-storm water discharge permit application? What new practices? As already illustrated, these activities have potential and possibly do discharge pollutants of extreme concern. This would also decrease their fees and revenue to the WPB.

Paragraph 17, page 1348. The entire paragraph is objectionable. 1. *What reasoning for changing from discharge water bodies to acreage?* 2. *“Renewal fees are not required” unless the authorization “has been in effect for more than four years”*. *“Comply with federal rules pertaining to construction storm water permits”*. There is no citation of federal rule in this document and I can find no rule to this effect. Additionally, the Federal Government, EPA, does not charge for Storm Water Permits. Please clarify compliance.

Paragraph 19 on page 1348. This paragraph explains that *“Modifications to authorizations” “can be processed as a minor modification” “if submitted within six months of the authorization”*. It further states that *“Modifications after that, other than name changes, are subject to the new permit fee. The reason for this is that construction storm water modifications after six months tend to involve significant project extensions, which require the additional processing fee.”* Where did the WPB arrive at 6 months? It has been my experience that modifications after 6 months do not generally involve *“significant project extensions”* other than extending the life of the project. Extending the life of the project would bring additional revenue to the WPB thereby being beneficial to the WPB. Also, as previously described the Storm Water Construction NOI packages are not reviewed.

Paragraph 25 on page 1349 makes false statements. *“This new subsection is necessary to describe current fee assessment procedures and to comply with federal rules pertaining to construction storm water permits.”* There is no known federal rule as illustrated in this statement. Please cite this rule. As I previously stated, EPA does not charge fees.

Under *“Fee Schedules”* beginning on page 1350 I have also discovered many issues.

Paragraph 1 states *“more equity among fee payers”*. As stated previously, Storm Water Construction permit authorization fees have in the past, and certainly would under these proposed fee rule amendments pay a substantial sum in excess of what is required to administer this program. Extra monies have in the past, and certainly in the future will be utilized to administer other programs in the WPB. This is not considered *“equity”*.

Paragraph 4, page 1350. *“The new schedule includes a renewal amount for facilities with effective permit coverage and a slightly higher rate for facilities that have never had permit coverage.”* A reasonable person would not consider a 3 to 4 times increase in fees *“slightly higher”*.

Paragraph 5 on pages 1350 and 1351 states *“This amendment is necessary because review fees vary with acreage rather than the type of development.”* Where is the methodology for charging by acreage rather than discharge water bodies? Is this the Water Protection Bureau or will the future name be Acreage Protection Bureau? How does review, when there is no review of the NOI package, pertain to acreage? This also carries through to paragraph 10 statements.

It is rather curious that the WPB has increased the number of compliance inspectors by 4 since 2007, while it appears that the number of inspections is less than would be expected. When I was employed in the WPB, the Storm Water program was required by EPA to conduct 75 inspections annually of which in excess of 50 were conducted on construction projects of which I was responsible for. In addition I performed other compliance assistance duties which included providing training to former, current, and future permittees (Storm Water, 318 and Construction Dewatering) throughout the State. I recently became aware that the WPB has made statements that 10% of the active permit authorizations are required to be inspected annually. The active construction authorizations to date are approximately 1085 which would mean that 109 inspections should be conducted. This workload coupled with the other duties that I performed would have been easily conducted solely by me. Please note that the WPB is in the Permitting and Compliance Division of DEQ. Since 2007 I am unaware of any compliance assistance being done by the WPB in the area of training for permittees. When permittees have requested training WPB staff have stated that they will no longer do such compliance assistance. Also note that it has been the experience of permittees that violations are being issued by WPB inspectors for perceived offenses not contained in the Permits, the WQA and ARM. Violations are also being issued for items permitted by other agencies such as the Army Corps of Engineers. This is in direct conflict with 75-5-605 of the WQA. In short, permittees are getting "less bang for their buck" and being flogged with it. The WPB wants to raise fees, for what?

Please know that I appreciate all DEQ employees for their hard work and dedication. Thank you for your time and consideration.

Gail M. Faber
151 Seven Mile Drive
Glendive, MT 59330

Schedule I.C Application Fee for Storm Water General Permits

Category	Renewal Amount	New Permit Amount (includes initial annual fee)
Storm water associated with construction		
1 to 5 acres	\$ 900	\$ 900
more than 5 acres, up to 10 acres	1,000	1,000
more than 10 acres, up to 25 acres	1,200	1,200
more than 25 acres, up to 100 acres	2,000	2,000
more than 100 acres	3,500	3,500
Storm water associated with industrial activities		
small - 5 acres or less	1,200	1,500
medium - more than 5 acres, up to 20 acres	1,500	1,800
large - more than 20 acres	1,800	2,000
Storm water associated with mining, oil, and gas		
small - 5 acres or less	1,200	1,500
medium - more than 5 acres, up to 20 acres	1,500	1,800
large - more than 20 acres	1,800	2,000
Traditional storm water municipal separate storm sewer system (MS4)		
population greater than 50,000	7,000	10,000
population 10,000 to 50,000	6,000	8,000
population less than 10,000	5,000	6,000
County MS4 permit	4,000	5,000
Non-traditional MS4 permit	2,000	3,000
Storm water no-exposure certification required once every five years	300	500
Storm water construction waiver		400

(o) The minimum application fee under Schedule I.D for federal Clean Water Act section 401 certification is ~~\$4,000~~ 400 or 1% of the gross value of the proposed project, whichever is greater, and the maximum fee may not exceed \$20,000. If a fee is submitted for a 401 certification and the department waives certification, without review, because the project will require a department permit or authorization identified in ARM 17.30.105(2)(b), the department will credit the fee towards the cost of the applicable permit or authorization.

Schedule I.D remains as proposed.

(7) and Schedule II remain as proposed.

(8) The annual permit fees are set forth in Schedules III.A, III.B, and III.C. No annual fee is required for activities listed in Schedule I. D.

(a) Under Schedules III.A and III.B, the department shall assess a fee for each outfall, except that MS4 permit fees under Schedule III.A are based on population as determined by the latest decennial census from the United States Census Bureau. An annual fee for multiple outfalls is not required if there are multiple outfalls from the same source that have similar effluent characteristics, unless the discharges are to different receiving waters or stream segments, or the discharges result in multiple or variable (flow dependent) effluent limits or monitoring requirements. For ground water permits, the department shall assess a fee based on the annual average daily flow in gallons per day for each outfall.

Schedules III.A and III.B remain as proposed.

(b) through (d) remain as proposed.

Schedule III.C Annual Fee for Storm Water General Permits

Category	Amount
Storm water associated with construction	
1 to 5 acres	\$ 700 <u>650</u>
more than 5 acres, up to 10 acres	800 <u>750</u>
more than 10 acres, up to 25 acres	1,200 <u>1,150</u>
more than 25 acres, up to 100 acres	2,000 <u>1,800</u>
more than 100 acres	3,000 <u>2,800</u>
Storm water associated with industrial activities	
small - 5 acres or less	1,000
medium - more than 5 acres, up to 20 acres	1,200
large - more than 20 acres	1,500
Storm water associated with mining, oil, and gas	
small - 5 acres or less	1,000
medium - more than 5 acres, up to 20 acres	1,200
large - more than 20 acres	1,500
Traditional storm water municipal separate storm sewer system (MS4)	
population greater than 50,000	5,000
population 10,000 to 50,000	4,000
population less than 10,000	2,500
County MS4 permit	1,200
Non-traditional MS4 permit	1,200

(e) remains as proposed.

(f) The annual permit fee is assessed for each calendar year or portion of the calendar year in which the permit is effective. ~~The fee for the previous calendar year must be received by the department not later than 30 days after the invoice date. The fee must be paid by a check or money order made payable to the state of Montana, Department of Environmental Quality.~~

(9) through (9)(b) remain as proposed.

(10) The department shall give written notice to each person assessed a fee under this rule of the amount of the fee that is assessed and the basis for the department's calculation of the fee. The fee is due 30 days after receipt the date of the written notice. The fee must be paid by a check, money order, or electronic transfer payable to the state of Montana, Department of Environmental Quality.

(11) through (11)(b) remain as proposed.

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: The public comment period should be extended because the regulated community did not have time to respond.

RESPONSE: Starting about three months prior to publication of the proposed rule notice in this rulemaking, the department conducted informal meetings with stakeholder groups. The department showed the groups the cost and revenue projections for the discharge permit program and showed proposed specific fee adjustments that would cover the costs. Informal comments were received from the stakeholder groups at that time, and the department made some changes to the fee proposal. The proposed fees were then made available for general public comment in the published proposed rule notice. Copies of the rule notice were mailed to all permittees and to parties, including all stakeholder groups, who had expressed an interest in rules pertaining to water quality. The board believes that the informal and formal comment periods gave affected parties adequate time to review and respond to the proposed fee changes.

COMMENT NO. 2: In ARM 17.30.201(1), the definition of "outfall" is different than in the draft municipal separate storm sewer system (MS4) general permit. The definitions should be the same.

RESPONSE: The definition of "outfall" in the MS4 general permit is based on the definition in the storm water permit rules at ARM 17.30.1102(14). That definition governs the meaning of "outfall" for purposes of MS4 permits. The definition of "outfall" in the revised fee rules is slightly different, but, because fees for MS4 permits are not based on the number of outfalls, there is no conflict with the definition in ARM 17.30.1102(14).

COMMENT NO. 3: Proposed Schedules I.A, I.C, III.A and III.C make it difficult to determine whether an MS4 would fall under the individual or general permit fee schedule.

RESPONSE: The fee rule does not contain the criteria for determining whether an MS4 falls under general or individual permit coverage. The fee rule simply sets out the applicable fees for each type of permit. The criteria for determining whether storm water discharges fall under general or individual permit coverage are set out in the storm water permit rules at ARM 17.30.1105(2).

COMMENT NO. 4: The proposed rules have deleted a footnote that limits fees for storm water outfalls to a maximum of five outfalls. The maximum outfall

language should be reinserted. Language should be added to clarify how the per-outfall fee applies to MS4s under the proposed fee schedule.

RESPONSE: The footnote was eliminated in the proposed rules because application and annual fees for MS4 discharges will no longer be based on the number of outfalls. For MS4 permits, the fees will be based on the MS4 population size. See proposed ARM 17.30.201(6)(h). Fees for construction storm water permits will also no longer be based on the number of outfalls. Industrial activities and mining and oil and gas activities that have an individual storm water permit or with a storm water outfall integrated with an individual permit will continue to be assessed fees on a per-outfall basis. ARM 17.30.201(6)(g). In response to this comment, ARM 17.30.201(6)(a) and (8)(a) will be modified to clarify that the per-outfall charges in Schedules I.A and III.A do not apply to MS4 permits.

COMMENT NO. 5: A commentor opposes the fee increase for MS4s if it is based on outfalls, and believes that the fees are excessive given that the majority of the effort for carrying out the program rests with local jurisdictions. The commentor also requests a reevaluation of construction-related permit fees, because the burden for inspection and compliance falls to the local jurisdiction with minimum involvement of the state.

RESPONSE: Under the revised fee rule, fee for MS4 permits are not based on the number of outfalls. See Response to Comment 4. Although the state MS4 permit requires cities to develop a storm water program, the department will continue to administer the state MS4 permit program. Administration of the construction storm water permit program will also continue to be the responsibility of the department. Consequently, the department still incurs significant costs for these programs. However, as discussed in the Response to Comment No. 6, some of the proposed fees have been reevaluation and reduced.

COMMENT NO. 6: A number of commentors expressed concern about the substantial fee increase being proposed for permits. It appears difficult for the department to justify the proposed increases.

RESPONSE: The proposed fee increases are necessary to account for an increase in overall costs to administer the discharge permit program. For fiscal year 2010, the Legislature authorized a budget of approximately \$2.4 million dollars for personnel and operations of the water quality discharge permit program. This amount is for expenses expected to be incurred in reviewing permit applications, review of modifications and renewals, monitoring permit compliance, providing compliance assistance, enforcing Water Quality Act requirements, developing water quality permit rules and guidance documents, file maintenance, and public information duties. The Legislature appropriated \$71,053 of state general fund monies for the program. The remainder of the program costs must be met through other sources. The program receives federal funding from the EPA Performance Partnership Grant (PPG) and nonpoint source grant funds of approximately \$423,912. The Water Quality Act requires the board to prescribe fees that are sufficient to cover the remainder of program costs. Section 75-5-516(1), MCA. For fiscal year 2010, the department projected that approximately \$1.9 million would need to be raised through annual fees.

As proposed, the fee rules would have generated \$1.9 million in annual fee revenue, based on FY 2008 data. This amount would have been an overall program funding increase of 40% compared to the previous year. However, based on comments received, some of the proposed fee amounts have been revised and decreased to reflect an overall funding increase of approximately 25%. The projected revenue from the revised fees will be \$1.5 million, based on FY 2009 data. This may not be enough to meet projected program costs, and the department will have to reevaluate the fees next fiscal year to determine if another fee increase is necessary. However, this approach will provide some relief to fee payers by phasing in the fee increase.

COMMENT NO. 7: In the notice of proposed rulemaking, it was stated that it was not known if the \$50,000 that the Legislature appropriated in state general fund for this program would be available. The commentor noted that these funds were subsequently reinstated and are now available.

RESPONSE: At the time the notice of proposed rulemaking was issued, the department estimated that its general fund appropriation would be approximately \$50,000, based on the appropriation for 2008. At the time, the actual amount of the appropriation was not known and it was not known if it would be available for use by the permit program. Subsequently the department learned that a general fund appropriation in the amount of \$71,053 would be available. However, even with the general fund appropriation, fees must raise approximately \$1.6 million to meet program costs.

COMMENT NO. 8: Several commentors objected to the proposed fee increase for holders of construction storm water permits. The fees associated with larger projects would see a fourfold increase in fees. These fees are excessive. The level of services provided has decreased in recent years. In the case of storm water permits, storm water pollution prevention plans (SWPPPs) are no longer reviewed by the department. Notice of Intent (NOI) forms are no longer reviewed for content, but only completeness. The majority of construction sites do not even receive a department inspection.

RESPONSE: Because the new construction permit fees are based on acreage rather than on the number of outfalls, it is difficult to directly compare the new fees with the old. However, based on a review of current storm water permit holders that have identified an area of disturbance of 1 to 5 acres, 94% will see a fee increase of 44% and 6% will see a fee decrease of 28 to 71%. Of current storm water permit holders that have identified an area of disturbance of 5 to 10 acres, 91% will see a fee increase of 75% and 9% will see a fee decrease of 15 to 78%. Of current storm water permit holders that have identified an area of disturbance of 10 to 25 acres, 93% will see a fee increase of 28 to 156% and 7% will see a fee decrease of 15 to 49%. Of current storm water permit holders that have identified an area of disturbance of 25 to 100 acres, 95% will see a fee increase of up to 300%, and 8% will see a fee decrease of 20%. For current storm water permit holders that have identified an area of disturbance of over 100 acres, 100% will see a fee increase of up to 24 to 522%.

The board is required by statute to establish fees that are commensurate with program costs. See Response to Comment No. 6. The proposed fee increases are necessary to account for an increase in overall costs to administer the discharge permit program, and specific permit fees are not necessarily based on the time required to administer that particular permit. In general, the increases in storm water construction permit fees reflect the fact that this is the largest single group in the discharge permit program, having approximately 52% of the total permits. The reason for the larger increase in fees for larger construction projects is that there is a direct correlation between the number of acres disturbed and the amount of sediment that can be released from a site. Although the department cost is not higher for issuing permits for the larger projects than for the smaller projects, subsequent department costs for compliance review and enforcement tend to be higher for larger projects.

One commentor's fee calculations show that the schedule for storm water construction permit fees needs clarification. Under the current rules, the application fee for a new storm water construction permit with one outfall is \$450, with an additional annual fee of \$450 for the first and each subsequent year of permit coverage. Under the current rules, the first year annual fee, which is due at the time of application, is shown in a separate schedule. Under the proposed fee rule changes, Schedule I.C established an application fee of \$900 for a 1 to 5 acre storm water construction permit. This amount in Schedule I.C includes the first year annual fee. The result is, for small construction projects, the initial fees (application and first year) are the same under the current and proposed fee schedules. Subsequent annual fees for these projects are increasing from \$450 to \$650. The rule will be revised to clarify that the "New Permit Amount" column in Schedule I.C includes the initial annual fee. Proposed ARM 17.30.201(6) will also be revised to clarify that the initial annual fee is included in the new permit amount.

COMMENT NO. 9: Because sediment is normally the only pollutant of concern for construction activities, it appears that fees for construction permits are bearing an unfair burden, compared with activities that involve numerous pollutants of concern.

RESPONSE: The proposed fee increases are necessary to account for an increase in overall costs to administer the discharge permit program, and reflect the fact that construction storm water dischargers are the largest single group in the discharge permit program. See Response to Comment No. 8. The fact that sediment is the primary pollutant of concern in construction storm water does not reduce the severity of potential impacts. Currently approximately 400 rivers and lakes are listed as impacted by sediment in Montana.

COMMENT NO. 10: A commentor asks whether the revenue shortfall has been distributed equitable across all permit fee payers. To increase revenue by 40%, we would expect to see a 40% increase in the fees for all payers. Instead, our analysis shows that transportation-related permit fees will increase by up to 2.7 times. It appears that the transportation industry's contribution to the funding shortfall is disproportionate when compared to other industries. The commentor

requests to see background data showing the distribution of the fee increase among permit holders.

RESPONSE: As discussed in the Response to Comment No. 6, the fee increase will be lowered to seek an overall program funding increase of 25% instead of 40%. The proposed fee rule distributes the fee increase throughout 26 different categories of department permits and authorizations. Because of statutory fee caps, not all fee payers are subject to the increase. The fees for 8% of current permit holders would remain unchanged because they have been capped by statute at a maximum amount. The groups with statutory fee caps include concentrated animal feeding operations (CAFOs), suction dredges, and major dischargers that are currently at the statutory maximum of \$3,000 per million gallons of discharge. Another reason that increases are not distributed equally among fee payers is that some adjustment within categories has been proposed. For example, for storm water and ground water permits, varied fee rates are proposed based on the size of the potential discharge. Those adjustments are intended to have higher fees for permit holders with a greater potential to discharge pollutants.

The board is required by statute to establish fees that are commensurate with program costs. The proposed fee increases are based on costs to administer the entire discharge permit program, and specific fees are not necessarily based on the costs to administer that particular permit. Fees must recover overall department costs for reviewing permit applications, review of modifications and renewals, monitoring permit compliance, providing compliance assistance, enforcing Water Quality Act requirements, developing water quality permit rules and guidance documents, file maintenance, and public information duties.

The permits most often obtained by the transportation industry are for construction storm water discharges under the general permit fee Schedule I.C. The extent of the increases and the reason for them are discussed in the Response to Comment No. 8. In general, the increased fees for construction storm water permits reflect the fact that this group is the largest single group in the discharge permit program, having approximately 52% of the total permits.

The information showing the distribution of fee increases among permit holders has been tabulated and is available for review as part of the department records, but will not be included in this Response.

COMMENT NO. 11: A commentor stated that if construction work was conducted on her 2.5 acre homestead she would be required to pay \$1,600 for a storm water construction permit for the soil disturbance for a hay corral.

RESPONSE: The department recommends that a construction storm water permit be obtained whenever there is a reasonable possibility that a discharge of storm water may occur from a construction project. However, the permit is only required if the area of disturbed land is one acre or more and a discharge is proposed. In this example, a permit would not be required if the clearing and grading for the hay corral project impacted less than one acre. If coverage under the construction storm water general permit were obtained, the application fee, which includes the annual fee for the year the authorization is issued, would be \$900, which is the same as under the current rule. Under the proposed rules, the annual fee for subsequent years will increase from \$450 to \$650. The rule has been

revised to clarify that the application fee and first year annual fee are combined in the New Permit Amount in Schedule I.C. See Response to Comment No. 8.

COMMENT NO. 12: The construction storm water program is difficult for industry to use in the planning and development of oil and gas wells. It is impossible to predict the exact number of wells required for maximum extraction. The addition or subtraction of a well from a plan should not require a reapplication for a new permit with a new fee. Drilling fewer wells in a plan should not be considered a significant modification of a permitted project. The commentor also requested definitions for the following terms: major/minor modification; flow dependent; major facility; significant additional review; stream segments; and substantial changes, alterations and additions.

RESPONSE: The addition or subtraction of a well would not, in itself, require a modification to the construction storm water permit. Under the proposed rule, the fees for these permits are based on the area of disturbed land. The addition of wells would increase the actual acreage of disturbance, but the acreage categories for storm water construction permits are broad enough to allow for several additional wells before a permit modification would be required. The categories are: 1 to 5 acres; >5 to 10 acres; >10 to 25 acres; >25 to 100 acres; and >100 acres. If the addition of a well does not change the acreage category, the permittee would simply need to modify the SWPPP at the project site to reflect the current site conditions.

The proposed rule also added ARM 17.30.201(6)(i) to address the concerns of the commentor. This provision allows the modification of a construction storm water authorization within the first six months to be handled as a minor modification for a fee of \$500, instead of the new permit amount shown in Schedule I.C. This provision offers permit holders a simpler way to address unforeseen changes in the early phases of natural resource development.

The term "Minor modification" in Schedule I.D refers to a minor modification under ARM 17.30.1362. All other permit modifications are considered "major." The term "flow dependent" does not have a technical definition. As used in ARM 17.30.201(6)(a), it refers to effluent limits or monitoring requirements that vary based upon flow. The term "major facility" is used in the definition of "major permit" in ARM 17.30.201(2)(d). A "major facility" is defined in ARM 17.30.1304(30) as a facility classified as such by the department in conjunction with the regional administrator. this is consistent with the federal definition at 40 CFR 122.2. A major facility is one that has a design flow greater than one million gallons/day (MGD), or a treatment facility that scores 80 or more points on the NPDES Permit Rating Worksheet, or a facility that is otherwise given this designation by EPA in consultation with the state permitting authority. The term "significant additional review" is used in ARM 17.30.201(6)(b) to clarify when a resubmitted application will be assessed an additional review fee under Schedule I.D. The term is not new, but is carried over from the current rules. The term can not be defined quantitatively. In general, the resubmittal review fee will not be charged for processing clerical corrections, but will be charged where a resubmitted application requires substantive review. The term "substantial changes" in ARM 17.30.201(6)(b) refers to changes that will require significant additional review. The term "stream segment" means any segment of a stream as defined by intervening tributaries or other identifying landmark. the term

"substantial alterations or additions" is used in ARM 17.30.201(6)(c) to clarify when an administrative processing fee under Schedule I.D will be assessed for department review of a sediment control plan, waste management plan, nutrient management plan, or storm water pollution prevention plan. In response to comments, this provision will be revised to clarify that the fee will be assessed where significant department review is required. See Response to Comment No. 26.

COMMENT NO. 13: A commentor requested justification for assessing construction storm water permit fees by acreage rather than by the number of outfalls. A small project that directly impacts surface water should be charged more than a large project that is miles from a any perennial stream. Why do minor modifications require such a substantial increase in fees? Would a change in project ownership require a permit modification?

REPOSENSE: The actual size of the disturbed acreage is directly related to the amount of sediment that could be discharged from the construction site during a storm event. See Response to Comment No. 8. The same processing steps involved in issuing permits are also required for permit modifications, even modifications that are minor as described in ARM 17.30.1362. Under ARM 17.30.1362(1)(d), a change in project ownership is a minor modification.

COMMENT NO. 14: A commentor is concerned about the apparent raise in fees for concentrated animal feeding operations (CAFOs).

REPOSENSE: During the 2005 Legislative session the Water Quality Act was amended to include fees for CAFOs. Pursuant to section 75-5-803, MCA, the fees for CAFO general and individual permits are \$600 for the application fee and \$600 for the annual fee. Since 2005 CAFO permit holders have been assessed the fee specified in the statute, and the lower fees shown in the current fee rule have not been applicable. The proposed amendments to the CAFO fees in the fee rule simply incorporate the amount specified in statute.

COMMENT NO. 15: The large fee increases proposed will have a chilling effect on the natural resource industries.

RESPONSE: The impact of the fee increase on the natural resource industries varies depending on how the current economic climate affects the particular industry. In general, the amount of the fee increase should not be so large as to significantly impact a facility's financial status. Some of the natural resource industries are not subject to the increases due to statutory fee caps. In other cases the impact of the fees may be reduced because fees are based on discharge flows, which are less in times of low production.

COMMENT NO. 16: Permit fees should not be increased for the aluminum refinery. Aluminum is a commodity whose price is set in the marketplace, and the facility has no control over it. The proposed fee increase for this facility is contrary to the Governor's stated goal to protect quality jobs.

RESPONSE: The current fee rules were last revised in 2002 and have remained unchanged for more than 7 years. For this permittee, assuming three outfalls and the same annual average flow, the proposed rule would increase annual

fees from \$2,267 to \$3,375. The renewal fee, which is due about every five years, will increase by about 20% from \$10,000 to \$12,000. This facility is current on its renewal fee and will not have to pay the increased fee for at least five years. These fee increases, while not insignificant, should not in themselves significantly impact the facility's financial status.

COMMENT NO. 17: Permit application fees for sand and gravel mines are increasing from \$450 to \$1,200, and annual fees are increasing also. This is excessive, especially for dry sites that do not pose a threat to water quality. If fees are supposed to reflect pollutant loading, sediment particles are not "pollutants" unless they enter water.

RESPONSE: The proposed fee increases are necessary to account for an increase in overall costs to administer the discharge permit program. See Response to Comment No. 6. Sand and gravel operations have a significant potential to cause pollution. In addition to sediment, the general permit for sand and gravel mines addresses discharges of wash water, transport water, scrubber water, pit dewatering water, and other process water to state waters. Pollutants of concern in process water include oil and grease, pH and turbidity.

COMMENT NO. 18: A small wastewater district commented that the fees are too high and penalize the smaller communities to the point where users may no longer be able to afford the system. Larger cities with more connections have a lower cost per connection than smaller towns. A user in a system with 50 connections would pay \$50.00 per year in permit fees alone, while a user in a large system (10,000 connections) may pay only \$.50 per year for permit fees. The fee schedule discriminates against smaller districts in Montana. The department should abandon this type of fee schedule and research other means of producing money.

RESPONSE: Application fees for larger systems are higher than for smaller systems, and larger systems also pay more in annual fees based on volume of the discharge. However, the commentor is correct that the annual cost per user can be significantly higher for small systems with few users, when compared with systems with more users. The per-user inequity can not be completely eliminated without imposing disproportionate costs on other categories of fee payers. Eliminating the permit fee system altogether is not an option absent legislative change. The amount of the per-user fee increase in small systems should not be prohibitive, however. The annual fees for small public systems are increasing from \$1000 to \$1,500. For a system with 50 users this amounts to an increase of \$10 per year per user.

COMMENT NO. 19: In an earlier draft version of the proposed rule, the term "determination of no significance" was used in ARM 17.30.201(3) and Schedule I.A. This is changed in the current proposal to "determination of significance." The commentor questions whether this has a substantive effect.

RESPONSE: The term "determination of significance" was used in the more recent draft because it is consistent with the terminology used in ARM 17.30.715, which establishes the criteria for determining nonsignificant changes in water quality. The change does not have a substantive effect.

COMMENT NO. 20: Under the proposed Schedule I. D, the fee for Clean Water Act section 401 certifications is \$4,000 or 1% of the value of the proposed project not to exceed \$20,000. How does the value of the project relate to DEQ's costs? Fees should be tied to potential risk and administrative burden, not value of project.

RESPONSE: Review of 401 certifications can require significant staff time within the department and can involve several different work units within the agency. Because there is no annual fee for 401 certifications, the application fee must address the costs of initial and any follow-up review. Project value is the simplest method to reflect the complexity of the review and the corresponding review costs. The rule will be revised to reduce the proposed \$4,000 minimum fee to \$400.

COMMENT NO. 21: A commentor requests clarification of whether the fees for Clean Water Act section 401 certifications will be assessed if certification is waived under ARM 17.30.105(2).

RESPONSE: The proposed ARM 17.30.201(6)(o) will be revised to clarify that if a fee is submitted for a 401 certification and the department waives certification, without review, because the project will require a permit or authorization identified in ARM 17.30.105(2)(b), the 401 fee will be credited toward the cost of the applicable permit or authorization.

COMMENT NO. 22: Under the proposed ARM 17.30.201(6) the new permit fee for certain permits covers the annual fee for the calendar year that the permit coverage becomes effective. An applicant could pay for a new permit in December of one year and then be subject to an annual fee the next month.

RESPONSE: The commentor is correct. Applicants are advised to time their applications to avoid unnecessary fees. This comment is most pertinent to construction storm water authorizations, which are usually short-term. Applications for these authorizations are usually received between February and June, coinciding with the construction season.

COMMENT NO. 23: A commentor requests clarification of what was intended in proposed ARM 17.30.201(6)(a), which refers to "multiple or variable (flow dependent) effluent limits or monitoring requirements."

RESPONSE: This language is in the current rules at ARM 17.30.201(5)(a). It was moved to reflect the amended rule's new format, resulting in the language being underlined as new text. The intent of the section is to provide a means to consolidate, for fee purposes, multiple outfalls that discharge to the same stream segment, require identical review and analysis, and result in the same effluent limits. The outfalls in these cases, although identified as separate in the permit, will be consolidated for fee purposes, resulting in lower annual fees for the permit holder.

COMMENT NO. 24: Please define how you determine a different outfall per stream segment pursuant to ARM 17.30.201(6)(a).

RESPONSE: Outfalls are initially identified by the permit applicant in the application form. The department permit reviewer analyzes the identified outfalls in terms of wastewater characteristics, process flow diagrams, and water quality data

in the receiving stream segment, which is the part of the stream extending between designated tributary junctions. A stream segment may have varying water quality characteristics requiring separate analysis to develop effluent limits, and each segment can be impaired for a variety of pollutants, which requires an analysis for each parameter. The permit protects water quality by requiring effluent limits and monitoring for each receiving stream segment. If the analysis results in identical effluent limits for two or more outfalls, and the outfalls discharge into the same receiving stream segment, the outfalls are grouped for fee assessment purposes. The process of "grouping" outfalls has been in effect since 1994 and is consistent with Section 75-5-516(2), MCA.

COMMENT NO. 25: In proposed ARM 17.30.201(6)(b) it is not clear why it would be necessary to charge an additional application fee if an application is denied for more than one year.

RESPONSE: If an amended application is submitted after 12 months or more of inactivity, the application would need extensive re-review. Even if there were no operational changes to the facility, new data about the water quality of the receiving stream would need to be obtained and evaluated in order to set effluent limitations for the permit.

COMMENT NO. 26: Proposed ARM 17.30.201(6)(c) authorizes the department to assess an administrative processing fee when a permittee makes substantial alterations or additions to a sediment control plan, waste management plan, nutrient management plan, or storm water pollution prevention plan. How much is the fee and what constitutes "substantial alteration"? The department encourages permittees to actively monitor and amend these plans. Charging them administrative fees for doing so is a deterrent to doing the right thing.

RESPONSE: The administrative processing fee, set out in Schedule I.D, is \$500. The fee will be charged when a change to a plan requires significant additional review time by the department. Although "significant" additional review can not be quantified, in general this fee will not be charged for processing of clerical corrections. It will be charged where a resubmitted plan requires substantive review by the department. For example, the administrative processing fee will generally not be assessed for processing voluntary updates of construction storm water pollution prevention plans (SWPPPs). However, if the department identifies deficiencies in a SWPPP during a compliance inspection, the processing fee may be charged for review of the resubmitted SWPPP. The fee will usually be charged when the department identifies a deficiency in a plan and reviews the corrected plan. Department review of voluntary amendments of non-construction storm water plans may also trigger this fee if significant review time is required. Nutrient management plan re-submittals for concentrated animal feeding operations (CAFOs) will generally be charged this fee because the department must provide a public comment process for these plans. In response to comments, the rule will be revised to clarify that the fee will be assessed where significant department review is required.

COMMENT NO. 27: ARM 17.30.201(6)(g) appears to be in conflict with ARM 17.30.201(6)(a). Can they be combined to avoid confusion?

RESPONSE: The proposed ARM 17.30.201(6)(a) states that fees associated with individual permits and non-storm water general permits under Schedules I.A and I.B are assessed based on the number of outfalls. ARM 17.30.201(6)(a) also provides that outfalls may be grouped, for fee purposes, in certain situations. See Response to Comment 24. ARM 17.30.201(6)(g) states that discharges composed entirely of storm water from industrial activities and mining and oil and gas activities may be incorporated into a facility permit under Schedule I.A, and in that event the storm water fees would be on a per-outfall basis. There is not a conflict between these two provisions.

COMMENT NO. 28: In Schedule III.A the fee for non-contact cooling water appears to be limited to minor privately-owned treatment works. This will result in higher fees for major dischargers of non-contact cooling water.

RESPONSE: The lower fee for "non-contact cooling water" was intended to apply to both public and private, major and minor, treatment works, as is the case under the current rules. This was a formatting error, and Schedule III.A will be revised to make this change.

COMMENT NO. 29: In the proposed rule, ARM 17.30.201(8)(f) states that the annual fee is due "not later than 30 days after the invoice date." Section ARM 17.30.201(10) states that the "fee is due 30 days after receipt of the written notice." The commentor requests clarification as to which provision controls. The commentor states that 30 days is not enough time to process payments from municipalities, and suggests 45-60 days.

RESPONSE: The current fee rule requires that annual permit fees be paid on March 1. The proposed ARM 17.30.201(8)(f) eliminates the March 1 due date and requires payment not later than 30 days after the date of an invoice. The "invoice" referenced in ARM 17.30.210(8)(f) was intended to be the same as the "notice" in ARM 17.30.210(10). In response to this comment, the rule will be revised to eliminate inconsistency and duplication. The term "notice" will be used instead of "invoice," and the 30 days for payment will run from the date on the notice, rather than the date of receipt. The provisions regarding fee notices and due dates will also be consolidated into ARM 17.30.201(10). Under both the current and proposed rule, interest and late fees begin to accrue after 30 days, but ARM 17.30.210(9) defers imposition of interest and late fees for 90 days after the due date. See 75-5-516(5), MCA. The additional 90 day grace period should address the commentor's concern about municipal payment processing times.

COMMENT NO. 30: ARM 17.30.201(8)(f) requires payment by check or money order, which is not consistent with the department electronic payment known as eBill.

RESPONSE: EBill is not currently available to the entire department. The rule will be modified to incorporate electronic payments when it becomes available.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/
JAMES M. MADDEN
Rule Reviewer

By: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, _____, 2009.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.30.201 pertaining to permit fees)
)
)) NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT
(WATER QUALITY)

TO: All Concerned Persons

1. On September 3, 2009, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., August 24, 2009, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.30.201 PERMIT APPLICATION, DEGRADATION AUTHORIZATION, AND ANNUAL PERMIT FEES (1) The purpose of this rule is to ~~establish~~ provide fee schedules for use in determining fees to be paid to the department under 75-5-516, MCA. ~~Fees to be paid are the sum of the fees in the applicable schedules. There are three~~ The types of fees imposed provided under this rule are:

- (a) a permit application fees for individual permits (Schedule I.A);
- (b) application fees for non-storm water general permits (Schedule 1.B);
- (c) application fees for storm water general permits (Schedule 1.C);
- (d) application fees for other activities (Schedule 1.D);
- ~~(b)~~ (e) a degradation authorization fees (Schedule II); and
- ~~(c)~~ (f) an annual permit fees for individual permits (Schedule III.A);
- (g) annual fees for non-storm water permits (Schedule III.B); and
- (h) annual fees for storm water general permits (Schedule III.C).

(2) For purposes of this rule, the definitions contained in ARM Title 17, chapter 30, subchapter 10 and subchapter 13 are incorporated by reference. The following definitions also apply in this rule:

- (a) "domestic waste" means wastewater from bathrooms, kitchens, and laundry;
- (b) "flow rate" means the maximum flow during a 24-hour period, expressed in gallons per day (gpd);
- (c) "industrial waste," as defined in 75-5-103, MCA, means a waste substance from the process of business or industry or from the development of any

natural resource, together with any sewage that may be present;

(d) "major permit" means a Montana pollutant discharge elimination system permit for a facility that is designated by the department as a major facility pursuant to ARM Title 17, chapter 30, subchapter 13;

(e) "minor permit" means a Montana pollutant discharge elimination system permit for a facility that is not designated by the department as major pursuant to ARM Title 17, chapter 30, subchapter 13;

(f) "municipal separate storm sewer system" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, that discharges to surface waters and is owned or operated by the state of Montana, a governmental subdivision of the state, a district, association, or other public body created by or pursuant to Montana law, including special districts such as sewer districts, flood control districts, drainage districts and similar entities, and designated and approved management agencies under section 208 of the federal Clean Water Act, which has jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, and is:

(i) designed or used for collecting or conveying storm water;

(ii) not a combined sewer; and

(iii) not part of a publicly owned treatment works (POTW) as defined in ARM Title 17, chapter 30, subchapter 13;

(g) "new permit" means a permit for a facility or activity that does not have an effective permit;

(h) "non-traditional MS4" means a system similar to separate storm sewer systems in municipalities, such as systems at military bases, large educational, hospital, or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings;

(i) "other wastes," as provided in 75-5-103, MCA, means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters;

(j) "outfall" means a disposal system through which effluent or waste leaves the facility or site; and

(k) "renewal permit" means a permit for an existing facility that has an effective discharge permit.

~~(2)~~ (3) A person who applies for a permit, certificate, license, notice of intent, plan review, waiver, determination of significance, or other authorization required by rule under 75-5-201, 75-5-301, or 75-5-401, MCA, or for a modification or renewal of any of these authorizations, shall pay to the department a permit application fee as determined under ~~(5)~~ of this rule (6).

~~(3)~~ (4) A person whose activity requires an application to degrade state waters under 75-5-303, MCA, and ARM Title 17, chapter 30, subchapter 7 of this chapter shall submit a degradation authorization fee with the application, as determined under ~~(6)~~ of this rule (7).

~~(4)~~ (5) A person who holds a permit, certificate, license, or other

authorization required by rule under 75-5-201 or 75-5-401, MCA, shall pay to the department an annual permit fee as determined under ~~(7) of this rule~~ (8).

~~(5) (6)~~ The fee schedules for new or renewal applications for, or modifications of, a Montana pollutant discharge elimination system permit under ARM Title 17, chapter 30, subchapter 11 or 13 of this chapter, a Montana ground water pollution control system permit under ARM Title 17, chapter 30, subchapter 10 of this chapter, or any other authorization under 75-5-201, 75-5-301, or 75-5-401, MCA, or rules promulgated under these authorities, is are set forth below as Schedules I.A, I.B, and I.C, and I.D. Payment of the permit application fee is due upon submittal of the application. Fees must be paid in full at the time of submission of the application. For new applications under Schedule I.A or I.B, the annual fee from Schedule I.A for the first year must also be paid at the time of application. For new applications under Schedule I.B, the annual fee is included in the new permit amount and covers the annual fee for the calendar year in which the permit coverage becomes effective.

(a) Under Schedules I.A and I.B, the department shall assess a fee for each outfall. An application fee for multiple outfalls is not required if there are multiple outfalls from the same source that have similar effluent characteristics, unless the discharges are to different receiving waters or stream segments, or result in multiple or variable (flow dependent) effluent limits or monitoring requirements.

(b) For purposes of (6) and (7), if a resubmitted application contains substantial changes or deficiencies requiring significant additional review, the department shall require an application resubmittal fee under Schedule I.D. The resubmittal fee must be paid before any further review is conducted. The department shall give written notice of the assessment within 30 days after receipt of the resubmittal and provide for appeal as specified in (11). If the department does not receive a response to a deficiency notice within one year, the applicant shall submit a new application and associated fees in order for application processing to continue.

(c) The department may assess an administrative processing fee under Schedule I.D when a permittee makes substantial alterations or additions to a sediment control plan, waste management plan, nutrient management plan, or storm water pollution prevention plan.

(d) Application fees are nonrefundable except, as required by 75-5-516(1)(d), MCA, if the permit or authorization is not issued the department shall return a portion of the application fee based on avoided enforcement costs. The department shall return 25% of the application fee if the application is withdrawn within 30 days after submittal.

(e) Facilities with an expired permit must pay the new permit application fee for individual permit coverage as specified in Schedule I. A.

(f) Applications for new permits or permit renewals for sources that constitute a new or increased source, as defined in ARM 17.30.702(18), must pay a significance determination fee for each outfall in addition to the application fee.

(g) Discharges composed entirely of storm water from industrial activities or from mining and oil and gas activities, as defined in ARM 17.30.1105, may be incorporated into a permit application submitted under Schedule I.A. The application fee for each storm water outfall must be submitted to the department

with the application.

(h) The application fee for an individual permit for a municipal separate storm sewer system (MS4) is determined by population based on the latest decennial census from the United States Census Bureau. Applications for MS4 permits with co-permittees will receive a 10% reduction in the application fee.

Schedule I.A Application Fee for Individual Permits

Category	Renewal Amount ⁽⁴⁾ Fee	New Permit Fee
Publicly owned treatment works - major <u>permit</u>	\$ <u>4,000</u> <u>4,800</u>	\$ <u>5,000</u>
Privately owned treatment works - major <u>permit</u>	<u>4,500</u> <u>5,000</u>	<u>5,000</u>
Publicly owned treatment works - minor <u>permit</u>	<u>1,000</u> <u>1,500</u>	<u>2,500</u>
Privately owned treatment works - minor <u>permit</u>	<u>2,500</u> <u>3,000</u>	<u>4,200</u>
Ground water <u>permit</u> , domestic wastes flow rate - gallons per day	<u>1,200</u>	
<u>0-10,000 gpd</u>	<u>1,200</u>	<u>2,500</u>
<u>10,001 to 30,000 gpd</u>	<u>1,500</u>	<u>2,500</u>
<u>more than 30,000 gpd</u>	<u>2,500</u>	<u>4,000</u>
Ground water <u>permit</u> , industrial, or other wastes	<u>4,500</u>	
<u>0-1,000 gpd</u>	<u>1000</u>	<u>1,500</u>
<u>1,001 to 5,000 gpd</u>	<u>1,500</u>	<u>2,500</u>
<u>5,001 to 10,000 gpd</u>	<u>2,500</u>	<u>3,500</u>
<u>more than 10,000 gpd</u>	<u>4,800</u>	<u>5,000</u>
<u>Concentrated animal feeding operation permit</u>	<u>600</u>	<u>600</u>
<u>Storm water permit construction, industrial, and mining, oil, and gas activities</u>	<u>2,000</u>	<u>3,200</u>
<u>Traditional storm water municipal separate storm sewer system (MS4) permit</u>		
<u>population greater than 50,000</u>	<u>9,000</u>	<u>11,000</u>
<u>population 10,000 to 50,000</u>	<u>7,000</u>	<u>9,000</u>
<u>population less than 10,000</u>	<u>6,000</u>	<u>8,000</u>
<u>Non-traditional MS4 permit</u>	<u>5,000</u>	<u>7,000</u>
<u>Other MS4 permits</u>	<u>4,000</u>	<u>5,000</u>
<u>Significance determination</u>	<u>4,000</u>	<u>5,000</u>
<u>Storm water outfall - (integrated)</u>	<u>1,000</u>	<u>1,500</u>

⁽⁴⁾ ~~Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.~~

Schedule I.B Application Fee for Non-Storm Water General Permits

Category	Renewal Amount ⁽⁴⁾ Fee	New Permit Fee (includes initial annual fee)
Concentrated animal feeding operation, greater than 1,000 animal units	\$ 450 600	\$ 1,200
Concentrated animal feeding operation less than 1,000 animal units	300	
Construction dewatering	300 400	900
Fish farms	300 600	1,200
Produced water	450 900	1,200
Suction dredge	250	
resident of Montana	25	25
nonresident of Montana	100	100
Sand and gravel	450 900	1,200
Domestic sewage treatment lagoon	500 800	1,200
Disinfected water	500 800	1,200
Petroleum cleanup	500 800	1,200
Storm water associated with construction residential (single family dwelling)	250	
Storm water associated with construction commercial or public	450	
Storm water associated with industrial activities	500	
Storm water associated with mining, oil and gas	500	
Storm water municipal separate storm sewer system (MS4)	1,500	
Ground water remediation or dewatering	700 800	1,400
Ground water potable water treatment facilities	700 800	1,400
Other general permit, not listed above	400 600	1,200

⁽⁴⁾ ~~Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.~~

(i) Application fees in Schedule I.C for authorizations under the general permit for storm water associated with construction activities are based on the total acreage of disturbed land. Renewal application fees will not be required during the general permit renewal cycle, unless the authorization has been in effect for more than four years.

(j) Application fees in Schedule I.C for authorizations under the general permits for storm water associated with industrial activities and mining, oil, and gas activities are based on the total size of the regulated facility or activity in acres.

(k) Application fees in Schedule I.C for authorizations under a general permit for a municipal separate storm sewer system (MS4) are determined by population

based on the latest decennial census from the United States Census Bureau. Applications for MS4 permit coverage with co-permittees will receive a 10% reduction in the application fee.

(l) Modifications to authorizations under the general permit for storm water associated with construction activities will be processed under Schedule I.D as a minor modification if the modification is submitted within six months after the date of issuance of the authorization. Modifications, except for name changes, submitted six months or more after issuance of the authorization will be processed under Schedule I.C as a new permit application.

(m) Modifications, except for name changes, to authorizations under a general permit other than the general permit for storm water associated with construction activities must be processed under Schedule 1.B and I.C as a renewed application.

(n) A facility with a construction storm water no-exposure certification from the department must apply for and receive a new certification every five years in order to maintain a no-exposure status.

Schedule I.C Application Fee for Storm Water General Permits

<u>Category</u>	<u>Renewal Amount</u>	<u>New Permit Amount</u>
<u>Storm water associated with construction</u>		
<u>1 to 5 acres</u>	<u>\$ 900</u>	<u>\$ 900</u>
<u>more than 5 acres, up to 10 acres</u>	<u>1,000</u>	<u>1,000</u>
<u>more than 10 acres, up to 25 acres</u>	<u>1,200</u>	<u>1,200</u>
<u>more than 25 acres, up to 100 acres</u>	<u>2,000</u>	<u>2,000</u>
<u>more than 100 acres</u>	<u>3,500</u>	<u>3,500</u>
<u>Storm water associated with industrial activities</u>		
<u>small - 5 acres or less</u>	<u>1,200</u>	<u>1,500</u>
<u>medium - more than 5 acres, up to 20 acres</u>	<u>1,500</u>	<u>1,800</u>
<u>large - more than 20 acres</u>	<u>1,800</u>	<u>2,000</u>
<u>Storm water associated with mining, oil, and gas</u>		
<u>small - 5 acres or less</u>	<u>1,200</u>	<u>1,500</u>
<u>medium - more than 5 acres, up to 20 acres</u>	<u>1,500</u>	<u>1,800</u>
<u>large - more than 20 acres</u>	<u>1,800</u>	<u>2,000</u>
<u>Traditional storm water municipal separate storm sewer system (MS4)</u>		
<u>population greater than 50,000</u>	<u>7,000</u>	<u>10,000</u>
<u>population 10,000 to 50,000</u>	<u>6,000</u>	<u>8,000</u>
<u>population less than 10,000</u>	<u>5,000</u>	<u>6,000</u>
<u>County MS4 permit</u>	<u>4,000</u>	<u>5,000</u>
<u>Non-traditional MS4 permit</u>	<u>2,000</u>	<u>3,000</u>
<u>Storm water no-exposure certification required once every five years</u>	<u>300</u>	<u>500</u>
<u>Storm water construction waiver</u>		<u>400</u>

(o) The minimum application fee under Schedule I.D for federal Clean Water Act section 401 certification is \$4,000 or 1% of the gross value of the proposed project, whichever is greater, and the maximum fee may not exceed \$20,000.

Schedule I.C D Application Fee for Other Activities

Category	Amount ⁽⁴⁾
Short-term water quality standard, turbidity "318 authorization"	\$ 150 <u>250</u>
Short-term water quality standard, remedial activities and pesticide application "308 authorization"	250 <u>400</u>
Storm water no exposure certification	100
Storm water construction waiver	100
Federal Clean Water Act section 401 certification	Varies ⁽²⁾ See ARM <u>17.30.201(6)(o)</u>
Review plans and specifications to determine if permit is necessary, pursuant to 75-5-402(2), MCA	$\frac{1}{2}$ Applicable Fee <u>2,000</u>
Major amendment <u>modification</u>	<u>Application Fee Renewal fee from Schedule I.A</u>
Minor amendment <u>modification</u> , includes transfer of ownership	200 <u>500</u>
<u>Resubmitted application fee</u>	<u>\$500</u>
<u>Administrative processing fee</u>	<u>\$500</u>

~~(4) Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.~~

~~(2) Minimum fee is \$350, or 1% of gross value of proposed project, not to exceed \$10,000.~~

~~(a) An application fee for multiple discharge points is not required if there are multiple discharge points from the same source that have similar effluent characteristics, unless the discharges are to different receiving waters or stream segments, or result in multiple or variable (flow dependent) effluent limits or monitoring requirements.~~

~~(b) If a resubmitted application contains substantial changes causing significant additional review, the department may require an additional application fee to be paid before any further review is conducted. The additional fee must be calculated in the same manner as the original fee and based on those parts of the application that must be reviewed again because of the change. The department shall give written notice of the assessment within 30 days after receipt of the resubmittal and provide for appeal as specified in (10) below.~~

~~(6) (7) The fee schedule for new or renewal authorizations to degrade state waters under ARM Title 17, chapter 30, subchapter 7 of this chapter is set forth in Schedule II. Payment of the degradation authorization fee is due upon submittal of the applications. For the domestic sewage treatment and industrial activity categories, the department shall assess a fee for each outfall. If an application for~~

authorization to degrade state waters is denied, the department shall return any portion 15% of the fee that it does not use to review the application submitted.

Schedule II Review of Authorizations to Degrade

Category	Amount
Domestic sewage treatment	\$2,500 ⁽⁴⁾ <u>5,000</u>
Industrial activity	5,000 ⁽⁴⁾
Subdivision, 1-9 lots	120/lot
Subdivision, 10+ lots	200/lot ⁽²⁾

⁽¹⁾ ~~Per outfall, limited to a maximum of five falls.~~

⁽²⁾ ~~Maximum fee is \$5,000 per subdivision.~~

~~(a) For purposes of (5) and (6) above, if a resubmitted application or petition contains substantial changes potentially causing additional or different sources of pollution that require the application or petition to be reviewed again, the department may require an additional application fee to be paid before any further substantive review. The additional fee must be calculated in the same manner as the original fee and based on those parts of the application that must be reviewed again because of the change. The department shall give written notice of the assessment within 30 days after receipt of the resubmittal and provide for appeal as specified in (10) below.~~

~~(7) (8) The annual permit fees is are set forth in Schedules III.A, and III.B, and III.C. No annual fee is required for activities listed in Schedule I.CD under (5) of this rule.~~

(a) Under Schedules III.A and III.B, the department shall assess a fee for each outfall. An annual fee for multiple outfalls is not required if there are multiple outfalls from the same source that have similar effluent characteristics, unless the discharges are to different receiving waters or stream segments, or the discharges result in multiple or variable (flow dependent) effluent limits or monitoring requirements. For ground water permits, the department shall assess a fee based on the annual average daily flow in gallons per day for each outfall.

Schedule III.A Annual Fee for Individual Permits

Category	Minimum Fee ⁽⁴⁾	Fee Per Million Gallons of Effluent per Day (MGD)
Publicly owned treatment works - major <u>permit</u>	\$2,000 <u>3,000</u>	\$2,500 <u>3,000</u>
Privately owned treatment works - major <u>permit</u>	3,000	3,000 ⁽²⁾
Publicly owned treatment works - minor <u>permit</u>	1,000 <u>1,500</u>	\$2,500 <u>3,000</u>
Privately owned treatment works - minor <u>permit</u>	1,000 <u>1,500</u>	3,000 ⁽²⁾
<u>discharge of non-contact cooling water</u>	<u>800</u>	<u>800</u>

<u>only</u>		
Privately owned treatment works—minor⁽³⁾	750	750
Ground water permit, domestic wastes	750	3,000
annual average daily flow - gallons per day		
 <u>0 to 10,000 gpd</u>	1,300	
 <u>10,001 to 30,000 gpd</u>	2,000	
 <u>more than 30,000 gpd</u>	3,000	
Ground water permit, industrial, or other wastes	4,500	3,000⁽²⁾
 <u>0 to 1,000 gpd</u>	2,000	
 <u>1,001 to 5,000 gpd</u>	2,500	
 <u>5,001 to 10,000 gpd</u>	2,800	
 <u>more than 10,000 gpd</u>	3,000	
Concentrated animal feeding operation permit	600	
Storm water permit construction, industrial, and	2,000	
mining, oil, and gas activities		
Traditional storm water municipal separate		
storm sewer system (MS4) permit		
 <u>population greater than 50,000</u>	3,000	
 <u>population 10,000 to 50,000</u>	2,500	
 <u>population less than 10,000</u>	2,000	
Non-traditional MS4 permit	1,500	
Other MS4 permits	1,500	
Storm water outfall - (integrated)	1,000	

~~⁽¹⁾ Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.~~

~~⁽²⁾ Except \$750 per MGD if effluent is noncontact cooling water.~~

~~⁽³⁾ Noncontact cooling water only.~~

Schedule III.B Annual Fee for Non-Storm Water General Permits

Category	Amount ⁽⁴⁾
Concentrated animal feeding operation, greater than 1,000 animal units	\$300 600
Concentrated animal feeding operation, less than 1,000 animal units	250
Construction dewatering	<u>250 450</u>
Fish farms	<u>250 450</u>
Produced water	<u>450 750</u>
Portable suction dredges	<u>200</u>
<u>resident of Montana</u>	<u>25</u>
<u>nonresident of Montana</u>	<u>100</u>

Sand and gravel production	450 <u>750</u>
Domestic sewage treatment lagoon	500 <u>850</u>
Disinfected water	450 <u>750</u>
Petroleum cleanup	450 <u>750</u>
Storm water associated with construction, residential (single family dwelling)	NA
Storm water associated with construction, commercial or public	450
Storm water associated with industrial activities	650
Storm water associated with mining, oil and gas	650
Storm water municipal separate storm sewer system (MS4)	650
Ground water remediation or dewatering	450 <u>800</u>
Potable water treatment facilities	450 <u>800</u>
Other general permit, not listed above	350 <u>800</u>

⁽⁴⁾ ~~Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.~~

(b) Annual fees in Schedule III.C for authorizations under the general permit for storm water associated with construction activities are based on the total acreage of disturbed land.

(c) Annual fees in Schedule III.C for authorizations under the general permits for storm water associated with industrial activities and for mining, oil, and gas activities are based on the total size of the regulated facility or activity in acres.

(d) Annual fees in Schedule III.C for authorizations under the general permit for municipal separate storm sewer systems (MS4s) are determined by population in an urbanized area as defined by the United States Census Bureau. The fees must be based on the latest available decennial census data.

Schedule III.C Annual Fee for Storm Water General Permits

Category	Amount
<u>Storm water associated with construction</u>	
<u>1 to 5 acres</u>	\$ <u>700</u>
<u>more than 5 acres, up to 10 acres</u>	<u>800</u>
<u>more than 10 acres, up to 25 acres</u>	<u>1,200</u>
<u>more than 25 acres, up to 100 acres</u>	<u>2,000</u>
<u>more than 100 acres</u>	<u>3,000</u>
<u>Storm water associated with industrial activities</u>	
<u>small - 5 acres or less</u>	<u>1,000</u>
<u>medium - more than 5 acres, up to 20 acres</u>	<u>1,200</u>
<u>large - more than 20 acres</u>	<u>1,500</u>
<u>Storm water associated with mining, oil, and gas</u>	
<u>small - 5 acres or less</u>	<u>1,000</u>
<u>medium - more than 5 acres, up to 20 acres</u>	<u>1,200</u>
<u>large - more than 20 acres</u>	<u>1,500</u>

Traditional storm water municipal separate storm sewer system (MS4)

<u>population greater than 50,000</u>	<u>5,000</u>
<u>population 10,000 to 50,000</u>	<u>4,000</u>
<u>population less than 10,000</u>	<u>2,500</u>
<u>County MS4 permit</u>	<u>1,200</u>
<u>Non-traditional MS4 permit</u>	<u>1,200</u>

~~(a) (e)~~ A facility that ~~consistently discharges effluent at less than or equal to one-half of its effluent limitations and is in compliance with other permit requirements, using~~ maintains compliance with permit requirements, including effluent limitations and reporting requirements, as determined by the previous year's discharge and compliance monitoring data, is entitled to a 25% reduction in its annual permit fee. ~~Proportionate reductions in annual fee of up to 25% may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their permit effluent limitations. The annual average of the percentage of use of each parameter limit will be used to determine an overall percentage.~~ A new permittee is not eligible for fee reduction in its first year of operation. A permittee with a violation of any effluent limit permit requirement during the previous year is not eligible for fee reduction.

~~(b) (f)~~ The annual permit fee is assessed for each ~~state fiscal~~ calendar year or portion of the calendar year in which the permit is effective. The fee for the ~~fiscal previous calendar~~ calendar year must be received by the department ~~by no later than March 1 following the commencement of the fiscal year~~ not later than 30 days after the invoice date. The fee must be paid by a check or money order made payable to the state of Montana, ~~d~~Department of eEnvironmental qQuality.

~~(8) (9)~~ If a person who is assessed a renewal or annual fee under this rule fails to pay the fee within 90 days after the due date for payment, the department may:

(a) impose an additional assessment consisting of ~~45~~ 20% of the fee plus interest on the required fee beginning the first day after the payment is due. Interest must be computed at the rate of 12% per year, established under 15-31-510(3) 15-1-216(4), MCA; or

(b) suspend the processing of the renewal application for a permit or authorization or, if the nonpayment involves an annual permit fee, suspend the permit, certificate, license, or other authorization for which the fee is required. The department may lift the suspension at any time up to one year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under this subsection rule.

~~(9) (10)~~ The department shall give written notice to each person assessed a fee under this rule of the amount of the fee that is assessed and the basis for the department's calculation of the fee. ~~This notice must be issued at least 30 days prior to the due date for payment of the assessment.~~ The fee is due 30 days after receipt of the written notice.

~~(10) (11)~~ Persons assessed a fee under this rule may appeal the department's fee assessment to the board within 20 days after receiving written

notice of the department's fee determination. The appeal to the board must include a written statement detailing the reasons why the permit holder or applicant considers the department's fee assessment to be erroneous or excessive.

(a) If part of the department's fee assessment is not in dispute in an appeal ~~filed under (10) above~~, the undisputed portion of the fee must be paid to the department upon written request of the department.

(b) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this ~~section~~ rule.

AUTH: 75-5-516, MCA

IMP: 75-5-516, MCA

REASON: Pursuant to 75-5-516, MCA, the board must prescribe fees to be assessed by the department for water quality permit applications, annual permit renewals, review of petitions for degradation, and for other water quality authorizations required under the Montana Water Quality Act, Title 75, chapter 5, MCA. Subject to specific statutory fee caps, the Act requires the board to adopt permit fees that are sufficient to cover the board and department costs of administering the permits and other authorizations required under the Act. Application fees are capped at \$5,000 per discharge point, and annual fees are capped at \$3,000 per million gallons per day. Section 75-5-516(1) and (2), MCA. The Act requires that annual fees cover department costs of administering the program after subtracting application fees, state general fund appropriations, and federal grants. Section 75-5-516(2), MCA.

Program administration costs have increased, but federal and state funding sources have not changed. EPA and state special funding for the program decreased 10% (\$40,000) from FY 2002 through FY 2009, and it is currently unknown if a \$60,000 state general fund appropriation will be available. Consequently, an increase in fees is necessary to defray a portion of the state's costs of maintaining the program. For the biennium the annual budget for the program is approximately \$2.4 million. Revenues of approximately \$2 million must be raised by permit fees. The \$2 million in fees would affect approximately 1,900 permittees. The fee revenue will be supplemented by approximately \$400,000 in special revenue funds and grants to cover the remaining costs of program administration.

Total fee revenue generated annually by the revised fees would be approximately \$2 million. Applications are projected to generate approximately \$255,000, and annual fees are projected to generate approximately \$1.7 million. The \$2 million in fees would affect approximately 1,900 permittees. The fee revenue will be supplemented by approximately \$400,000 in special revenue funds and grants to cover the remaining costs of program administration.

In this rulemaking, the board is proposing to amend the current fee schedules in ARM 17.30.201. The four major proposed amendments to ARM 17.30.201 are: (1) increasing both the application and annual fees for permits and authorizations; (2) establishing fees based on volume discharged for ground water discharges; (3) establishing fees for administrative processing of permit related submittals; and (4)

adding explanatory text in the rules to clarify how fees are assessed under the fee schedules. The proposed amendments are necessary to implement the statutory requirement that fees recover costs of program administration, move the fee schedule toward a system that has more equity among fee payers than the current structure, and improve the readability of the rule and schedules.

In this statement of reasonable necessity, changes to the rule text are discussed first, followed by discussion of the amendments to the fee schedules.

The proposed amendments to (1) would make minor clerical changes and conform (1) to the new schedule format.

Proposed new (2) would add definitions associated with fee assessment. The definitions are necessary to clarify how the fee schedules apply.

The proposed amendments to existing (2), (3), and (4), (renumbered (3), (4), and (5)) would make minor clerical changes and add to the list of types of application for which fees are provided in the revised schedules. These amendments are necessary for clarity.

The proposed amendments to existing (5) (renumbered (6)) would make minor clerical revisions and provide that applications are incomplete without fees. The amendments clarify that the first annual fee is included in the new permit fee listed in Schedule I.B application fees.

Proposed new (6)(a) would clarify that the application fees in Schedules I.A and I.B are based on the number of outfalls and describes when multiple outfalls can be combined under a single fee. These provisions are necessary to provide clarity in the rule about the assessment process.

Proposed new (6)(b) would establish a review fee for resubmitted applications that have substantial changes or deficiencies requiring significant additional review. As set out in Schedule I.D, the resubmittal fee is \$500. This new fee is necessary to recover additional review costs caused by changes or deficiencies in applications. This new subsection would also provide that a new application fee is required if an application has been denied for a year or more. In those situations, a complete re-review is often required, and the additional fee is necessary to recover the additional review costs.

Proposed new (6)(c) would provide for an administrative processing fee for review of substantial changes to certain management plans. As set out in Schedule I.D, the fee is \$500. This new fee is necessary to address additional review and public notice costs pertaining to changes in management plans.

Proposed new (6)(d) would provide that application fees are nonrefundable except as provided by 75-5-516(1)(d), MCA. The statute provides that a partial refund, based on avoided enforcement costs, must be made for applications that are not issued. This proposed new subsection would establish the refund amount at 25% of the fee. This reflects the approximate average per-permit cost of enforcement actions. The proposed new subsection would also limit the refund to cases in which the permit application is withdrawn within 30 days. This provision is necessary to recover review costs, beyond those recovered in the application fee, for applications that are active more than 30 days but subsequently withdrawn.

Proposed new (6)(e) would require facilities with an expired individual permit to pay the new permit application fee upon reapplication. This is necessary to create an incentive for facilities to timely apply for renewal of permits, which avoids

administrative and enforcement costs associated with processing expired permit renewals.

Proposed new (6)(f) would require a fee for significance review of discharges from new or increased sources, as defined in water quality nondegradation requirements. Significance review is currently required in order to comply with the requirements of the Water Quality Act nondegradation provisions, but a separate fee is not currently in effect. The proposed review fee is necessary to recover review costs.

Proposed new (6)(g) would allow storm water discharges from industrial activities, or mining or oil and gas activities, to be incorporated into a non-storm water discharge permit application, at a lower fee. This new subsection is necessary to describe current practices that simplify the application process.

Proposed new (6)(h) and (k) clarify that fees for MS4 individual permits are based on population as determined by the latest U.S. decennial census. These new subsections are necessary to describe current fee calculation procedures and to comply with federal rules pertaining to MS4 permits.

Proposed new (6)(i) clarifies that application fees for authorizations under the general permit for storm water associated with construction activities are based on the total acreage of disturbed land. Renewal fees are not required when the general permit is reissued unless the facility's authorization has been in effect for more than four years. This new subsection is necessary to describe current procedures for fee assessment, to comply with federal rules pertaining to construction storm water permits, and to avoid unnecessary renewal fees for facilities who are authorized under a general permit and who are required to reapply when a new general permit is issued.

Proposed new (6)(j) clarifies that application fees for authorizations under the general permits for storm water associated with industrial activities and mining, oil, and gas activities are based on the total acreage of the regulated facility or activity. This new subsection is necessary to describe current procedures for assessing fees for these applications.

Proposed new (6)(l) and (m) explain how fees are assessed for modifications of general permit authorizations. Modifications to authorizations under the construction storm water general permit can be processed as a minor modification under Schedule I.D if submitted within six months of the authorization. Modifications after that, other than name changes, are subject to the new permit fee. The reason for this is that construction storm water modifications after six months tend to involve significant project extensions, which require the additional processing fee. For authorizations under the other storm water general permits, modifications are processed as renewal applications.

Proposed new (6)(n) would provide that a storm water no-exposure certification must be renewed every five years to remain effective. This new subsection is necessary to describe current procedures and to comply with federal rules pertaining to industrial storm water permits.

Proposed new (6)(o) would replace the former footnote for Schedule I.C pertaining to fees for 401 certifications. The minimum fee is proposed to be increased from \$350 to \$4,000. The new subsection is necessary to describe how fees are assessed for 401 certifications, and the fee increase is necessary to

recover review costs.

Existing (6) is being renumbered (7) and is proposed to be amended to make minor changes for clarity and to incorporate a former footnote. The amendments also propose that 15% of the application fee for applications to degrade will be returned if the application is denied. This percentage is necessary based on the expectation that applications to degrade will be complex and will require extensive department review time even if the application is ultimately denied.

Existing (7) is being renumbered (8) and is proposed to be amended. The proposed amendments are necessary to make minor changes for clarity and to incorporate a former footnote regarding outfalls.

The provisions in new (8)(a) regarding multiple outfalls are from the current rules and are not substantively altered.

Proposed new (8)(b) would clarify that annual fees for authorizations under the general permit for storm water associated with construction activities are based on the total acreage of disturbed land. This new subsection is necessary to describe current fee assessment procedures and to comply with federal rules pertaining to construction storm water permits.

Proposed new (8)(c) would clarify that annual fees for authorizations under the general permits for storm water associated with industrial activities and mining, oil, and gas activities are based on the total acreage of the regulated facility or activity. This new subsection is necessary to describe current procedures for assessing annual fees for these authorizations.

Proposed new (8)(d) would clarify that annual fees for MS4 general permit authorizations are based on population as determined by the latest U.S. decennial census. This new subsection is necessary to describe current procedures and to comply with federal rules pertaining to MS4 permits.

Existing (7)(a) is being renumbered (8)(e) and is proposed to be amended to modify the current provisions pertaining to reduction in annual fees for permit compliance. The current subsection provides a 25% reduction to facilities that discharge at half or less than half of their permitted limits. The amendments propose to provide the 25% reduction to all facilities that maintained compliance with all permit requirements in the previous calendar year. Administration of the current subsection has proven to be difficult and unfairly penalizes facilities that reduce pollutants by less than half the effluent limit, even if the reduction is achieved at a large cost. The current subsection is based on the statute at 75-5-516(2)(b)(ii), MCA. The proposed amendments are necessary to make administration of the fee reduction simpler. The proposed amendments meet the statutory requirement for fee reduction but extend the reduction to other permittees as well.

Existing (7)(b) is being renumbered (8)(f) and is proposed to be amended to change the annual fee assessment period from the fiscal year to the calendar year. This would not lead to a change in department practice. Annual fees are currently assessed on a calendar year basis. The reason for this is that annual fees are based on the volume and concentration of waste discharged into the state waters based on discharge data, and the discharge data is collected on a calendar year basis. Also, 75-5-516(2)(b)(ii), MCA, requires that the 25% reduction in the annual permit fee be based on the previous calendar year's discharge data. The amendment to the subsection is necessary to reflect current fee assessment

practices and to provide for more efficient administration of the annual fees.

Existing (8) and (9) are being renumbered (9) and (10) and are proposed to be amended to make minor changes to the existing rules pertaining to late fees and interest for unpaid permit fees. The amendments are for clarification and to correct an erroneous statutory reference. Section 75-5-516(5)(a), MCA, requires that interest be computed on unpaid fees as provided in 15-1-216, MCA. The current section erroneously refers to 15-31-510(3), MCA, which does not exist. The amendments also raise the late fee from 15% to 20%, which is the maximum allowed by the statute, and clarify that the late fees and interest apply to both permit renewal and permit annual fees that are overdue. The amendments are necessary to clarify how late fees and interest are assessed, and to conform the rule to the statute.

Existing (10) is being renumbered (11) and is proposed to be amended to correct an erroneous cross-reference, and make a minor clerical change. As provided by 75-5-516(8), MCA, the appeal process set out in this section applies to any fee assessed under this section. The proposed deletion of references elsewhere in this rule to the appeal process is intended to avoid duplicative language, and is not intended to limit the availability of appeals.

Fee Schedules

The proposed amendments to the fee schedules are necessary to implement the statutory requirement that fees recover costs of administration after special revenue and federal grant funds are used, and to move the fee schedule toward a system that has more equity among fee payers than the current structure.

The proposed amendments to the schedules delete the footnotes and replace them with new subsections. The reformatting does not change the meaning of the schedules or the rule.

The revisions to Schedule I.A increase the application fees for individual permits as shown and propose to add specific categories for ground water dischargers. Individual ground water discharge permit holders would be grouped, for fee purposes, by discharge volume. A fee for significance review is added, which is necessary to recover costs of determining whether permitted activities will result in nonsignificant changes in existing water quality.

The revisions to Schedule I.B, pertaining to general permit authorizations, increase the existing fees as shown. The new schedule includes a renewal amount for facilities with effective permit coverage and a slightly higher rate for facilities that have never had permit coverage. A new column has been added to address new permit coverage. This column includes the annual fee for the first year the permit coverage is effective. The existing categories for storm water general permits are deleted and moved in modified form to new Schedule I.C.

A new Schedule I.C is proposed that addresses application fees for storm water general permits. The proposed new fees are higher and are based on the size of the project or regulated activity. Larger facilities will pay a higher fee than smaller facilities. As provided in the proposed amendments to (6)(i), when a construction storm water general permit is reissued, renewal fees will not be required from authorization holders if their coverage has not been effective for more

than four years. The proposed new fee schedule eliminates the categories of commercial, public and residential storm water discharges. This amendment is necessary because review fees vary with acreage rather than the type of development.

The revisions to Schedule I.D increase application fees for other activities as shown and propose to move the storm water fees to new Schedule I.C.

The revisions to Schedule II propose to increase fees for review of domestic authorizations to the same level as for industrial authorizations. The amendments also eliminate differentiation based on the number of lots in a subdivision. Although no applications to degrade have been received since the process was created, these amendments are necessary because applications are expected to be complex and expected to require extensive department review time regardless of the type or size of the discharge.

The amendments to Schedule III.A increase annual fees for individual permits as shown. Fees for ground water discharge permits are based on the amount of the discharge.

The amendments to Schedule III.B increase annual fees for non-storm water general permits as shown. The amendments move storm water annual permit fees to the new Schedule III.C.

A new Schedule III.C is proposed that addresses annual fees for storm water general permits. The proposed new fees are higher than previous annual fees and are based on the size of the project or regulated activity.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., September 10, 2009. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing

preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden

JAMES M. MADDEN

Rule Reviewer

BY: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,

Chairman

Certified to the Secretary of State, August 3, 2009.