

AGENDA

FRIDAY, JULY 26, 2013

METCALF BUILDING, ROOM 111

1520 EAST SIXTH AVENUE, HELENA, MONTANA

NOTE: Individual agenda items are not assigned specific times. For public notice purposes, the meeting will begin no earlier than the time specified; however, the Board might not address the specific agenda items in the order they are scheduled. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone at (406) 444-6701 or by e-mail at jwittenberg@mt.gov no later than 24 hours prior to the meeting to advise her of the nature of the accommodation you need.

9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. May 17, 2013, Board meeting minutes.

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATE

1. Enforcement cases assigned to the Hearing Examiner
 - a. **In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps and Dennis Rasmussen at the Trailer Terrace, PWSID No. MT0000025, Great Falls, Cascade County, BER 2012-11 PWS.** The parties have until August 1, 2013, to settle the matter or file a joint proposed prehearing schedule.
 - b. **In the matter of violations of the sanitation in subdivisions act by Levi Britton at the 80th Street Estates Subdivision, Billings, Yellowstone County, BER 2013-03 SUB.** A First Prehearing Order was issued on March 26, giving the parties until April 8, 2013, to submit a joint proposed schedule.
2. Other Cases Assigned to a Hearing Examiner
 - a. **In the matter of the request for hearing by Hawthorne Springs Property Owners Association; H Lazy Heart, LLC; Patchy, Inc.; and other residents regarding Opencut Mining Permit No. 2258, issued to Farwest Rock Products, Missoula County, BER 2012-09 OC.** Oral argument on DEQ's motion for summary judgment took place May 20, 2013, and a decision is pending.
3. Contested Cases not assigned to a Hearing Examiner
 - a. **In the matter of the request for hearing by William E. Smith, on behalf of Mike Adkins, regarding Park County's denial to validate Adkins Class III Waste Tire Monofill License No. 517, BER 2012-05 SW.** At its July 27, 2012, meeting, the Board voted to hear all matters in this case. On September 11, 2012, the Board granted a motion to stay proceedings until disposition of the Petition for Judicial Review filed in the Sixth Judicial District. Counsel for DEQ submitted a written status report concerning the progress of the case in District Court on March 11, 2013. Counsel for Protecting Paradise filed a written status report on May 9, 2013.

- b. **In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.** On December 19, the Board received *Motion to Intervene* from counsel for Montana Environmental Information Center and Sierra Club. On December 24, attorney for the Appellant filed *Agreed Motion for Extension to File Response Briefs and Reply Briefs Regarding Intervention and Agreed Motion to Vacate First Scheduling Order*. On January 2, 2013, the hearing examiner issued *Order Granting Extension to File Briefs on Motion to Intervene and Order Vacating First Scheduling Order*. On January 23, 2013, the Board received *Opposition Brief to Motion to Intervene* from the attorney for the Appellant, and on February 8 it received *Reply in Support of Motion to Intervene* from the proposed intervener. A hearing on the *Motion to Intervene* occurred on May 7, 2013. On June 13, 2013, counsel for Western Energy filed *Motion for Pro Hac Vice Admission for Good Cause Shown* to admit John C. Martin.
- c. **In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP0513-08 for the Colstrip Steam Electric Station, Colstrip, BER 2013-01 AQ.** At its January 25 meeting, the Board chose to not appoint a hearings examiner for this matter. On May 28, 2013, the hearing examiner issued *Second Amended Scheduling Order*, setting oral argument on pending motions for October 22, 2013. The contested case hearing is set for December 6, 2013.
- d. **In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP2953-07 for the JE Corette Steam Electric Station, Billings, BER 2013-02 AQ.** At its January 25, 2013, meeting, the Board chose to not appoint a hearings examiner for this matter. On May 28, 2013, the hearing examiner issued *Second Amended Scheduling Order*, setting oral argument on pending motions for October 22, 2013. The contested case hearing date is set for the regularly scheduled meeting in January or February of 2014.

B. OTHER BRIEFING ITEMS

- 1. Nutrient Reduction Strategy Briefing – The department will brief the Board on water quality items facing the BER and explain how they all tie together.
- 2. Legislative Briefing – The Department will brief the Board on bills passed by the 2013 Legislature that affect the Board.
- 3. Current Rulemakings – The department will present a brief description of rulemakings currently in progress.

III. ACTION ITEMS

A. NEW CONTESTED CASES

- 1. **In the matter of the notice of appeal and request for hearing by City of Whitefish regarding DEQ's notice of final decision for its MPDES Permit No. MT0030414 issued for Whitefish Water Treatment Plant, BER 2013-04 WQ.** The Board received the appeal on June 12, 2013. The Board may assign a permanent hearing examiner or decide to hear the matter.

IV. GENERAL PUBLIC COMMENT

Under this item, members of the public may comment on any public matter within the jurisdiction of the Board that is not otherwise on the agenda of the meeting. Individual contested case proceedings are not public matters on which the public may comment.

V. ADJOURNMENT

MINUTES

May 17, 2013

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:06 a.m., on Friday, May 17, 2013, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Robin Shropshire

Board Members via Teleconference: Chairman Russell, Larry Mires, Marvin Miller, Joe Whalen

Board Members Absent: Heidi Kaiser

Board Attorney Present: Katherine Orr, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers (Deputy Director); Ed Hayes, Norman Mullen – Legal; Judy Hanson – Permitting & Compliance Division; Jon Dilliard, Eugene Pizzini, Rachel Clark, Barb Kingery – Public Water Supply & Subdivisions Bureau; David Klemp, Bob Habeck, Eric Merchant, Julie Merkel, Doug Kuenzli, Deb Wolfe – Air Resources Management Bureau; Deb Grimm – Waste & Underground Tank Management Bureau; John Arrigo, Judy Watkins – Enforcement Division

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Neal Blossom, Kraig Keltz, Dan Brimhall, and Frank Crowley for American Chemet; Anne Hedges for Montana Environmental Information Center

- At the request of Chairman Russell, Mr. Livers took roll call of Board members present.
- I.A.1 Review and approve May 17, 2013, Board meeting minutes.
- Mr. Mires MOVED to approve the May 17, 2013, meeting minutes as written. Mr. Miller SECONDED the motion. The motion CARRIED with a 5-0 vote.
- II.A.1.a In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps and Dennis Rasmussen at the Trailer Terrace, PWSID No. MT0000025, Great Falls, Cascade County, BER 2012-11 PWS. *(No discussion took place regarding this matter.)*
- II.A.2.a In the matter of the request for hearing by Hawthorne Springs Property Owners Association; H Lazy Heart, LLC; Patchy, Inc.; and other residents regarding Opencut Mining Permit No. 2258, issued to Farwest Rock Products, Missoula County, BER 2012-09 OC. *(No discussion took place regarding this matter.)*
- II.A.3.a In the matter of the request for hearing by William E. Smith, on behalf of Mike Adkins, regarding Park County's denial to validate Adkins Class III waste Tire Monofill License No. 517, BER 2012-05 SW.
- Ms. Orr said that, according to a status report filed by counsel for Protecting Paradise, a hearing was held April 11 at which time the court asked for additional briefing. The additional briefing was filed on April 30, and DEQ filed a motion to strike the post-hearing brief.
- II.A.3.b In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.
- Ms. Orr said oral argument on the motion to intervene took place on May 7 and a ruling will be forthcoming.
- II.A.3.c In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP2953-07 for the Colstrip Steam Electric Station, Colstrip, BER 2013-01 AQ. *(see II.A.3.d)*
- II.A.3.d In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP0513-08 for the JE Corette Steam Electric Station, Colstrip, BER 2013-02 AQ.
- Concerning both Colstrip cases (2013-01 and 2013-02), Ms. Orr said a joint motion is pending regarding issuance of a protective order to keep certain confidential

- proprietary business information protected.
- III.A.1 In the matter of the hearing regarding American Chemet Corporation's Lead Raw Materials Limit.
- The hearing began at 9:12 a.m. Mr. Habeck provided context for the process, and Mr. Merchant provided DEQ testimony. Mr. Blossom presented for American Chemet. No other proponents and no opponents testified.
- Chairman Russell called for a motion to authorize him to sign the order with a minor change. Mr. Miller so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a 4-1 vote.
- III.B.1 In the matter of DEQ's request for initiation of rulemaking to re-notice revisions to Circular DEQ-4, Montana Standards for Subsurface Wastewater Treatment Systems.
- Mr. Pizzini explained that staff determined that the adoption by reference may not have been properly noticed and this is why DEQ is requesting extension of the comment period through re-initiation of the rule. He said a public hearing was held January 11, 2013, and DEQ is not proposing a separate one for the amended notice. He said DEQ does propose to correct a pagination problem in the circular.
- Chairman Russell called for a motion to grant the department's request to extend the notice. Ms. Shropshire so MOVED. Mr. Miller SECONDED the motion. Chairman Russell called for public comment on the matter; no one responded. The motion CARRIED with a 5-0 vote.
- III.C.1 In the matter of violations of the Sanitation in Subdivisions Act by Levi Britton at the 80th Street Estates Subdivision, Billings, Yellowstone County, BER 2013-03 SUB.
- Ms. Orr provided a summary of the case.
- Chairman Russell called for a motion to assign this matter to Ms. Orr. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED 5-0.
- III.D.1 In the matter of violations of the Montana Septage Disposal and Licensure Laws by James Vaughn, d/b/a Any Time Septic & Porta-Potty, Lake County, BER 2011-06 SDL.
- Ms. Orr said the parties stipulated to dismissal with prejudice and that a proposed order of dismissal was before the Board for approval.
- Chairman Russell called for a motion to authorize him to sign the order of dismissal for Case No. BER 2011-06 SDL. Mr. Miller so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED 5-0.

- III.D.2 | In the matter of violations of the Montana Solid Waste Management Act by Valley County Refuse District #1 at the Valley County Landfill, Glasgow, BER 2012-06 SW.
- Ms. Orr explained that after she issued an order granting DEQ's motion for summary judgment, the parties agreed on a penalty amount. She said the Board needs to determine whether to adopt by reference the proposed order on the motion for summary judgment, as well as a proposed order recommending imposition of penalties, thereby affirming the violation.
- Chairman Russell called for a motion to affirm the hearing examiner's summary judgment order and the stipulation for penalties. Mr. Miller so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED 5-0.
- III.D.3 | In the matter of violations of the Montana Solid Waste Management Act by Asphalt Plus, LLC, a corporation, and Michael C. and Melinda M. Oedekoven, as individuals, at 425 Johnson lane, Billings, Yellowstone County, BER 2012-13 SW.
- Ms. Orr said the parties have proposed a 41(a) dismissal, having resolved the corrective action and clean-up.
- Chairman Russell called for a motion to authorize him to sign the order dismissing the case. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED 5-0.
- IV. | General Public Comment
- Chairman Russell asked if any member of the public would like to address the Board on matters pertaining to the Board. There was no response.
- Mr. Livers discussed the July 19 board meeting date, saying some conflicts had been identified. He said staff is looking at July 26 as the alternative, and asked Board members to check their calendars and let us know if that is workable.
- Mr. Livers then discussed the December and January meeting dates, and the possible PPL case hearings. He said a two-day block would be needed for each and asked Board members to check calendars.
- V. | Adjournment
- Chairman Russell called for a motion to adjourn. Mr. Miller so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous vote.
- The meeting adjourned at 10:20 a.m.

Board of Environmental Review May 17, 2013, minutes approved:

ROBIN SHROPSHIRE
CHAIR
BOARD OF ENVIRONMENTAL REVIEW

DATE



Montana Department of
ENVIRONMENTAL QUALITY

MEMO

TO: Katherine Orr, Hearing Examiner
Board of Environmental Review

FROM: Joyce Wittenberg, Board Secretary
Board of Environmental Review
P.O. Box 200901
Helena, MT 59620-0901

DATE: June 12, 2013

SUBJECT: Board of Environmental Review Case No. BER 2013-04 WQ

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF:
THE NOTICE OF APPEAL AND REQUEST
FOR HEARING BY CITY OF WHITEFISH
REGARDING DEQ'S NOTICE OF FINAL
DECISION FOR ITS MPDES PERMIT NO.
MT0030414 ISSUED FOR WHITEFISH
WATER TREATMENT PLANT IN WHITEFISH,
MT.

Case No. BER 2013-04 WQ

The BER has received the attached request for hearing. Also attached is DEQ's administrative document(s) relating to this request.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

John North
Chief Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Bob Habeck, Acting Bureau Chief
Water Protection Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

c: Alan Joscelyn, for Appellant

BEFORE THE MONTANA BOARD OF ENVIRONMENTAL REVIEW

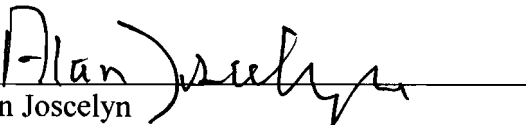
In The Matter of the Notice of Final Decision, Montana Pollutant Discharge Elimination System (MPDES) Permit Number MT0030414, Whitefish Water Treatment Plant, City of Whitefish

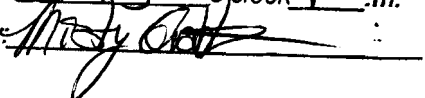
NOTICE OF APPEAL AND REQUEST FOR HEARING

Pursuant to MCA 75-4-403 and 75-5-611, Permittee City of Whitefish appeals from the Notice of Final Decision (copy attached), requests a hearing before the Board, and requests that the Board reverse or modify the action of the Montana Department of Environmental Quality (DEQ) as reflected in the Notice of Final Decision.

Specifically, The City of Whitefish believes and alleges that the DEQ erred in imposing a Final Effluent Limit of 0.75 NTU for Turbidity (Maximum Daily Limit), and asks that the Board modify the permit to correct the error.

Dated June 12, 2013.


Alan Joscelyn
Gough, Shanahan, Johnson & Waterman, PLLP
33 S. Last Chance Gulch
P.O. Box 1715
Helena, MT 59624-1715
Tel. 406 442-8560
Attorneys For City of Whitefish

Filed with the
MONTANA BOARD OF
ENVIRONMENTAL REVIEW
This 12th day of June, 2013
at 1:53 o'clock P.m.
By: 



Steve Bullock, Governor
Tracy Stone-Manning, Director

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

May 14, 2013

Charles Stearns, City Manager
City of Whitefish
PO Box 158
Whitefish, MT 59937-0158

RE: Notice of Final Decision, Montana Pollutant Discharge Elimination System (MPDES)
Permit Number: MT0030414

Dear Mr. Stearns:

In accordance with the Administrative Rules of Montana (ARM) 17.30.1378, enclosed is a copy of the final wastewater discharge permit for the Whitefish Water Treatment Plant issued to City of Whitefish. The Montana Department of Environmental Quality (DEQ or Department) is issuing this permit pursuant to the Montana Water Quality Act, Title 75, Chapter 5, Montana Code Annotated (MCA). The Response to Comments addresses the issues that were identified during the public comment period. The public comment period closed on May 1, 2013.

The following changes were made in the final permit in response to comments received during the public comment period:

1. The dissolved aluminum Required Reporting Value (RRV) for the required effluent monitoring was changed from 0.009 mg/L to 0.03 mg/L.
2. The effluent sampling frequency for dissolved aluminum was changed from weekly to monthly.
3. The narrative language describing the turbidity effluent limit was revised as follows: "Values reported that are equal to or less than the Department's RRV of 1 NTU are considered to be in compliance with this limit."

Additionally, DEQ corrected footnote four (4) in Tables 1 and 2 and footnote seven (7) in Table 4 to indicate that the average monthly load reported is the average of the individual daily loads for the reporting period. DEQ also corrected the RRV for turbidity in footnote six (6) of Table 2 and footnote nine (9) of Table 4.

In accordance with ARM 17.30.1378, DEQ's final decision to issue the permit is effective 30 days after service of this notice. The applicant may appeal this decision within that 30-day period in accordance with 75-5-403, MCA and 75-5-611, MCA.

Attached

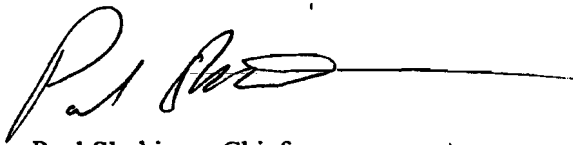
Charles Stearns
May 14, 2013
Page 2 of 2

A copy of the permit should be made available to the person(s) in charge of the wastewater treatment facilities so that they are aware of the requirements of the permit. **Please note the effluent limits, monitoring requirements, and the compliance schedule specified in the permit.**

The preprinted Discharge Monitoring Report (DMR) forms for your facility will be sent soon.

If you have any questions, please contact the permit writer, Tommy Griffeth, at (406) 444-1454 or tgriffeth@mt.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read 'P. Skubinna', followed by a long horizontal line extending to the right.

Paul Skubinna, Chief
Water Protection Bureau
Permitting and Compliance Division
PSkubinna@mt.gov

cc: ✓ Greg Acton, City of Whitefish Utility Operations Supervisor
Rosemary Rowe, EPA
File

Enclosures: Permit Number: MT0030414
Response to Comments

**Response to Comments
City of Whitefish
Montana Pollutant Discharge Elimination System Permit # MT0030414**

On April 1, 2013, the Department of Environmental Quality (DEQ) issued Public Notice MT-13-07, stating the DEQ's intent to issue a Montana Pollutant Discharge Elimination System (MPDES) wastewater discharge permit to the City of Whitefish for the Whitefish Water Treatment Plant. The notice stated DEQ had prepared a draft permit, fact sheet, and an environmental assessment.

The public notice required all substantive comments must be received or postmarked by May 1, 2013, in order to be considered in formulation of the final determination and issuance of the permit. DEQ has received and considered the following comments in preparation of the final permit and decision.

The table below identifies individual(s) supplying written or oral comments on the issuance of MPDES permit MT0030414.

List of Individual(s) Submitting Comments on Draft MPDES Permit MT0030414

| Number | Commenter |
|---------------|--------------------------------|
| 1 | Greg Acton, City of Whitefish. |

Comments on Draft MPDES Permit MT0030414

Commenter 1: Greg Acton, City of Whitefish

Comment 1: "We would respectfully request that our current minimum detection level of 0.03 mg/L be allowed for effluent monitoring and reporting of dissolved aluminum in our final permit."

Response 1: Given the nature of the discharge from the facility and the fact that the facility has not violated any effluent limits for dissolved aluminum during the term of the previous permits, DEQ grants the permittee's request to increase the RRV for the required effluent monitoring for dissolved aluminum from 0.009 mg/L to 0.03 mg/L. DEQ has updated Table 4 of the permit to reflect the change in the RRV for dissolved aluminum. However, the RRV for dissolved aluminum will remain 0.009 mg/L for the upstream sampling due to the need to accurately characterize the ambient water quality.

Comment 2: "We would respectfully request that the sampling frequency for dissolved aluminum effluent monitoring and reporting be reduced from weekly to monthly."

Response 2: Given the nature of the discharge from the facility and the fact that the facility has not violated any effluent limits for dissolved aluminum during the term of the previous permits, DEQ grants the permittee's request to decrease the required effluent sampling frequency for dissolved aluminum from weekly to monthly. DEQ has updated Table 4 of the permit to reflect the change in sampling frequency for dissolved aluminum.

Comment 3: “We respectfully request that the turbidity limit prescribed in ARM 17.30.622(3)(d), ‘no increase above naturally occurring turbidity or suspended sediment is allowed’, is retained in this permit cycle or a numeric limit of 1.00 NTU, which is the Departments RRV for turbidity reported as NTU, be substituted for the 0.75 NTU limit in the Draft.”

Response 3: Comment noted. The effluent limit for turbidity will remain 0.75 NTU. DEQ will adjust the narrative language in the permit and the footnotes found in Table 2 and Table 4 of the permit to the following: “Values reported that are equal to or less than DEQ’s RRV of 1 NTU are considered to be in compliance with this limit.”

End of Comments



**Montana Department of
ENVIRONMENTAL QUALITY**

**Steve Bullock, Governor
Tracy Stone-Manning, Director**

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

May 14, 2013

Charles Stearns, City Manager
City of Whitefish
PO Box 158
Whitefish, MT 59937-0158

RE: Notice of Final Decision, Montana Pollutant Discharge Elimination System (MPDES)
Permit Number: MT0030414

Dear Mr. Stearns:

In accordance with the Administrative Rules of Montana (ARM) 17.30.1378, enclosed is a copy of the final wastewater discharge permit for the Whitefish Water Treatment Plant issued to City of Whitefish. The Montana Department of Environmental Quality (DEQ or Department) is issuing this permit pursuant to the Montana Water Quality Act, Title 75, Chapter 5, Montana Code Annotated (MCA). The Response to Comments addresses the issues that were identified during the public comment period. The public comment period closed on May 1, 2013.

The following changes were made in the final permit in response to comments received during the public comment period:

1. The dissolved aluminum Required Reporting Value (RRV) for the required effluent monitoring was changed from 0.009 mg/L to 0.03 mg/L.
2. The effluent sampling frequency for dissolved aluminum was changed from weekly to monthly.
3. The narrative language describing the turbidity effluent limit was revised as follows: "Values reported that are equal to or less than the Department's RRV of 1 NTU are considered to be in compliance with this limit."

Additionally, DEQ corrected footnote four (4) in Tables 1 and 2 and footnote seven (7) in Table 4 to indicate that the average monthly load reported is the average of the individual daily loads for the reporting period. DEQ also corrected the RRV for turbidity in footnote six (6) of Table 2 and footnote nine (9) of Table 4.

In accordance with ARM 17.30.1378, DEQ's final decision to issue the permit is effective 30 days after service of this notice. The applicant may appeal this decision within that 30-day period in accordance with 75-5-403, MCA and 75-5-611, MCA.

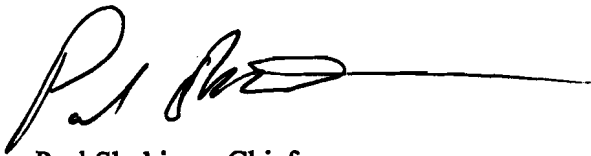
Charles Stearns
May 14, 2013
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A copy of the permit should be made available to the person(s) in charge of the wastewater treatment facilities so that they are aware of the requirements of the permit. **Please note the effluent limits, monitoring requirements, and the compliance schedule specified in the permit.**

The preprinted Discharge Monitoring Report (DMR) forms for your facility will be sent soon.

If you have any questions, please contact the permit writer, Tommy Griffeth, at (406) 444-1454 or tgriffeth@mt.gov.

Sincerely,

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Paul Skubinna, Chief
Water Protection Bureau
Permitting and Compliance Division
PSkubinna@mt.gov

cc: Greg Acton, City of Whitefish Utility Operations Supervisor
Rosemary Rowe, EPA
File

Enclosures: Permit Number: MT0030414
Response to Comments

**Response to Comments
City of Whitefish
Montana Pollutant Discharge Elimination System Permit # MT0030414**

On April 1, 2013, the Department of Environmental Quality (DEQ) issued Public Notice MT-13-07, stating the DEQ's intent to issue a Montana Pollutant Discharge Elimination System (MPDES) wastewater discharge permit to the City of Whitefish for the Whitefish Water Treatment Plant. The notice stated DEQ had prepared a draft permit, fact sheet, and an environmental assessment.

The public notice required all substantive comments must be received or postmarked by May 1, 2013, in order to be considered in formulation of the final determination and issuance of the permit. DEQ has received and considered the following comments in preparation of the final permit and decision.

The table below identifies individual(s) supplying written or oral comments on the issuance of MPDES permit MT0030414.

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Commenter 1: Greg Acton, City of Whitefish

Comment 1: "We would respectfully request that our current minimum detection level of 0.03 mg/L be allowed for effluent monitoring and reporting of dissolved aluminum in our final permit."

Response 1: Given the nature of the discharge from the facility and the fact that the facility has not violated any effluent limits for dissolved aluminum during the term of the previous permits, DEQ grants the permittee's request to increase the RRV for the required effluent monitoring for dissolved aluminum from 0.009 mg/L to 0.03 mg/L. DEQ has updated Table 4 of the permit to reflect the change in the RRV for dissolved aluminum. However, the RRV for dissolved aluminum will remain 0.009 mg/L for the upstream sampling due to the need to accurately characterize the ambient water quality.

Comment 2: "We would respectfully request that the sampling frequency for dissolved aluminum effluent monitoring and reporting be reduced from weekly to monthly."

Response 2: Given the nature of the discharge from the facility and the fact that the facility has not violated any effluent limits for dissolved aluminum during the term of the previous permits, DEQ grants the permittee's request to decrease the required effluent sampling frequency for dissolved aluminum from weekly to monthly. DEQ has updated Table 4 of the permit to reflect the change in sampling frequency for dissolved aluminum.

Comment 3: "We respectfully request that the turbidity limit prescribed in ARM 17.30.622(3)(d), 'no increase above naturally occurring turbidity or suspended sediment is allowed', is retained in this permit cycle or a numeric limit of 1.00 NTU, which is the Departments RRV for turbidity reported as NTU, be substituted for the 0.75 NTU limit in the Draft."

Response 3: Comment noted. The effluent limit for turbidity will remain 0.75 NTU. DEQ will adjust the narrative language in the permit and the footnotes found in Table 2 and Table 4 of the permit to the following: "Values reported that are equal to or less than DEQ's RRV of 1 NTU are considered to be in compliance with this limit."

End of Comments

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

AUTHORIZATION TO DISCHARGE UNDER THE MONTANA POLLUTION DISCHARGE ELIMINATION SYSTEM

In compliance with Montana Water Quality Act, Title 75, Chapter 5, Montana Code Annotated (MCA) and the Federal Water Pollution Control Act (the "Clean Water Act"), 33 U.S.C. § 1251 *et seq.*,

City of Whitefish

is authorized to discharge from the **Whitefish Water Treatment Plant**; located at 300 Reservoir Road in the City of Whitefish, Flathead County; to receiving waters, the **1907-built reservoir on an unnamed tributary to Whitefish Lake**,

in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein. Authorization for discharge is limited to those outfalls specifically listed in the permit. The numeric effluent limits, water quality standards, and special conditions specified herein support the protection of the affected receiving water.

This permit shall become effective: **July 1, 2013**.

This permit and the authorization to discharge shall expire at midnight, **June 30, 2018**.

FOR THE MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

COPY



Paul Skubinna, Chief
Water Protection Bureau
Permitting and Compliance Division

Issue Date: May 14, 2013

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I. EFFLUENT LIMITS, MONITORING REQUIREMENTS & OTHER CONDITIONS

A. Description of Discharge Point and Mixing Zone

The authorization to discharge provided under this permit is limited to the outfall specially designated below as discharge location. Discharges at any location not authorized under an MPDES permit is a violation of the Montana Water Quality Act and may subject the person(s) responsible for such discharge to penalties under the Act. Knowingly discharging from an unauthorized location or failing to report an unauthorized discharge within a reasonable time from first learning of an unauthorized discharge could subject such person to criminal penalties as provided under Section 75-5-632 of the Montana Water Quality Act.

Outfall
001

Description

Location: Outfall 001 is located at 48° 26' 10" North Latitude and -114° 19' 48" West Longitude Flathead County, at the end of the pipe discharging into the 1907-built reservoir on the unnamed tributary to Whitefish Lake.

Chronic Mixing Zone: The maximum extent of the chronic mixing zone granted is five (5) percent of the 1907-built reservoir surface area defined as a semicircle extending 23 feet upstream and 23 feet downstream and 23 feet in radius from the point of discharge.

Acute Mixing Zone: No acute mixing zone is granted.

Treatment Works: Dechlorination and settling basin.

B. Interim Effluent Limits

Beginning on the July 1, 2013, and expiring at midnight on June 30, 2015, the quality of the effluent discharged by the Whitefish Water Treatment Plant at Outfall 001 must, as a minimum, meet the limits set forth below in Table 1.

Table 1: Interim Effluent Limits – Outfall 001

| Parameter Name | Units | Maximum Daily Limit ⁽¹⁾⁽²⁾ | Average Monthly Limit ⁽¹⁾ |
|--------------------------|---------|--|--------------------------------------|
| Aluminum, Dissolved | mg/L | 0.750 | NA |
| | lbs/day | NA | 0.4 ⁽³⁾⁽⁴⁾ |
| Chlorine, Total Residual | mg/L | 0.019 ⁽⁵⁾ | 0.011 ⁽⁵⁾ |
| Turbidity | NTU | ≤ 0 ⁽⁶⁾ | NA |
| pH | s.u. | Within the Range of 6.0 - 9.0 ⁽⁷⁾ | NA |

Footnotes:

NA = Not Applicable

(1) See definitions in Part V of the permit.

(2) Report the highest measured daily value for the reporting period on the DMR forms.

(3) Value reported on DMR form is calculated based on the monthly average values for flow and concentration.

(4) Report the average of the individual daily loads for the reporting period on the DMR forms.

(5) Values reported that are equal to or less than the Department's RRV of 0.1 mg/L are considered to be in compliance with this limit.

(6) As measured by upstream turbidity (NTU) minus discharge turbidity (NTU). When reporting turbidity readings less than 1 NTU for upstream and discharge samples, report in increments of 0.05 NTU. For the purposes of net turbidity change, when upstream turbidity readings are less than 1 NTU, any discharge sample result less than 1 NTU is considered to be in compliance with the limit.

(7) Report the lowest and the highest measured daily values for the reporting period on the DMR forms.

C. Final Effluent Limits

Beginning on July 1, 2015, and lasting through the term of the permit, the quality of the effluent discharged by the Whitefish Water Treatment Plant at Outfall 001 must, as a minimum, meet the limits set forth below in Table 2.

Table 2: Final Effluent Limits – Outfall 001

| Parameter Name | Units | Maximum Daily Limit ⁽¹⁾⁽²⁾ | Average Monthly Limit ⁽¹⁾ |
|--------------------------|---------|--|--------------------------------------|
| Aluminum, Dissolved | mg/L | 0.750 | NA |
| | lbs/day | NA | 0.4 ⁽³⁾⁽⁴⁾ |
| Chlorine, Total Residual | mg/L | 0.014 ⁽⁵⁾ | 0.010 ⁽⁵⁾ |
| Turbidity | NTU | 0.75 ⁽⁶⁾ | NA |
| pH | s.u. | Within the Range of 6.0 - 9.0 ⁽⁷⁾ | NA |

Footnotes:

NA = Not Applicable

(1) See definitions in Part V of the permit.

(2) Report the highest measured daily value for the reporting period on the DMR forms.

(3) Value reported on DMR form is calculated based on the monthly average values for flow and concentration.

(4) Report the average of the individual daily loads for the reporting period on the DMR forms.

(5) Values reported that are equal to or less than the Department's RRV of 0.1 mg/L are considered to be in compliance with this limit.

(6) Values reported that are equal to or less than the Department's RRV of 1 NTU are considered to be in compliance with this limit.

(7) Report the lowest and the highest measured daily values for the reporting period on the DMR forms.

D. Background Monitoring and Reporting Requirements

The background water quality must be monitored at the frequency and with the type of measurement indicated. Samples representative of the background water quality must be individually collected upstream of the discharge. The permittee must report the monitoring data to the Department at the frequency respectively listed in Table 3 for each parameter. Each sample must include, but is not limited to, the respective parameters listed in Table 3.

Table 3: Background Monitoring and Reporting Requirements

| Parameter | Monitoring Location | Units | Sample Type ⁽¹⁾⁽²⁾ | Minimum Sampling Frequency | Reporting Requirements ⁽¹⁾⁽³⁾ | Reporting Frequency | RRV ⁽⁴⁾ |
|---------------------|---------------------|-------|-------------------------------|----------------------------|--|---------------------|--------------------|
| Aluminum, Dissolved | Upstream | mg/L | Grab | 1/Quarter | Quarterly Average | Quarterly | 0.009 |

Footnotes:

(1) See definitions in Part V of the permit.

(2) Grab sample will represent concentration for a 24 hour period.

(3) Daily Maximum: report the highest measured daily value for the reporting period on Discharge Monitoring Report (DMR) forms.

(4) When listed, the RRV is the detection level that must be achieved in reporting effluent monitoring or compliance data to the Department. The RRV is the Department's best determination of a level of analysis that is achievable by the majority of the commercial, university, or governmental laboratories using EPA approved methods or methods approved by the Department. PQL (Practical Quantification Limits) are not acceptable substitutions for RRV.

Analytical methods must be 40 CFR 136 approved methods unless otherwise specified or approved by the Department. Analysis must meet the RRV listed in Circular DEQ-7. Practical Quantification Limits are not acceptable substitutions for the RRVs.

E. Effluent Monitoring and Reporting Requirements

The effluent discharged from the treatment system must be monitored at the frequency and with the type of measurement indicated. Samples or measurements must be representative of the volume and nature of the monitored discharge. Samples representative of the effluent quality at the outfall must be individually collected from the last point of control prior to discharge. The permittee must report the monitoring data to the Department at the frequency respectively listed in Table 4 for each parameter. Discharge Monitoring Report Forms (DMRs) will be required regardless of the operational status of the facility. If no discharge occurs during the entire monitoring period, it shall be stated on the DMR that no discharge or overflow occurred. Each sample must include, but is not limited to, the respective parameters listed in Table 4.

Table 4: Effluent Monitoring and Reporting Requirements – Outfall 001

| Parameter | Monitoring Location | Units | Sample Type ⁽¹⁾⁽²⁾ | Minimum Sampling Frequency | Reporting Requirements ⁽¹⁾⁽³⁾ | Reporting Frequency | RRV ⁽⁴⁾ |
|--------------------------|-------------------------------|---------|-------------------------------|----------------------------|---|---------------------|---------------------|
| Effluent Flow Rate | Discharge from Settling Basin | mgd | Calculated ⁽⁵⁾ | 1/Day | Daily Maximum and Monthly Average | Monthly | - |
| Duration of Discharge | Effluent | days | Reported | NA | Number of Days the Discharge Occurs | Monthly | - |
| Aluminum, Dissolved | Effluent | mg/L | Grab | 1/Month | Daily Maximum and Monthly Average | Monthly | 0.03 ⁽⁶⁾ |
| | | lbs/day | Calculated ⁽⁷⁾ | 1/Month | Monthly Average | Monthly | - |
| Chlorine, Total Residual | Effluent | mg/L | Grab | 1/Day | Daily Maximum and Monthly Average | Monthly | 0.1 ⁽⁸⁾ |
| Turbidity | Effluent | NTU | Grab | 1/Day | Daily Maximum and Monthly Average | Monthly | 1 ⁽⁹⁾ |
| pH | Effluent | s.u. | Instantaneous | 1/Day | Daily Minimum and Daily Maximum ⁽¹⁰⁾ | Monthly | - |

Footnotes:

NA = Not Applicable

(1) See definitions in Part V of the permit.

(2) Grab sample will represent concentration for a 24 hour period.

(3) Daily Maximum: report the highest measured daily value for the reporting period on the DMR forms.

(4) When listed, the Required Reporting Value (RRV) is the detection level that must be achieved in reporting effluent monitoring or compliance data to the Department. The RRV is the Department's best determination of a level of analysis that is achievable by the majority of the commercial, university, or governmental laboratories using EPA approved methods or methods approved by the Department. PQL (Practical Quantification Limits) are not acceptable substitutions for RRV.

(5) Measured using staff gage to determine volumetric differences and averaged over the duration of discharge.

(6) The Department is specifying a RRV of 0.03 mg/L for this parameter based on Footnote 19 in the 2012 version of DEQ-7.

(7) Report the average of the individual daily loads for the reporting period on the DMR forms.

(8) Values reported that are equal to or less than the Department's RRV of 0.1 mg/L are considered to be in compliance with the permit.

(9) Values reported that are equal to or less than the Department's RRV of 1 NTU are considered to be in compliance with the permit.

(10) Report the highest and the lowest measured daily values for the reporting period on the DMR forms.

Analytical methods must be 40 CFR 136 approved methods unless otherwise specified or approved by the Department. Analysis must meet the RRV listed in Circular DEQ-7 unless specified otherwise. Practical Quantification Limits are not acceptable substitutions for the RRVs.

For the individual parameter Aluminum, Dissolved (mg/L): the Department is specifying a RRV of 0.03 mg/L for effluent monitoring and reporting only.

For the individual parameter Turbidity (NTU): values reported that are equal to or less than the Department's RRV of 1 NTU are considered to be in compliance with the permit.

For the individual parameter Chlorine, Total Residual (mg/L): values reported that are equal to or less than the Department's RRV of 0.1 mg/L are considered to be in compliance with the permit.

F. Special Conditions

There are not any special conditions associated with the issuance of this permit.

G. Compliance Schedule

The City of Whitefish must provide annual reports to the Department during the interim permit period, due by no later than January 28th of the years 2014 and 2015, that summarize the progress made toward meeting the final effluent limits of the permit. The compliance schedule for the facility is presented in Table 5.

| Table 5: Compliance Schedule | | | |
|---|-----------|---|--|
| Action | Frequency | Scheduled Completion Date of Action ⁽¹⁾ | Scheduled Report Due Date ⁽²⁾ |
| Submit a report documenting actions taken to meet final effluent limits ⁽³⁾ | Annually | By December 31 st of the years 2013 and 2014 | Due on or before January 28 th of the years 2014 and 2015 |
| Footnotes: (1) The actions must be completed on or before the scheduled completion dates. (2) Reports must be received by the Department on or before the scheduled report due dates and must include all information as required. (3) This report must detail any changes in operation and maintenance, any system optimization, and/or any other steps taken by the facility in order to meet the final permit effluent limits. | | | |

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

A. Representative Sampling

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

B. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under Part 136, Title 40 of the Code of Federal Regulations, unless other test procedures have been specified in this permit. All flow-measuring and flow-recording devices used in obtaining the data submitted in self-monitoring reports must indicate values within 10 percent of the actual flow being measured.

C. Penalties for Tampering

The Montana Water Quality Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$25,000, or by imprisonment for not more than six months, or by both.

D. Reporting of Monitoring Results

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

Montana Department of Environmental Quality
Water Protection Bureau
PO Box 200901
Helena, Montana 59620-0901
Phone: (406) 444-3080

E. Compliance Schedules

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

F. Additional Monitoring by the Permittee

If the permittee monitors any additional pollutant or any pollutant more frequently than required by this permit using approved analytical methods as specified in this permit, the results of this monitoring shall be included in the analysis and reporting of the data submitted in the Discharge Monitoring Report. Such increased frequency shall also be indicated.

G. Records Contents

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The initials or name(s) of the individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The time analyses were initiated;
5. The initials or name(s) of individual(s) who performed the analyses;
6. References and written procedures, when available, for the analytical techniques or methods used; and

7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

H. Retention of Records

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

I. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee shall report any serious incidents of noncompliance affecting the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the Water Protection Bureau at (406) 444-3080 or the Office of Disaster and Emergency Services at (406) 324-4777. The following examples are considered serious incidents:

- a. Any noncompliance which may seriously endanger health or the environment; or
- b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part III.G. of this permit, "Bypass of Treatment Facilities").

2. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times;
- c. The estimated time noncompliance is expected to continue if it has not been corrected; and
- d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

3. The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Protection Bureau, by phone, at (406) 444-3080.

4. Reports shall be submitted to the addresses in Part II.D. of this permit, "Reporting of Monitoring Results."

J. Other Noncompliance Reporting

Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part II.D. of this permit are submitted. The reports shall contain the information listed in Part II.I.2. of this permit.

K. Inspection and Entry

The permittee shall allow the head of the Department, the Director, or an authorized representative thereof, upon the presentation of credentials and other documents as may be required by law, to:

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

III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Montana Water Quality Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give the Department advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.

B. Penalties for Violations of Permit Conditions

The Montana Water Quality Act provides that any person who violates a permit condition of the Act is subject to civil or criminal penalties not to exceed \$25,000 per day or one year in prison, or both, for the first conviction, and \$50,000 per day of violation or by imprisonment for not more than two years, or both, for subsequent convictions. MCA 75-5-611(9)(a) also provides for administrative penalties not to exceed \$10,000 for each day of violation and up to a maximum not to exceed \$100,000 for any related series of violations. Except as provided in

Part III.G. of this permit, "Bypass of Treatment Facilities," nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

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

E. Proper Operation and Maintenance

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

F. Removed Substances

Collected screenings, grit, solids, sludge, or other pollutants removed in the course of treatment shall be disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard.

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III.G.2. and III.G.3. of this permit.

2. Notice:

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

- b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.I. of this permit, "Twenty-four Hour Reporting."

3. Prohibition of bypass:

- a. Bypass is prohibited and the Department may take enforcement action against a permittee for a bypass, unless:
 - 1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - 2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - 3) The permittee submitted notices as required under Part III.G.2. of this permit.
- b. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in Part III.G.3.a. of this permit.

IV. GENERAL REQUIREMENTS

A. Planned Changes

The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- 1. The alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit; or
- 2. There are any planned substantial changes to the existing sewage sludge management practices of storage and disposal. The permittee shall give the Department notice of any planned changes at least 180 days prior to their implementation.

B. Anticipated Noncompliance

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

C. Permit Actions

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

D. Duty to Reapply

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

E. Duty to Provide Information

The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for revoking, modifying and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit.

F. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Department, it shall promptly submit such facts or information with a narrative explanation of the circumstances of the omission or incorrect submittal and why they weren't supplied earlier.

G. Signatory Requirements

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

1. All permit applications shall be signed as follows:

- a. For a corporation: by a responsible corporate officer:
- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
- c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Department shall be signed by a person described above or by a duly authorized representative of that person. A person is considered a duly authorized representative only if:

- a. The authorization is made in writing by a person described above and submitted to the Department; and
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters (a duly authorized representative may thus be either a named individual or an individual occupying a named position).
3. Changes to authorization. If an authorization under Part IV.G.2. of this permit is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part IV.G.2. of this permit must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.
 4. Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

H. Penalties for Falsification of Reports

The Montana Water Quality Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than \$25,000 per violation, or by imprisonment for not more than six months per violation, or by both.

I. Availability of Reports

All reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department and the EPA. Permit applications, permits and effluent data shall not be considered confidential and shall also be available for public inspection.

J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.

K. Property or Water Rights

The issuance of this permit does not convey any property or water rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

M. Transfers

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

1. The current permittee notifies the Department at least 30 days in advance of the proposed transfer date;
2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them;
3. The Department does not notify the existing permittee and the proposed new permittee of the intent to revoke or modify and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part IV.M.2. of this permit; and
4. Required annual and application fees have been paid.

N. Fees

The permittee is required to submit payment of an annual fee as set forth in ARM 17.30.201. If the permittee fails to pay the annual fee within 90 days after the due date for the payment, the Department may:

1. Impose additional fee assessment(s) computed at the rates established under ARM 17.30.201; and
2. Suspend the processing of the application for a permit or authorization or, if the nonpayment involves an annual permit fee, suspend the permit, certificate or authorization for which the fee is required. The Department

may lift 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 sub-section. Suspensions are limited to one year, after which the permit will be terminated.

O. Reopener Provisions

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

1. **Water Quality Standards:** The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit; or
2. **Water Quality Standards are Exceeded:** If it is found that water quality standards or trigger values, excluding mixing zones designated by ARM 17.30.501-518, for parameters included in the permit or others, the department may modify the effluent limits or water management plan.

V. DEFINITIONS

1. **"30-day (and Monthly) Average"** other than for *E. coli* bacteria, means the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. Geometric means shall be calculated for *E. coli* bacteria. The calendar month shall be used for purposes of reporting self-monitoring data.
2. **"90-day (and Quarterly) Average"** other than for *E. coli* bacteria, means the arithmetic average of all samples collected during a consecutive 90-day period or calendar quarter, whichever is applicable. Geometric means shall be calculated for *E. coli* bacteria. The calendar month shall be used for purposes of reporting self-monitoring data.
3. **"180-day (and Six-Month or Semi-Annual) Average"** other than for *E. coli* bacteria, means the arithmetic average of all samples collected during a consecutive 180-day period or calendar half-year, whichever is applicable. Geometric means shall be calculated for *E. coli* bacteria. The calendar month shall be used for purposes of reporting self-monitoring data.
4. **"Annual Average Load"** means the arithmetic mean of all 30-day or monthly average loads reported during the calendar year for a monitored parameter.
5. **"Annual Maximum Limit"** means the maximum allowable discharge of a pollutant during a calendar year.

6. **“Average Monthly Limit”** means the maximum allowable discharge of a pollutant during a calendar month. Expressed as units of mass, the monthly discharge is cumulative mass discharged over the calendar month. Expressed as a concentration, it is the arithmetic average of all measurements taken that month.
7. **“BOD₅”** means the five-day measure of pollutant parameter biochemical oxygen demand.
8. **“Bypass”** means the intentional diversion of waste streams from any portion of a treatment facility.
9. **“Composite Samples”** shall be flow proportioned. The composite sample shall, as a minimum, contain at least three (3) samples collected over the compositing period. Unless otherwise specified in this permit, the time between the collection of the first sample and the last sample shall not be less than six (6) hours nor more than 24 hours. Acceptable methods for preparation of composite samples are as follows:
 - a. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;
 - b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;
 - c. Constant sample volume, time interval between samples proportional to flow (i.e. sample taken every “X” gallons of flow); and,
 - d. Continuous collection of sample, with sample collection rate proportional to flow rate.
10. **“Continuous”** means the measurement of effluent flow which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance process changes, or other similar activities.
11. **“Daily Discharge”** means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
12. **“Department”** means the Montana Department of Environmental Quality.

13. **"DEQ"** means the Montana Department of Environmental Quality.
14. **"Discharge"** means the injection, deposit, dumping, spilling, leaking, placing, or failing to remove any pollutant so that it or any constituent thereof may enter into state waters, including ground water.
15. **"Grab Sample"** means a sample which is taken from a waste stream on a one-time basis without consideration of flow rate of the effluent or without consideration for time.
16. **"Instantaneous"** measurement, for monitoring requirements, means a single reading, observation, or measurement.
17. **"Load Limits"** are mass-based discharge limits expressed in units such as lbs/day
18. **"Maximum Daily Limit"** means the maximum allowable discharge of a pollutant during a calendar day. Expressed as units of mass, the daily discharge is cumulative mass discharged over the course of the day. Expressed as a concentration, it is the arithmetic average of all measurements taken that day.
19. **"Mixing Zone"** means a limited area of a surface water body or aquifer where initial dilution of a discharge takes place and where certain water quality standards may be exceeded.
20. **"Nondegradation"** means the prevention of a significant change in water quality that lowers the quality of high-quality water for one or more parameters. Also, the prohibition of any increase in discharge that exceeds the limits established under or determined from a permit or approval issued by the Department prior to April 29, 1993.
21. **"NTU"** means nephelometric turbidity unit and is the unit of measure for the pollutant parameter turbidity.
22. **"Severe Property Damage"** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
23. **"TMDL"** means the total maximum daily load limitation of a parameter, representing the estimated assimilative capacity for a water body before other designated uses are adversely affected. Mathematically, it is the sum of wasteload allocations for point sources, load allocations for non-point and natural background sources, and a margin of safety.

24. "TSS" means the pollutant parameter total suspended solids.