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**TELECONFERENCE AGENDA**

FRIDAY, MAY 29, 2015

METCALF BUILDING, ROOM 111

1520 EAST 6<sup>TH</sup> AVENUE, HELENA, MONTANA

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**NOTE:** It is expected that most available Board members will be participating telephonically. The Board attorney and secretary, along with any Board members who so choose, will be present at the location stated above. Interested persons, members of the public, and the media are welcome to attend at the location stated above. Members of the public and press also may join Board members with prior arrangement. Contact information for Board members is available on the Board's Website (<http://www.deq.mt.gov/ber/index.asp>) or from the Board Secretary (406-444-2544). The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone or by e-mail at [jwittenberg@mt.gov](mailto:jwittenberg@mt.gov) no later than 24 hours prior to the meeting to advise her of the nature of the accommodation needed.

**9:00 A.M.**

**I. ADMINISTRATIVE ITEMS**

**A. REVIEW AND APPROVE MINUTES**

The Board will vote on adopting the March 20, 2015, 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 Opencut Mining Act by Bay Materials, LLC at Normont Farms Pit, Toole County, Montana, BER 2014-07 OC.** On March 16, 2015, the parties filed Joint Motion to Vacate First Prehearing Order and Form of Order requesting to vacate the First Prehearing Order and set June 2, 2015, as the deadline for the parties to submit a proposed revised prehearing schedule. On March 30, 2015, the hearing examiner issued Order Vacating Scheduling Order and ordered the parties to confer and file dates for a new scheduling order by June 2, 2015.
- b. In the matter of violation of the Opencut Mining Act by Somont Oil Company, Inc., at Somont Oil Company gravel pit, Toole County (Permit No. 2597, FID 2326, Docket No. OC-14-021), BER 2014-08 OC.** On March 6, 2015, the hearing examiner issued the First Prehearing Order requesting the parties submit a proposed schedule by March 16, 2015. The parties filed Joint Response to First Prehearing Order on March 16, requesting an extension of the deadline to file a prehearing schedule. On March 27, the hearing examiner issued Order Extending

Deadline for Submittal of Joint Proposed Prehearing Schedule ordering the parties to confer and propose a schedule by June 2, 2015. On March 30, the hearing examiner issued Order Vacating Scheduling Order and ordered the parties to confer and file dates for a new scheduling order by June 2, 2015.

- c. **In the matter of violations of the Public Water Supply Laws by Rene Requa at Highlander Bar and Grill, PWISD MT0004764, Lewis and Clark County (FID 2299, Docket No. PWS-14-08), BER 2014-09 PWS.** On March 5, 2015, the hearing examiner issued First Prehearing Order requesting the parties submit a proposed schedule by March 13, 2015. On March 13, after consultation with the appellant, the DEQ attorney filed Request for Extension, requesting that the deadline for filing a hearing schedule be extended to May 15. On March 25, the hearing examiner issued Scheduling Order setting a hearing for September 4, 2015. On March 30, the hearing examiner issued Order Vacating Scheduling Order and ordered the parties to confer and file dates for a new scheduling order by June 2, 2015.
2. Non-enforcement cases assigned to the Hearings Examiner
    - a. **In the matter of the notice of appeal and request for hearing by Yellowstone Energy Limited Partnership (YELP) regarding issuance of MPDES Permit NO. MT0030180 for YELP's facility in Billings, MT, BER 2014-01 WQ.** On January 12, 2015, the parties filed Joint Motion for Partial Dismissal of Appeal and Continued Stay of Proceedings. On March 5, 2015, the hearing examiner issued Order for Partial Dismissal of Appeal and Continued Stay of Proceedings extending the stay until July 14, 2015.
    - b. **In the matter of Phillips 66 Company's appeal of Outfall 006 Arsenic Limits in Montana Pollution Discharge Elimination System Permit No. MT0000256, Billings, Yellowstone County, MT, BER 2014-05 WQ.** On March 11, 2015, the Board received Stipulation to Stay Appeal from the parties. On March 25, the hearing examiner issued Order approving the stipulation and ordered the parties to comply with the terms or the stipulation.
    - c. **In the matter of Columbia Falls Aluminum Company's (CFAC) appeal of DEQ's modification of Montana Pollutant Discharge Elimination System Permit No. MT0030066, Columbia Falls, Flathead County, MT, BER 2014-06 WQ.** The parties filed Stipulated Scheduling Order on March 11, 2015, proposing a hearing the week of April 20, 2016. On March 25, the hearing examiner issued Scheduling Order scheduling a hearing for April 18, 2016.
  3. Contested Cases not assigned to a Hearing Examiner
    - a. **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 April 9, 2014, the hearing examiner issued an Order Granting the Joint Unopposed Motion for Partial Remand of Permit to Department of Environmental Quality and for Suspension of Proceedings. On May 14, 2014, DEQ filed a Status Report regarding the matter stating that a modified permit would be made available for public comment on or before June 9, 2014.

### III. ACTION ITEMS

#### A. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. In the matter of the amendment of ARM 17.8.102 and 103 to incorporate by reference updated federal and state statutes and regulations.

#### B. NEW CONTESTED CASES

1. **In the matter of violations of the Water Quality Act by Reflections at Copper Ridge, LLC at Reflections at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105376), BER 2015-01 WQ.** The Board received the appeal April 7, 2015. On May 5, the hearing examiner issued First Prehearing Order requesting the parties consult with each other and file a proposed schedule by May 22, 2015. The Board may assign a permanent hearing examiner or decide to hear the matter.
2. **In the matter of violations of the Water Quality Act by Copper Ridge Development Corporation at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105377), BER 2015-02 WQ.** The Board received the appeal April 7, 2015. On May 5, the hearing examiner issued First Prehearing Order requesting the parties consult with each other and file a proposed schedule by May 22, 2015. 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. CONTESTED CASE HEARING – **POSTPONED (date to be determined)**

**In the matter of the notice of appeal for hearing by Montana Environmental Information Center regarding DEQ's approval of coal mine permit No. C1993017 issued to Signal Peak Energy, LLC, for Bull Mountain Mine No. 1 in Roundup, MT, BER 2013-07 SM.** The Board will hold oral argument on Appellant MEIC's Motion for Summary Judgment, filed April 11, 2014, and on Signal Peak Energy's Cross Motion for Summary Judgment, filed May 30, 2014.

### VI. ADJOURNMENT

**MINUTES**  
**March 20, 2015**

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Madam Chair Shropshire at 9:00 a.m., on Friday, March 20, 2015, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Shropshire, Joe Russell, Heidi Kaiser, Chris Tweeten, Marietta Canty, Larry Mires

Board Members Present via Teleconference: Joan Miles

Board Attorney Present: Ben Reed, 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 – Director; John North, Dana David, Carol Schmidt, and Norm Mullen – Legal; Hoby Rash, Julie Merkel, Eric Merchant, Rebecca Harbage, and Annette Williams – Air Resources Management Bureau; Jon Dilliard – Public Water Supply & Subdivisions Bureau; John Arrigo – Enforcement Division; Jon Kenning and Paul Skubinna – Water Protection Bureau; George Mathieus, Eric Urban, Erik Makus, Michael Pipp, Amy Steinmetz; Ed Coleman, Emily Hinz, and Melissa Sjolund – Industrial & Energy Minerals Bureau

Interested Persons Present: Art Hayes – Tongue River Water Users Association; Julie DalSoglio – Environmental Protection Agency; Anne Hedges and Derf Johnson – Montana Environmental Information Center; Ella Smith and Robyn Yancey – Northern Plains Resource Council; Vicki Marquis – ARCH Coal; Shiloh Hernandez

I.A. Review and approve January 30, 2015, Board meeting minutes.

Chairman Shropshire asked if any members of the Board had comments on the draft minutes. No one commented.

Mr. Mires MOVED to adopt the minutes as submitted. Ms. Kaiser SECONDED the motion. The motion CARRIED 6-0.

<Ms. Miles joined the meeting via teleconference.>

--- Mr. North informed the Board that four of the members – Ms. Miles, Chairman Shropshire, Mr. Tweeten, and Ms. Canty – were up for confirmation before the Legislature and that the hearing is set for April 8 before the Senate Natural Resources Committee.

II.A.1.a. In the matter of violations of the Opencut Mining Act by Bay Materials, LLC at Normont Farms Pit, Toole County, BER 2014-07 OC.

Mr. Reed said the schedule for this case will be vacated; that both parties had filed motions for summary judgment and he would be issuing an order scheduling a hearing on the motions.

II.A.1.b. In the matter of violation of the Opencut Mining Act by Somont Oil Company, Inc., at Somont Oil Company gravel pit, Toole County (Permit No. 2597, FID 2326, Docket No. OC-14-021), BER 2014-08 OC.

Mr. Reed said the deadline for the parties to resolve their proposed dates in this matter will be extended to June 2.

II.A.1.c. In the matter of violations of the Public Water Supply Laws by Rene Requa at Highlander Bar and Grill, PWSID MT0004764, Lewis and Clark County (FID 2299, Docket No. PWS-14-08), BER 2014-09 PWS.

Mr. Reed said the parties had not yet filed a proposed schedule for this matter.

II.A.2.a. In the matter of the notice of appeal and request for hearing by Yellowstone Energy Limited Partnership (YELP) regarding issuance of MPDES Permit No. MT0030180 for YELP's facility in Billings, MT, BER 2014-01 WQ.

Mr. Reed said this matter has been stayed and monitoring continues.

II.A.2.b. In the matter of Phillips 66 Company's appeal of Outfall 006 Arsenic Limits in MPDES Permit No. MT0000256 Billings, Yellowstone County, BER 2014-05 WQ.

Mr. Reed said the parties stipulated that the discharge will be stopped until the permit can be modified or renewed, and that the appeal is stayed through 2017.

II.A.2.c. In the matter of Columbia Falls Aluminum Company's (CFAC) appeal of DEQ's modification of MPDES Permit No. MT0030066, Columbia Falls, Flathead County, BER 2014-06 WQ.

Mr. Reed said the parties have not filed a proposed schedule yet. He later corrected himself saying the parties had submitted a stipulated scheduling order.

II.A.3.a. 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.

Mr. Reed said he has not seen the modified permit yet.

II.A.3.b. In the matter of the notice of appeal for hearing by Montana Environmental Information Center regarding DEQ's approval of coal mine permit No. C1993017 issued to Signal Peak Energy, LLC, for Bull Mountain Mine No. 1 in Roundup, MT, BER 2013-07 SM.

Mr. Reed said both parties in this matter had requested the hearing be reset to the May 29 Board meeting because of the lack of adequate notice.

II.B.2. In the matter of the department's briefing to the Board regarding EPA's recent action on Montana's Numeric Nutrient Criteria and Variance Rules. (taken out of order)

Mr. Mathieus briefed the board on the letter detailing EPA's action regarding the rules the Board adopted in July 2014. He said EPA approved the water quality criteria saying it is scientifically defensible, supported by the record, and consistent with Clean Water Act requirements.

II.B.1. In the matter of the department briefing regarding a future rule initiation to adopt site-specific electrical conductivity and sodium adsorption ratio criteria for Otter Creek.

Ms. Steinmetz and Mr. Makus provided information, along with a PowerPoint presentation, about EC and SAR in regard to Otter Creek. They said Otter Creek is water quality limited and, when a mine showed interest in a surface water discharge permit, the TMDL priority was elevated. They both responded to questions from Board members.

Chairman Shropshire asked if any member of the public would like to comment on the matter.

Mr. Art Hayes provided some history of the current standards and spoke against making changes at this time.

Ms. Marquis pointed out that the EC and SAR rules were originally designed with coal bed methane discharge in mind and that Arch Coal's mine is a coal mine with zero discharge. She spoke in favor of the rulemaking effort and responded to questions from Board members.

Mr. Makus and Mr. Urban responded to further questions from the Board.

<Ms. Miles is not present.>

III.A.1. In the matter of final action regarding proposed adoption of amendments to ARM 17.8.103, 17.8.201, 17.8.202, 17.8.204, and 17.8.230, and the repeal of ARM 17.8.206.

Mr. Merchant said the department is requesting the board adopt the proposed amendments to existing air quality rules. He said the rules were initiated December 5 of last year, and comments were received. He said changes were made in response to the comments, and that both the comments and responses are included in the packet.

Chairman Shropshire called for public comment on the rule making. No one commented.

Chairman Shropshire called for a motion to amend and repeal the rules as proposed in the notice of amendment, and adopt the House Bill 521 and 311 analyses and the responses to comments. Mr. Russell so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED 6-0.

III.B.1. 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.

Mr. Reed said an order of dismissal was ready for the Chair's signature.

Chairman Shropshire called for a motion to authorize her to sign the order dismissing the matter. Mr. Mires so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED 6-0.

IV. General Public Comment

Chairman Shropshire asked if any member of the audience would like to speak to any matters before the Board. No one responded.

V. Adjournment

Chairman Shropshire adjourned.

The meeting adjourned at 11:13 a.m.

Board of Environmental Review March 20, 2015, minutes approved:

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ROBIN SHROPSHIRE  
CHAIRMAN  
BOARD OF ENVIRONMENTAL REVIEW

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DATE

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM**

**EXECUTIVE SUMMARY FOR ACTION ON RULE ADOPTION**

**Agenda # III.A.1.**

**Agenda Item Summary:** The board is considering adoption of amendments to the air quality incorporation by reference (IBR) rules, ARM 17.8.102 and 17.8.103. The amendments would adopt more recent editions of federal statutes and regulations and state administrative rules.

**List of Affected Rules:** This rulemaking would amend ARM 17.8.102 and 17.8.103.

**Affected Parties Summary:** The proposed rule amendments would affect sources of air pollution subject to regulation under the air quality rules in ARM Title 17, Chapter 8 for which applicable federal regulations were changed during July 2013 through June 2014 or applicable federal statutes or state rules that were changed during 2014. A table of changes made to the Code of Federal Regulations (CFR) can be viewed at the Department's website: <http://deq.mt.gov/dir/legal/hearing.mcpX>.

**Scope of Proposed Proceeding:** The Board is considering adoption of amendments to the air quality IBR rules. The amendments were proposed in Montana Administrative Register (MAR) Notice No. 17-369 on February 12, 2015.

**Background:** Annually, the Department requests that the Board update the rules incorporating by reference federal statutes and regulations and state administrative rules. The IBR update is accomplished by amending the dates of the editions and the website addresses of the CFR, U.S. Code, and Administrative Rules of Montana (ARM) set forth in ARM 17.8.102(1) and by providing the website address to the updated versions of the CFR and the U.S. Code sources in ARM 17.8.103. Failure to adopt the most recent edition of the CFR could result in the loss of state primacy for administering the air program.

**Hearing Information:** The Board's hearing officer, Ben Reed, presided over a public hearing on March 5, 2015, to take comment on the proposed amendments. No member of the public submitted comments at the hearing or during the comment period.

**Board Options:** The Board may:

1. Adopt the proposed amendments set forth in the attached Draft Notice of Amendment and also adopt the attached HB 521 (stringency) and HB 311 (takings) analyses and the Presiding Officer's Report;
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 that the board adopt the proposed attached HB 521 (stringency) and HB 311 (takings) analyses, the Presiding Officer's Report, and amendments as set forth in the attached Draft Notice of amendment.

**Enclosures:**

1. Notice of Public Hearing on Proposed Amendment
2. HB 521 and 311 Analyses
3. Presiding Officer's Report
4. Department Testimony
5. Draft Notice of Amendment

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.8.102 and 17.8.103 pertaining to )  
incorporation by reference--publication )  
dates and incorporation by reference )  
and availability of referenced documents )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On March 5, 2015, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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., February 23, 2015, 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](mailto:ejohnson@mt.gov).

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

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) In this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, 2013 2014, edition of the Code of Federal Regulations (CFR), as it is published on the web site of the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2014&go=Go>;

(b) adopted a section of the United States Code (USC) by reference, the reference is to the 2012 2013 edition of the USC as it ~~exists on December 31, 2013~~ is published on the web site of the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/browse/collectionUScode.action?selectedYearFrom=2013&go=Go>;

(c) adopted a rule of the state of Montana from another chapter of the Administrative Rules of Montana (ARM), the reference is to the rule in effect on ~~June 30, 2013~~ September 30, 2014.

(2) through (2)(b) remain the same.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

17.8.103 INCORPORATION BY REFERENCE AND AVAILABILITY OF

REFERENCED DOCUMENTS (1) through (3) remain the same.

(4) Copies of the CFR may be obtained from the U.S. Government Printing Office, at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2014&go=Go>. When printed versions are available, they may be obtained as described in (3)(c).

(5) Copies of the U.S. Code may be obtained from the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/browse/collectionUScode.action?selectedYearFrom=2013&go=Go>. When printed versions are available, they may be obtained as described in (3)(c).

AUTH: 75-2-111, MCA  
IMP: Title 75, chapter 2, MCA

REASON: The board is proposing to amend the air quality rules to update editions of federal and state statutes, rules, and regulations that are incorporated by reference. The board is proposing to amend ARM 17.8.102(1) and 17.8.103(4) and (5) to adopt revisions to federal regulations published in the July 1, 2014, edition of the Code of Federal Regulations (CFR), as it is published on the web site of the U.S. Government Printing Office, the 2013 edition of the U.S. Code, as it is published on the web site of the U.S. Government Printing Office, and the September 30, 2014, edition of the ARM. The reason for the reference to a specific web page of the CFR is that the CFR is published in a new codified version every year. For Title 40, which contains most of the federal regulations adopted by reference by the board for air quality regulation, the official version is dated July 1 of each year. However, the online version is not available by that date and the printed version is not available for more than four months after that date. The board adopts the July 1 edition after the online version has been made available. The reason for the reference to a specific web page for the U.S. Code is that the U.S. Code is published in a new codified printed version every six years. The most recent printed version is 2012. It is updated online by the U.S. Law Revision Counsel, which is associated with the U.S. House of Representatives, as new laws are enacted. It then takes about eight months before all titles of the U.S. Code are updated on the web site of the U.S. Government Printing Office (U.S. GPO) with the changes enacted into law by the previous session of Congress. It takes about another ten months for a printed annual supplement to be distributed. The U.S. GPO publishes the printed versions and its web site is the most authoritative site for the official online version of the U.S. Code. It is the version on this web site that the board is proposing to use as the version of the updated U.S. Code referred to in its rules in ARM Title 17, chapter 8. The board adopts and incorporates by reference updates to federal regulations to ensure that Montana's air quality rules are at least as stringent as federal air quality regulations, to maintain primacy and federal delegation of Montana's air quality program, and to implement federal emissions standards according to a federal program of emissions control.

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](mailto:ejohnson@mt.gov), no later than 5:00 p.m., March 12, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Ben Reed, 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](mailto: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.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Robin Shropshire

ROBIN SHROPSHIRE

Chairman

Certified to the Secretary of State, February 2, 2015.



## Memo

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**TO:** Board of Environmental Review

**FROM:** Norman J. Mullen, DEQ Staff Attorney

**DATE:** March 5, 2015

**SUBJECT:** House Bill 521 (stringency) and House Bill 311 (takings) review of rulemaking concerning the amendment of ARM 17.8.102 and 103, which establish the date of the version of federal regulations incorporated by reference in air quality rules and provide addresses where those regulations can be obtained, in ARM Notice No. 17-369 (publ. 2/12/15)

HB 521 REVIEW  
(Comparing Stringency of State and Local Rules  
to Any Comparable Federal Regulations or Guidelines)

Sections 75-2-111 and 207, MCA, codify the air quality provisions of House Bill 521, from the 1995 legislative session, by requiring that the Board of Environmental Review, prior to adopting a rule to implement the Clean Air Act of Montana that is more stringent than a comparable federal regulation or guideline that addresses the same circumstances, make certain written findings after a public hearing and receiving public comment.

In this proceeding, the Board is proposing to amend ARM 17.8.102 by adopting more recent versions of the federal regulations, federal statutes, and rules of other Department programs and other Montana state agencies that are incorporated by reference into the state's air quality rules.

None of the proposed amendments would make the state rules more stringent than comparable federal regulations or guidelines. Rather, the proposed amendments to ARM 17.8.102 would update the Board's air quality rules to make them more consistent with federal air quality regulations and statutes. Therefore, no further House Bill 521 analysis is required.

(over, please)

House Bill 521 and House Bill 311 Memo for Update  
to Air Quality Incorporation-by-Reference Rule  
ARM Notice No. 17-369  
March 5, 2015  
Page 2

HB 311 REVIEW  
(Assessing Impact on Private Property)

Sections 2-10-101 through 105, MCA, codify House Bill 311, the Private Property Assessment Act, from the 1995 legislative session, by requiring that, prior to taking an action that has taking or damaging implications for private real property, a state agency must prepare a taking or damaging impact assessment. Under Section 2-10-103(1), MCA, "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 2-10-104, 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.

I reviewed the guidelines and researched whether the adoptions of the federal regulations being proposed to be incorporated by reference would constitute a deprivation of real property in violation of the federal or state constitution. I determined that they would not, and have completed an Attorney General's Private Property Assessment Act Checklist, which is attached to this memo. No further House Bill 311 assessment is required.

**PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST**  
**(using form prepared by Montana Department of Justice, Jan. 2011)**

In the matter of the amendment of ARM 17.8.102 and 17.8.103 (pertaining to air quality incorporation by reference--publication dates and incorporation by reference and availability of referenced documents) in ARM Notice No. 17-369 (publ. 2/12/15)

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

**YES      NO**

- |                          |                                     |   |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?   |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 2. Does the action result in either a permanent or indefinite physical occupation of private property?  |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 3. Does the action deprive the owner of all economically beneficial use of the property?  |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 4. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO, skip questions 4a and 4b and continue with question 5.]  |
| <input type="checkbox"/> | <input type="checkbox"/>            | 4a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?   |
| <input type="checkbox"/> | <input type="checkbox"/>            | 4b. Is the government requirement roughly proportional to the impact of the proposed use of the property?   |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 5. Does the action deny a fundamental attribute of ownership?   |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 6. Does the action have a severe impact on the value of the property?   |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 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? [If the answer is <b>NO</b> , do not answer questions 7a-7c.] |
| <input type="checkbox"/> | <input type="checkbox"/>            | 7a. Is the impact of government action direct, peculiar, and significant?   |
| <input type="checkbox"/> | <input type="checkbox"/>            | 7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?  |
| <input type="checkbox"/> | <input type="checkbox"/>            | 7c. Has government action diminished 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?                              |

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, 5, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 4a or 4b.

If taking or damaging implications exist, the agency must comply with Mont. Code Ann. § 2-10-105, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.



1 **BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**  
2 **OF THE STATE OF MONTANA**

3 **In the matter of the amendment of**  
4 **ARM 17.8.102 and 17.8.103 pertaining**  
5 **to incorporation by reference –**  
6 **publication dates and incorporation**  
7 **by reference and availability of**  
8 **referenced documents**

**PRESIDING OFFICER'S REPORT**

9 **INTRODUCTION**

10 1. On March 5, 2015 at 2:00 p.m., the undersigned Presiding Officer  
11 presided over and conducted the public hearing held in Room 111 of the Metcalf  
12 Building, 1520 East Sixth Avenue, Helena, Montana, to take public comment on the  
13 above-captioned proposed amendments. The amendments serve to incorporate by  
14 reference the publication dates and incorporation by reference and availability of  
15 referenced documents.

16 2. Notice of the hearing was contained in the Montana Administrative  
17 Register (MAR), Notice No. 17-369, published on February 12, 2015, in Issue No.3  
18 at pages 104 through 106. A copy of the notice is attached to this report.  
19 (Attachments are provided in the same order as they are referenced in this report.)

20 3. The hearing began at 2:00 p.m. and concluded at 2:45 p.m. The Court  
21 Reporter, Susan Johnson, RPR, of Lesofski Court Reporting, Inc., recorded the  
22 hearing.

23 4. There were no members of the public at the hearing. At the hearing,  
24 the Hearing Examiner identified and summarized the MAR notice and read the  
25 Notice of Function of Administrative Rule Review Committee as required by Mont.  
26 Code Ann. § 2-4-302(7)(a).

27 **SUMMARY OF HEARING**

Ms. Elizabeth Ulrich, Air Quality Planner & County Coordinator, of  
the Air Resources Management Bureau of the Montana Department of  
Environmental Quality submitted a written statement and gave a brief oral summary

1 of the changes at the hearing. (The written statement is attached.)

2 6. No other written comments were submitted.

3 7. A written memorandum was submitted from DEQ staff attorney,  
4 Norman J. Mullen, with HB 521 and HB 311 reviews of the proposed amendments  
5 and a Private Property Assessment Act Checklist. (Mr. Mullen's memorandum is  
6 attached to this report.)

7 8. None of the proposed amendments would make the state rules more  
8 stringent than comparable federal regulations or guidelines. No further HB 521  
9 analysis is required.

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

17 10. The period to submit comments ended at 5:00 p.m. on March 13,  
18 2015. None were submitted.

19 **PRESIDING OFFICER COMMENTS**

20 11. The Board has jurisdiction to make the proposed amendments. See  
21 Mont. Code Ann. §§ 75-2-111, 75-2-202, 75-2-203, 75-2-204, 75-2-217, 75-2-218.

22 12. The conclusions in the memorandum of Mr. Mullen concerning House  
23 Bill 521 (1995) and House Bill 311 (1995) are correct.

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

26 14. The Board may adopt the proposed rule amendments, reject them, or  
27 adopt the rule amendments with revisions not exceeding the scope of the public

1 notice.

2 15. Under Mont. Code Ann. § 2-4-305(7), for the rulemaking process to  
3 be valid, the Board must publish a notice of adoption within six months of the date  
4 the Board published the notice of proposed rulemaking in the Montana  
5 Administrative Register, or by August 12, 2015.

6 Dated this 9th day of April, 2015.

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9 BENJAMIN REED  
Hearing Examiner

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HEARING TESTIMONY  
March 5, 2015

**In the matter of the amendment of ARM 17.8.102 and 103  
pertaining to incorporation by reference**

Good afternoon. For the record, my name is Liz Ulrich and I'm here representing the Department regarding action on the proposed incorporation by reference rulemaking.

As a state with delegated authority for the administration of various federal air quality programs, Montana maintains primacy in part by adopting and implementing the most current federal and state regulatory provisions. The Department is supporting the Board's proposal to amend the Administrative Rules of Montana (ARM) 17.8.102 and 103. With this action the Board is proposing to incorporate federal regulations as they existed on July 1, 2014, federal statutes as they existed on December 31, 2013, and Montana rules in effect as of September 30, 2014.

The Department conducted an extensive analysis of the substantive revisions to federal regulations that have occurred since the Board last incorporated them by reference on May 30, 2014. A summary of this analysis is attached to my written testimony to be submitted for the record.

Through adoption and incorporation by reference of more recent editions of federal regulations, which include revisions to New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants, the Board maintains the integrity of the air quality program in Montana. This action will ensure that Montana's air quality rules are at least as stringent as federal air quality regulations, maintain federal delegation of Montana's air quality program, and ensure the timely implementation of emission standards that have been developed on the federal level according to a program of emissions control.

The Department has completed a stringency and takings analysis in accordance with §§ 75-2-111 and 207 and 2-10-101 through 105, MCA. These documents are attached to my written testimony, and are being submitted for the record. The Department has also determined that the transfer of administrative authority from the Environmental Protection Agency to the state of Montana through incorporation of the above-referenced regulations will not significantly and directly impact small businesses.

The Department supports the Board's adoption of the amendments as proposed in the Montana Administrative Register notice published February 12, 2015.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.8.102 and 17.8.103 pertaining to )  
incorporation by reference--publication )  
dates and incorporation by reference )  
and availability of referenced documents )

NOTICE OF AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On February 12, 2015, the Board of Environmental Review published MAR Notice No. 17-369 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 104, 2015 Montana Administrative Register, Issue Number 3.

2. The board has amended the rules exactly as proposed.

3. No public comments or testimony were received.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

\_\_\_\_\_  
JOHN F. NORTH  
Rule Reviewer

By: \_\_\_\_\_  
ROBIN SHROPSHIRE  
Chairman

Certified to the Secretary of State, \_\_\_\_\_, 2015.

1    **BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**  
2    **OF THE STATE OF MONTANA**

---

3 **IN THE MATTER OF:**  
4 **VIOLATIONS OF THE WATER**  
5 **QUALITY ACT BY REFLECTIONS AT**  
6 **COPPER RIDGE, LLC AT**  
7 **REFLECTIONS AT COPPER RIDGE**  
8 **SUBDIVISION, BILLINGS,**  
9 **YELLOWSTONE COUNTY, MONTANA.**  
10 **(MTR105376) [FID 2288, DOCKET NO.**  
11 **WQ-15-07]**

**CASE NO. BER 2015-01 WQ**

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12    **FIRST PREHEARING ORDER**

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13 Reflections At Copper Ridge, LLC (Appellant), has filed a "Notice of Appeal and  
14 Request for Hearing" regarding the Department of Environmental Quality's  
15 (Department) notice of violation, dated March 27, 2015, issued for Appellant's  
16 facility in Billings, Montana. The following guidelines and rules are provided to  
17 assist the parties in an orderly resolution of this contested case.

18            1.        REFERENCES: This matter is governed by the Montana  
19 Administrative Procedure Act, Contested Cases, Mont. Code Ann. Tit. 2, ch. 4,  
20 pt. 6, and Mont. Admin. R. 17.4.101, by which the Board of Environmental Review  
21 (Board) has adopted the Attorney General's Model Rules for contested cases, Mont.  
22 Admin. R. 1.3.211 through 1.3.225, and by Mont. Code Ann. Tit. 75, Ch. 5, pts. 6.

23            2.        FILING: Except for discovery requests and responses (which are not  
24 routinely filed), **original** documents shall be sent for filing with the Board,  
25 addressed as follows:  
26

27    MS. JOYCE WITTENBERG  
    Secretary, Board of Environmental Review  
    Department of Environmental Quality  
    1520 East Sixth Avenue  
    P.O. Box 200901  
    Helena, MT 59620-0901

1 One copy of each document that is filed should be sent to the Hearing  
2 Examiner addressed as follows:

3 BENJAMIN REED  
4 Hearing Examiner  
5 Agency Legal Services Bureau  
6 1712 Ninth Avenue  
7 P.O. Box 201440  
8 Helena, MT 59620-1440

9 Although discovery documents are not normally filed, when a motion or brief  
10 is filed making reference to discovery documents, the party filing the motion or  
11 brief should also attach the relevant discovery documents.

12 3. SERVICE Copies of all documents filed with the Board and  
13 provided to the Hearing Examiner, including correspondence, must be served upon  
14 the opposing party. A certificate of service should be provided.

15 4. EX PARTE COMMUNICATIONS: The Montana Administrative  
16 Procedure Act in Mont. Code Ann. § 2-4-613, and the Attorney General's Model  
17 Rule 18 in Mont. Admin. R. 1.3.222, prohibit *ex parte* communications with a  
18 hearing examiner concerning any issue of fact or law in a contested case. In  
19 addition to observing this rule, please contact the opposing party before you  
20 communicate with the undersigned Interim Hearing Examiner, even on purely  
21 procedural matters such as the need for a continuance.

22 5. SCHEDULING: The parties are requested to consult with each  
23 other and propose to the undersigned a schedule upon which they agree by  
24 May 22, 2015. The schedule should include the following dates:

- 25 (a) for joinder/intervention of additional parties;  
26 (b) for disclosure by each party to the other parties of: (1) the  
27 name and address of each individual likely to have discoverable information that the  
disclosing party may use to support its claims or defenses; and, (2) a copy of, or a  
description by category and location of, all documents and tangible things that are in

1 the possession, custody, or control of the disclosing party and that the disclosing  
2 party may use to support its claims or defenses;

3 (c) for completion of discovery (if any party wishes to conduct  
4 discovery);

5 (d) for exchange of lists of witnesses and copies of documents that  
6 each party intends to offer at the hearing;

7 (e) for submitting any motions and briefs in support;

8 (f) for a prehearing conference to hear argument on any motions  
9 and resolve other prehearing matters; and,

10 (g) for the contested case hearing, as well as the place of  
11 hearing.

12 DATED this 1<sup>st</sup> day of May, 2015.



13  
14 BENJAMIN REED  
15 Hearing Examiner  
16 Agency Legal Services Bureau  
17 1712 Ninth Avenue  
18 P.O. Box 201440  
19 Helena, MT 59620-1440  
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1 CERTIFICATE OF SERVICE

2 I hereby certify that I caused a true and accurate copy of the foregoing

3 Caption to be mailed to:

4 Ms. Joyce Wittenberg  
5 Secretary, Board of Environmental Review  
6 Department of Environmental Quality  
7 1520 East Sixth Avenue  
8 P.O. Box 200901  
9 Helena, MT 59620-0901  
10 **(original)**

11 Ms. Kirsten Bowers  
12 Legal Counsel  
13 Department of Environmental Quality  
14 P.O. Box 200901  
15 Helena, MT 59620-0901

16 Mr. John Arrigo, Administrator  
17 Enforcement Division  
18 Department of Environmental Quality  
19 P.O. Box 200901  
20 Helena, MT 59620-0901

21 Mr. William W. Mercer  
22 Holland & Hart LLP  
23 401 N. 31st Street, Suite 1500  
24 P.O. Box 639  
25 Billings, MT 59103-0639

26 DATED: May 5, 2015 Denise M. Hagen  
27



**MEMO**

TO: Benjamin Reed, Hearing Examiner  
Board of Environmental Review

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

DATE: April 20, 2015

SUBJECT: Board of Environmental Review case, Case No. BER 2015-01 WQ

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

IN THE MATTER OF:  
VIOLATIONS OF THE WATER QUALITY  
ACT BY REFLECTIONS AT COPPER  
RIDGE, LLC AT REFLECTIONS AT  
COPPER RIDGE SUBDIVISION,  
BILLINGS, YELLOWSTONE COUNTY,  
MONTANA. (MTR105376) [FID 2288,  
DOCKET NO. WQ-15-07]

Case No. BER 2015-01 WQ

TITLE

BER has received the attached request for hearing. Also attached is DEQ's administrative document relating to this request (Enforcement Case FID 2288, Docket No. WQ-15-07).

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

Kirsten Bowers  
Legal Counsel  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

John Arrigo, Administrator  
Enforcement Division  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Attachments

BER 2015-01 WQ

**Wittenberg, Joyce**

**From:** Bill Mercer <WWMercer@hollandhart.com>  
**Sent:** Friday, April 17, 2015 2:54 PM  
**To:** Wittenberg, Joyce  
**Cc:** Bowers, Kirsten  
**Subject:** FW: Administrative Compliance and Penalty Order Docket No. WQ-15-07  
**Attachments:** Letter to the Board Secretary, Board of Environmental Review (Docket No. WQ-15-07).pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** BER

Ms. Wittenberg:

Attached is correspondence seeking an appeal in WQ-15-07.

If you have questions or concerns regarding this appeal, please contact me.

Thank you,

William W. Mercer  
Holland & Hart LLP  
401 N. 31st Street, Suite 1500  
P.O. Box 639  
Billings, MT 59103-0639  
(406) 896-4607 Office  
(406) 647-3223 Mobile  
[wwmerc@hollandhart.com](mailto:wwmerc@hollandhart.com)

Billings, MT	Boulder, CO	Las Vegas, NV	Cheyenne, WY	Santa Fe, NM
Salt Lake City, UT	Colorado Springs, CO	Reno, NV	Boise, ID	Washington D.C.
Denver, CO	Carson City, NV	Jackson Hole, WY	Aspen, CO	

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ATTORNEY WORK-PRODUCT

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Docket No. WQ-15-07

---

**From:** Arlene Forney  
**Sent:** Friday, April 17, 2015 2:43 PM  
**To:** Bill Mercer  
**Subject:** Administrative Compliance and Penalty Order



**William W. Mercer**  
Phone (406) 896-4607  
Fax (406) 252-1669  
WWMercer@hollandhart.com

April 17, 2015

**SENT VIA U.S. MAIL AND ELECTRONIC MAIL**

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

Filed with the  
MONTANA BOARD OF  
ENVIRONMENTAL REVIEW  
This 17 day of April, 2015  
at 2 o'clock 55 .m.  
By: Hillary Hole

Re: Administrative Compliance and Penalty Order Docket No. WQ-15-07

Dear Board Secretary:

Pursuant to Mont. Code Ann. § 75-5-611(4), Reflections at Copper Ridge, LLC appeals the March 27, 2015, Administrative Order issued by the Department of Environmental Quality regarding alleged violations of the Water Quality Act. Reflections at Copper Ridge, LLC requests a hearing be set on the matter within a reasonable time after completion of discovery and resolution of any pre-hearing motion.

Sincerely,

William W. Mercer  
of Holland & Hart LLP

WWM/asf

cc: Kirsten Bowers, DEQ Legal Unit (kbowers@mt.gov)

7695202\_1

**Holland & Hart** LLP

Phone [406] 252-2166 Fa: [406] 252-1669 [www.hollandhart.com](http://www.hollandhart.com)

401 North 31st Street Suite 1500 Billings, MT 59101 Mailing Address P.O. Box 639 Billings, MT 59103-0639

Aspen Boulder Carson City Colorado Springs Denver Denver Tech Center Billings Boise Cheyenne Jackson Hole La Vegas Reno Salt Lake City Santa Fe Washington, D.C.

RECEIVED BY DEQ  
FINANCIAL SERVICES  
2015 APR 20 AM 11:21

HOLLAND & HART LLP



**William W. Mercer**  
Phone (406) 896-4607  
Fax (406) 252-1669  
WWMercer@hollandhart.com

April 17, 2015

***SENT VIA U.S. MAIL AND ELECTRONIC MAIL***

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

Re: Administrative Compliance and Penalty Order Docket No. WQ-15-07

Dear Board Secretary:

Pursuant to Mont. Code Ann. § 75-5-611(4), Reflections at Copper Ridge, LLC appeals the March 27, 2015, Administrative Order issued by the Department of Environmental Quality regarding alleged violations of the Water Quality Act. Reflections at Copper Ridge, LLC requests a hearing be set on the matter within a reasonable time after completion of discovery and resolution of any pre-hearing motion.

Sincerely,

William W. Mercer  
of Holland & Hart LLP

WWM/asf

cc: Kirsten Bowers, DEQ Legal Unit (kbowers@mt.gov)

7695202\_1

**Holland & Hart LLP**

Phone (406) 252-2166 Fax (406) 252-1669 [www.hollandhart.com](http://www.hollandhart.com)

401 North 31st Street Suite 1500 Billings, MT 59101 Mailing Address P.O. Box 639 Billings, MT 59103-0639

Aspen Boulder Carson City Colorado Springs Denver Denver Tech Center Billings Boise Cheyenne Jackson Hole Las Vegas Reno Salt Lake City Santa Fe Washington, D.C. ☉

This 17 day of April, 2015  
at 2 o'clock 54 .m.  
By: Hillary Hoyle

1 BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
2 OF THE STATE OF MONTANA

3 IN THE MATTER OF:  
4 VIOLATIONS OF THE WATER QUALITY ACT  
5 BY REFLECTIONS AT COPPER RIDGE, LLC AT  
6 REFLECTIONS AT COPPER RIDGE  
7 SUBDIVISION, BILLINGS, YELLOWSTONE  
8 COUNTY, MONTANA. (MTR105376; FID 2288)

ADMINISTRATIVE COMPLIANCE AND  
PENALTY ORDER

Docket No. WQ-15-07

9 **I. NOTICE OF VIOLATION**

10 Pursuant to the authority of Sections 75-5-611 and 75-5-617, Montana Code Annotated  
11 (MCA), the Department of Environmental Quality (Department) hereby issues this administrative order  
12 to Reflections at Copper Ridge, LLC, hereinafter referred to as "RCR," based upon the allegations set  
13 forth below for violations of the Water Quality Act (WQA) (Title 75, chapter 5, part 6, MCA) and the  
14 Administrative Rules of Montana (ARM) (Title 17, chapter 30) adopted thereunder at Reflections at  
15 Copper Ridge Subdivision in Billings, Yellowstone County, Montana (herein "Reflections").

16 **II. PARTIES**

17 1. The Department is an agency of the executive branch of government of the State  
18 of Montana, created and existing under the authority of Section 2-15-3501, MCA.

19 2. The Department is charged with the administration and enforcement of the  
20 Montana WQA, Title 75, chapter 5, parts 1 through 11, MCA, and the administrative rules  
21 adopted under the WQA. The Department's principal office is located in Helena, Montana.

22 3. RCR is an active corporation registered to do business in the State of Montana.

23 4. RCR's principal office is located in Billings, Montana.

24 **III. GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5. RCR is the owner and/or operator of Reflections; and is developing 30 acres of land  
within that subdivision.

1 6. It is a violation of the Montana WQA, Section 75-5-605(1)(a), MCA, to cause  
2 pollution of state waters or to place or cause to be placed wastes where they will cause pollution of  
3 state waters.

4 7. It is a violation of the Montana WQA, Section 75-5-605(1)(b), MCA, to "violate  
5 any provision set forth in a permit or stipulation, including but not limited to limitations and  
6 conditions contained in the permit."

7 8. It is a violation of the Montana WQA, Section 75-5-605(2), MCA, to construct or  
8 use any outlet for the discharge of wastes to state waters, or to discharge any wastes to state waters  
9 without a current permit.

10 9. Storm water runoff from sites disturbed by construction activity impairs water  
11 quality by contributing sediment and other pollutants, such as concrete, petroleum, pesticides, and  
12 other wastes, to waters of the state.

13 10. Pursuant to Section 75-5-401, MCA, the Board of Environmental Review (BER)  
14 adopted rules at Administrative Rules of Montana (ARM) Title 17, chapter 30, subchapters 11, 12,  
15 and 13 governing application for and issuance of permits to discharge sewage, industrial wastes, or  
16 other wastes to state waters.

17 11. ARM 17.30.1105(1)(a) requires any person who discharges or proposes to  
18 discharge storm water from a point source to obtain coverage under an MPDES general permit or  
19 another MPDES permit for discharges associated with construction activity.

20 12. ARM 17.30.1102(28) defines "storm water discharge associated with construction  
21 activity" as "a discharge of storm water from construction activities including clearing, grading,  
22 and excavation that result in the disturbance of equal to or greater than one acre of total land area.  
23 For purposes of these rules, construction activities include clearing, grading, excavation,  
24 stockpiling earth materials, and other placement or removal of earth material performed during

1 construction projects. Construction activity includes the disturbance of less than one acre of total  
2 land area that is a part of a larger common plan of development or sale if the larger common plan  
3 will ultimately disturb one acre or more.”

4 13. ARM 17.30.1102(13) defines “municipal separate storm sewer” system” as “a  
5 conveyance or system of conveyances (including roads with drainage systems, municipal streets,  
6 catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that discharges to  
7 surface waters...”

8 14. The City of Billings municipal separate storm sewer system (MS4) (herein  
9 “Billings MS4”) is authorized by the Department to discharge storm water to state waters under  
10 the MPDES General Permit for Storm Water Discharge Associated with Small Municipal  
11 Separate Storm Sewer Systems. The Billings MS4 ultimately discharges to the Yellowstone  
12 River, a state surface water.

13 15. A person who discharges or proposes to discharge storm water associated with  
14 construction activity shall submit a notice of intent (NOI) to the Department that meets the  
15 requirements set forth under ARM 17.30.1115(1). Authorization to discharge under the General  
16 Permit for Storm Water Discharges Associated with Construction Activity Permit No. MTR:100000  
17 (herein “the General Permit”) is effective upon receipt by the Department of a complete NOI package,  
18 which includes the NOI, Storm Water Pollution Prevention Plan (SWPPP), and the permit fee.

19 16. The General Permit defines "disturbance" related to construction activity to mean:  
20 “areas that are subject to clearing, excavating, grading, stockpiling earth materials, and  
21 placement/removal of earth material performed during construction projects.”

22 17. Section 1.1.1 of the General Permit states that “storm water which discharges into a  
23 drain inlet and/or storm sewer system from the site is regulated as a discharge to state surface  
24 waters if the inlet or system itself ultimately discharges into state surface water.”



1 18. ARM 17.30.1102(7) defines "illicit discharge" as "any discharge to a municipal  
2 separate storm sewer that is not composed entirely of storm water except discharges pursuant to an  
3 MPDES permit (other than the MPDES permit for discharges from the municipal separate storm  
4 sewer) and discharges resulting from firefighting activities."

5 19. Section 75-5-103(4), MCA, defines "contamination" as "impairment of the quality  
6 of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health."

7 20. Section 75-5-103(24), MCA, defines "other wastes" as "garbage, municipal refuse,  
8 decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat,  
9 chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid  
10 waste, and all other substances that may pollute state waters."

11 21. Section 75-5-103(30)(a), MCA, defines "pollution" as "(i) contamination or other  
12 alteration of the physical, chemical, or biological properties of state waters that exceeds that  
13 permitted by Montana water quality standards, including but not limited to standards relating to  
14 change in temperature, taste, color, turbidity or odor; or (ii) the discharge, seepage, drainage,  
15 infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will  
16 or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public  
17 health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife."

18 22. RCR, as the "owner or operator," pursuant to Section 75-5-103(25), MCA, of a  
19 storm water discharge associated with construction activity, is required to obtain and maintain  
20 authorization to discharge storm water under the General Permit. The General Permit also refers  
21 to the owner or operator as the "permittee."

22 23. The permittee is required to install, and maintain effective erosion and sediment  
23 control, including best management practices (BMPs) identified in the SWPPP, designed to  
24 minimize discharge of pollutants from the construction site. *See* Part 2 of the General Permit.

1 24. The permittee must specify a Primary SWPPP Administrator, a Secondary  
2 SWPPP Administrator (as applicable), and any other designated SWPPP Administrator(s) in the  
3 SWPPP. A SWPPP Administrator is responsible for developing, implementing, maintaining,  
4 revising, and updating the SWPPP. The SWPPP Administrator must have knowledge of the  
5 principles and practices of erosion, sediment control, and pollution prevention. The SWPPP  
6 Administrator must address all aspects of the SWPPP from initiation of construction activities  
7 until final site stabilization is achieved and the permit authorization is terminated. *See* Part 3.2 of  
8 the General Permit.

9 25. The General Permit requires control of storm water discharges from the  
10 construction site to meet applicable water quality standards. *See* Part 2.2 of the General Permit.

11 26. The General Permit requires regular site inspections in accordance with a schedule  
12 that is documented in the SWPPP until final stabilization of the construction site is achieved. *See*  
13 Part 2.3 of the General Permit.

14 27. The General Permit requires that all BMPs identified in the SWPPP be maintained  
15 in effective operating condition. *See* Part 2.3.5 of the General Permit.

16 28. The General Permit requires that if BMPs identified in the SWPPP must be  
17 modified, if additional BMPs are necessary, if additional or corrective measures must be  
18 completed before the next storm event, all changes must be documented in the SWPPP and  
19 summarized in a SWPPP Revision/Update Log. *See* Part 2.4 and Part 3.12.2. of the General  
20 Permit.

21 29. The General Permit requires that certain records be retained and made available at  
22 the construction site immediately upon request by the Department, EPA, or local officials, or their  
23 representatives. *See* Part 2.5 of the General Permit.

24 //

1 30. The General Permit requires that the owner/operator or permittee notify the  
2 Department in writing of any changes in the SWPPP Administrator. *See* Part 3.2.1 of the General  
3 Permit.

4 31. The SWPPP must include a description of the intended sequence of construction  
5 activity, and clearly describe the relationship between phases of construction activity and the  
6 implementation and maintenance of BMPs. *See* Part 3.3 of the General Permit.

7 32. The SWPPP must contain a narrative description of the construction activity,  
8 including, but not limited to: construction-related storm water discharges; total site area; area of  
9 the site expected to undergo construction-related disturbance; site soil characteristics; nearby state  
10 surface waters; outfall locations; and expected storm water flow. *See* Part 3.4 of the General  
11 Permit.

12 33. The SWPPP must identify potential sources of pollution. *See* Part 3.6 of the General  
13 Permit.

14 34. Section 3.1.1 of the General Permit states the SWPPP must be developed and  
15 implemented in accordance with good engineering, hydrologic, and pollution control practices, and  
16 pursuant to Section 3.1.3 of the General Permit, the SWPPP must be implemented as stated in the  
17 Primary SWPPP Administrator's up-to-date field copy.

18 35. Storm water from Reflections ultimately discharges to state waters through catch  
19 basin inlets, swales, pipes, detention ponds, and overland flow to Cove Ditch, its tributary  
20 drainages, and to the Billings MS4.

21 36. Beginning in 1992, the Department has issued the General Permit, which is  
22 effective for five-year periods, or longer if administratively extended. The current General Permit,  
23 MTR100000, is effective January 1, 2013, through December 31, 2017.

24 37. Land disturbing activities began at Reflections in 2006.

1 38. In response to a citizen complaint, representatives of the City of Billings (City)  
2 conducted site inspections at Reflections in May and again in August of 2012. During its  
3 inspections, the City observed soil stockpiles near storm drain inlets, sediment tracking, sediment  
4 build-up in the curb line, erosion, and a lack of BMPs installed to control the discharge of  
5 pollutants.

6 39. After the August 2012 inspection, the City sent a Notice of Violation (NOV) to  
7 Gary Oakland of The Oakland Companies advising Mr. Oakland of the observed violations at  
8 Reflections and indicating that if compliance was not achieved, the City may refer the matter to the  
9 Montana Department of Environmental Quality for further enforcement action.

10 40. Between August 9, 2012, and July 9, 2013, the City conducted six site inspections  
11 at Reflections. During this period, the City observed and photographed continued sediment  
12 tracking in the streets, sediment build-up in curbs and streets, discharges of sediment and debris  
13 into storm drains, soil stockpiling, and no BMP installation to control pollutant discharges.

14 41. On March 26, 2013, the City contacted the Department for guidance and  
15 assistance in dealing with the lack of compliance and non-responsiveness of RCR at Reflections.  
16 The Department informed the City that RCR did not have an active permit authorizing  
17 discharges from Reflections.

18 42. On September 9, 2013, a Department inspector (Inspector) conducted a compliance  
19 evaluation inspection at Reflections (September 2013 CEI). At the time of the September 2013  
20 CEI, RCR had not submitted an NOI to obtain coverage under the General Permit for the discharge  
21 of storm water associated with construction activities, and RCR was not authorized to discharge  
22 storm water associated with construction activity under any other MPDES permit.

23 43. During the September 2013 CEI, the Inspector documented homes under  
24 construction and areas disturbed by associated construction activity such as cleared and graded

1 areas, excavations, soil stockpiles, concrete washout areas, and sediment tracking in the streets.

2 The Inspector also noted that there were no BMPs installed at Reflections to control and mitigate  
3 the introduction of pollutants associated with storm water runoff from these construction  
4 activities. The Inspector also observed that storm water had discharged from Reflections into  
5 Cove Ditch through storm water ponds, storm drains, swales and drainage ditches.

6 44. On September 23, 2013, the Department sent a violation letter to notify RCR and  
7 Copper Ridge Development Corporation (CR) that they were in violation of the WQA for  
8 conducting construction activities prior to submitting an NOI, discharging storm water into state  
9 waters without a permit, and placing a waste where it will cause pollution of state waters. This  
10 violation letter notified RCR and CR that each of these separate subdivisions are part of a "larger  
11 common plan of development or sale" as defined in ARM 17.30.1102(28); and that RCR and CR  
12 were being recommended for a formal enforcement action.

13 45. On September 27, 2013, a representative of RCR and CR responded to the  
14 Department's September 23, 2013 violation letter. In its response, RCR stated that "Copper  
15 Ridge Development Corporation and Reflections at Copper Ridge, LLC are separate entities,  
16 owning and developing separate parcels of real estate. Development plans, permits, and daily  
17 operations are kept separate and distinct." The response also included a request for two separate  
18 violation letters, one for each subdivision.

19 46. In a letter dated October 8, 2013, the Department responded to RCR and CR that  
20 it had determined that both subdivisions are part of a larger common plan of development that  
21 was operated by a common registered agent.

22 47. On October 29, 2013, RCR responded to the Department's October 8, 2013 letter  
23 and reiterated that the two subdivisions are separate and distinct legal entities with separate and  
24 unique land developments and are not part of a larger common plan of development.

1 48. In response to RCR's October 29, 2013 letter, the Department issued a violation  
2 letter on November 8, 2013, separating and distinguishing the violations that occurred at  
3 Reflections from those that occurred at Copper Ridge Subdivision.

4 49. The Department received a Notice of Intent (NOI) and associated SWPPP from  
5 RCR on December 23, 2013. On January 8, 2014, the Department sent a confirmation letter to  
6 RCR issuing permit number MTR105376 authorizing coverage under the General Permit for  
7 construction-related storm water discharges from Reflections.

8 50. On October 17, 2014, the Department contacted RCR via phone to schedule an  
9 appointment for a CEI for MTR105376. At that time, areas under permit coverage included  
10 what are known as the 2<sup>nd</sup> and 3<sup>rd</sup> filings of Reflections. The October 17, 2014 telephone  
11 conversation was followed by an email in which the Department described the inspection  
12 procedure and listed the records that would need to be provided for review at the time of the  
13 inspection.

14 51. On October 20, 2014, RCR contacted the Department via email stating that the  
15 inspection was scheduled on the same day as a storm water training class in Billings. The  
16 Department confirmed there were RCR staff registered to attend the October 21, 2014 training  
17 course.

18 52. On October 20, 2014, the Department contacted RCR via telephone and offered to  
19 reschedule the October 2014 CEI so as not to disrupt attendance at the training. RCR declined to  
20 reschedule. The Department followed up with RCR via email, again offering to reschedule the  
21 October 2014 CEI. RCR again declined and stated they would proceed with the October 2014  
22 CEI.

23 53. Two Department Inspectors (Inspectors) arrived at Reflections at 1:00 P.M. on  
24 October 21, 2014, to conduct the October 2014 CEI. RCR had 3 representatives in attendance

1 during the October 2014 CEI. The Inspectors requested RCR to provide the records previously  
2 identified in the October 17, 2014 email. Signed copies of the NOI, SWPPP, and the Delegation of  
3 Authority Form were not made available for review during the October 2014 CEI as requested.

4 54. During the October 2014 CEI, the Inspectors found that the SWPPP had not been  
5 adequately developed to the standards listed in the Permit.

6 55. During the October 2014 CEI, the Inspectors found that RCR was not conducting  
7 Inspections at a minimum once every 7 days as indicated in their SWPPP.

8 56. During the October 2014 CEI, the Inspectors found that BMPs were not installed  
9 according to manufacturer's specifications; BMPs were not installed to standard engineering  
10 specifications, and BMPs were not implemented to minimize the discharge of sediment and non-  
11 sediment pollutant sources.

12 57. On December 9, 2014, the Department sent RCR a violation letter outlining the  
13 violations observed during the October 2014 CEI, and requesting corrective actions be completed  
14 to address the violations by December 31, 2014.

15 58. On December 17, 2014, RCR requested an extension to mid-January for their  
16 response to the December 9, 2014 violation letter. On December 23, 2014, the Department agreed  
17 to extend the deadline for response to January 9, 2015.

18 59. On January 12, 2015, the Department received a letter from RCR describing the  
19 corrective actions taken, which included a copy of their updated SWPPP.

#### 20 IV. VIOLATIONS

##### 21 A. *Conducting construction activity without submittal of an NOI*

22 60. The Department incorporates and restates Paragraphs 1 through 59.

23 61. Construction activities, including clearing, grubbing, grading and excavating began  
24 at Reflections in 2006.

1 62. RCR submitted an NOI for the 2<sup>nd</sup> and 3<sup>rd</sup> filings to the Department on December  
2 23, 2013.

3 63. On January 8, 2014, the Department sent a confirmation letter to RCR authorizing  
4 storm water discharges associated with construction activities under the General Permit, and  
5 issued RCR permit MTR105376.

6 64. RCR violated ARM 17.30.1105 from 2006 until December 23, 2013, by conducting  
7 construction activities that discharged storm water to state waters prior to submitting an NOI.

8 ***B. Discharging storm water without a permit***

9 65. The Department incorporates and restates Paragraphs 1 through 64.

10 66. A discharge of storm water associated with construction activity will likely occur  
11 during and after a precipitation event of 0.25 inches or greater.

12 67. During the City's inspections and during the Department's September CEI, the  
13 City and the Department Inspector observed and documented storm water discharges to state  
14 water through catch basin inlets, overland flow, and overflow from on-site retention ponds to  
15 Cove Ditch.

16 68. RCR violated Section 75-5-605(2)(c), MCA, from at least 2006 to December 23,  
17 2013 by illicitly discharging storm water associated with construction activities to state water  
18 without a permit.

19 ***C. Placing a waste where it will cause pollution***

20 69. The Department incorporates and restates Paragraphs 1 through 68.

21 70. ARM 17.30.611(1)(b) classifies the Yellowstone River drainage area from the  
22 Laurel water supply intake to the Billings water supply intake as B-2. ARM 17.30.624(2),  
23 standards for B-2 Classified waters, states: No person may violate the following specific water  
24 quality standards for waters classified B-2: . . . (f) No increases are allowed above naturally



1 | occurring concentrations of sediment or suspended sediment (except as permitted in Section 75-5-  
2 | 318, MCA), settleable solids, oils, or floating solids, which will or are likely to create a nuisance or  
3 | render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare,  
4 | livestock, wild animals, birds, fish, or other wildlife.

5 |         71.     Section 2.2.1 of the General Permit states that a storm water discharge associated  
6 | with construction activity may not cause or contribute to an exceedance of applicable water quality  
7 | standards.

8 |         72.     Sediment is considered "other waste" pursuant to Section 75-5-103(24), MCA, and  
9 | can be harmful to plants and animals living in aquatic environments by decreasing oxygen,  
10 | decreasing food availability and visibility, clogging gills of fish, harming aquatic insects, and  
11 | increasing water temperature. Other pollutants such as oil, grease, and nutrients can be transported  
12 | by storm water runoff from construction sites causing pollution of state waters.

13 |         73.     During the May 2012 inspection, the City documented soil stockpiles placed near  
14 | a storm drain inlet, sediment tracking in the streets, concrete washout areas without BMPs and a  
15 | general lack of BMPs installed to prevent the introduction of sediment and other pollutants into  
16 | storm water that discharges to state waters.

17 |         74.     During the August 2012 inspection, the City documented excessive sediment tracking  
18 | in the streets, soil stockpiles, sediment build-up in the curb line, erosion, and a lack of BMPs  
19 | installed to prevent the introduction of sediments and other pollutants into storm water discharges.

20 |         75.     The City conducted six inspections between August 2012, and July 2013, and  
21 | documented continued sediment tracking in the streets, sediment build-up in curbs and streets,  
22 | discharges of sediment and debris into storm drains, soil stockpiling, and no BMP installation to  
23 | prevent the introduction of sediment and other pollutants into storm water discharges from

24 | Reflections.

1 76. Between July and October 2013, the City documented continued sediment  
2 tracking in the streets, sediment build-up in curbs and streets, discharges of sediment and debris  
3 into storm drains, soil stockpiling, sediment build-up in curb line, erosion, and a lack of BMPs  
4 installed to prevent the introduction of sediments and other pollutants into storm water  
5 discharges from Reflections.

6 77. During the September 2013 CEI, the Inspector documented homes under construction,  
7 areas disturbed by associated construction activity, such as graded areas, soil stockpiles and concrete  
8 washout areas. There were no BMPs installed at Reflections to prevent the introduction of sediments  
9 and other pollutants into storm water discharges from these construction activities. The Inspector also  
10 observed that storm water had discharged from Reflections into Cove Ditch through catch basin  
11 inlets, storm water ponds, storm drains, swales and drainage ditches.

12 78. RCR violated Section 75-5-605(1)(a), MCA, ARM 17.30.624(2)(f) and ARM  
13 17.30.629(2)(f) from at least May 2012, to at least October 21, 2014, by placing waste where it  
14 will cause pollution and by contributing sediments and other pollutants that will increase the  
15 concentration of sediment, oils, settleable solids, and other debris above levels that are naturally  
16 occurring in state surface waters.

17 ***D. Violating provisions of the General Permit***

18 79. The Department incorporates and restates Paragraphs 1 through 78.

19 80. During the October 2014 CEI, the Inspectors documented that the SWPPP had not  
20 been developed in accordance with good engineering, hydrologic, and pollution control practices;  
21 the SWPPP had not been implemented as stated in the Primary SWPPP Administrator's up- to-date  
22 field copy; the SWPPP had not been updated to reflect current on-site conditions; and the SWPPP  
23 was not signed.

24 //

1 81. RCR violated Section 75-5-605(1)(b), MCA, and Sections 3.1.1 and 3.1.3 of the  
2 Permit by failing to develop an adequate SWPPP and failing to implement the SWPPP as written.

3 82. Section 2.1.1 of the General Permit states permittees must design, install, and  
4 maintain effective erosion and sediment controls to minimize the discharge of potential pollutants.  
5 Section 2.1.4 of the General Permit states that permittees must design, install, implement, and  
6 maintain effective pollution prevention measures to minimize the discharge of pollutants.

7 83. During the October 2014 CEI, the Inspectors documented the improper installation  
8 of BMPs, improper maintenance of BMPs, and absence of BMPs at Reflections that would result  
9 in the discharge of sediments and other pollutants to storm water that discharges to state water.

10 84. RCR violated Sections 2.1.1 and 2.1.4 of the General Permit by failing to install,  
11 implement, and maintain BMPs at Reflections.

12 85. Section 2.3 of the General Permit states that regular inspections must be  
13 performed by a SWPPP Administrator. The initial SWPPP submitted with the NOI Package  
14 must specify which inspection schedule will be utilized and this inspection schedule must be  
15 used until final stabilization is achieved for all areas of the construction activity. The permittee  
16 cannot switch between the inspection schedule options ... during the life of the permit  
17 authorization. The General Permit provides the following two inspection schedules options: (1)  
18 Section 2.3.1 states that a SWPPP Administrator must, at a minimum, conduct a routine  
19 inspection at least once every 7 calendar days; or (2) Section 2.3.2 states that a SWPPP  
20 Administrator must, at a minimum, conduct a routine inspection at least once every 14 calendar  
21 days, and a post-storm event inspection must be conducted by a SWPPP Administrator within 24  
22 hours of the end of a rainfall event of 0.25 inches or greater, and within 24 hours of snowmelt  
23 due to thawing conditions which cause visible surface erosion at the site.

24 //

1 86. During the October 2014 CEI, the Inspectors documented that the SWPPP for  
2 Reflections called for inspections to be conducted once every 7 calendar days in accordance with  
3 the inspection schedule at Section 2.3.1 of the General Permit. Inspection records maintained  
4 onsite at Reflections indicated that 14 inspections were not conducted in accordance with this  
5 schedule between January 15, 2014, and October 10, 2014.

6 87. RCR violated Section 75-5-605(1)(b), MCA, and Section 2.3 of the General Permit  
7 by failing to conduct inspections as scheduled in the SWPPP.

8 88. Section 2.5 of the General Permit states that the primary SWPPP Administrator  
9 must retain certain records at the construction site including: a copy of the General Permit; a  
10 copy of the completed and signed NOI form; a copy of the Department's Confirmation Letter for  
11 receipt of the complete NOI Package; a copy of the latest up-to-date and signed SWPPP; BMP  
12 installation and design standards for all BMPs installed and detailed in the SWPPP; and the  
13 SWPPP Administrator(s) documentation requirements, including the SWPPP Administrator's  
14 training records; the SWPPP Administrator Delegation Form; the SWPPP Revision/Update Log  
15 as required under Part 3.12.2.; all inspection records required under Part 2.3. of this permit; and  
16 all reports of noncompliance under Part 4 of this permit. These documents are to be made  
17 available at the site immediately upon request from a Department representative, EPA official, or  
18 local official.

19 89. During the October 2014 CEI, the Inspectors requested RCR to provide documents  
20 identified in the Department's October 17, 2014 email for review. RCR did not provide signed  
21 copies of the NOI, the SWPPP, or the SWPPP Administrator Delegation Form to the Inspectors for  
22 review upon request as required by the General Permit.

23 90. RCR violated Section 75-5-605(1)(b), MCA, and Section 2.5 of the General Permit  
24 by failing to maintain the required documents onsite.

1 91. Section 2.3.5 of the General Permit states all BMPs identified in the SWPPP must  
2 be maintained in effective operating condition. Proper selection and installation of BMPs, and  
3 implementation of comprehensive inspection and maintenance procedures, in accordance with the  
4 SWPPP, is important to ensure permit compliance.

5 92. During the October 2014 CEI, the Inspectors documented that BMPs were not  
6 properly installed to minimize the discharge of sediments, specifically Filtrexx sediment control  
7 devices were not staked to manufacturer's specifications, earthen berms were not installed to  
8 standard engineering specifications and concrete waste was observed with no BMPs installed to  
9 control the discharge of concrete waste to storm water.

10 93. RCR violated Section 75-5-605(1)(b), MCA, and Section 2.3.5 of the General  
11 Permit by failing to implement, install and maintain BMPs in an effective operating condition.

## 12 V. ADMINISTRATIVE ORDER

13 This Administrative Compliance and Penalty Order (Order) is issued to RCR pursuant to  
14 the authority vested in the State of Montana, acting by and through the Department under the  
15 WQA and administrative rules adopted thereunder. Based on the foregoing Findings of Fact and  
16 Conclusions of Law and the authority cited above, the Department hereby ORDERS RCR to take  
17 the following actions to comply with the WQA within the timeframes specified in this Order:

### 18 A. *Corrective Actions*

19 94. At least one executive-level manager from RCR will attend each of the following  
20 classes offered by the Department, or acceptable equivalents, no later than December 1, 2015:  
21 BMP 101,102, 201 and 202. Any classes that are not offered by the Department shall be approved  
22 by the Department prior to registration and attendance.

23 95. No later than December 31, 2015, a certificate of completion for each class listed in  
24 Paragraph 94 shall be submitted to the Department at the address listed in Paragraph 98.

1 96. Within 60 days of receipt of this Order, RCR shall install, replace and/or repair all  
2 BMPs necessary at Reflections in accordance with its current SWPPP.

3 97. Within 90 days of receipt of this Order, RCR shall submit an updated SWPPP and  
4 a report describing the actions taken to install, replace and/or repair BMPs at Reflections, and  
5 describe daily housekeeping procedures that will be used to prevent pollutants from entering  
6 storm water and the Billings MS4 from Reflections. The report shall include photographic  
7 documentation of the BMPs and clean up and be sent to the address in Paragraph 98.

8 98. RCR shall submit a summary report of activities conducted at Reflections under its  
9 current SWPPP; a SWPPP revision/update log; a revised site map; a BMP maintenance log; and  
10 inspection reports for Reflections to the Department on a quarterly basis for two years or until final  
11 stabilization has been achieved and a Notice of Termination has been submitted and accepted by  
12 the Department. The aforementioned documents shall be due: July 10, 2015; October 10, 2015;  
13 January 10, 2016; April 10, 2016; July 10, 2016; October 10, 2016; January 10, 2017, and April  
14 10, 2017, and sent to:

15 Susan Bawden  
16 Enforcement Division  
17 Department of Environmental Quality  
18 1520 East 6<sup>th</sup> Avenue  
19 P.O. Box 200901  
20 Helena, MT 59620-0901

19 **B. *Administrative Penalty***

20 99. RCR is hereby assessed an administrative penalty in the amount of \$100,000 for the  
21 violations cited herein.

22 100. Within 60 days of receipt of this Order, RCR shall pay to the Department the  
23 \$100,000 administrative penalty. The penalty must be paid by check or money order, made  
24 payable to the "Montana Department of Environmental Quality," and sent to:

1 John L. Arrigo, Administrator  
2 Enforcement Division  
3 Department of Environmental Quality  
4 1520 East Sixth Avenue  
5 P.O. Box 200901  
6 Helena, MT 59620-0901

7 101. Failure to take the required corrective actions and pay the assessed penalty by the  
8 specified deadlines, as ordered herein, constitutes a violation of Title 75, chapter 5, part 6, MCA,  
9 and may result in the Department seeking a court order assessing civil penalties of up to \$25,000  
10 per day of violation pursuant to Section 75-5-631, MCA.

11 102. None of the requirements in this Order are intended to relieve RCR from  
12 complying with all applicable state, federal, and local statutes, rules, ordinances, orders, and  
13 permit conditions.

14 103. The Department may take any additional enforcement action against RCR,  
15 including the right to seek injunctive relief, civil penalties, and other available relief for any  
16 violation of, or failure or refusal to comply with, this Order.

#### 17 VI. NOTICE OF APPEAL RIGHTS

18 104. RCR may appeal this Order under Section 75-5-611(4), MCA, by having your  
19 attorney file a written request for a hearing before the Montana Board of Environmental Review  
20 no later than 30 days after service of this Order. Any request for a hearing must be sent to:

21 Board Secretary  
22 Board of Environmental Review  
23 P.O. Box 200901  
24 Helena, MT 59620-0901

25 105. Hearings are conducted as provided in the Montana Administrative Procedure Act,  
26 Title 2, chapter 4, and part 6, MCA. Hearings are normally conducted in a manner similar to court  
27 proceedings, with witnesses being sworn and subject to cross-examination. Proceedings prior to

1 the hearing may include formal discovery procedures, including interrogatories, requests for  
2 production of documents, and depositions. Because RCR is not an individual, RCR may not  
3 appear on its own behalf through an agent other than an attorney. See ARM 1.3.231(2) and  
4 Section 37-61-201, MCA.

5 106. If a hearing is not requested within 30 days after service of this Order, the  
6 opportunity for a contested case appeal is waived.

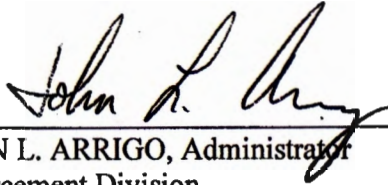
7 107. Service by mail is complete on the date of receipt.

8 108. This Order becomes effective upon signature of the Department.

9 IT IS SO ORDERED:

10 DATED this 27<sup>th</sup> day of March, 2015.

11 STATE OF MONTANA  
12 DEPARTMENT OF ENVIRONMENTAL QUALITY

13   
14 \_\_\_\_\_  
15 JOHN L. ARRIGO, Administrator  
16 Enforcement Division



**Department of Environmental Quality - Enforcement Division  
Penalty Calculation Worksheet**

Responsible Party Name:	Reflections at Copper Ridge LLC (RCR) at Reflections at Copper Ridge Subdivision (Reflections)	
FID:	2288	
Statute:	Water Quality Act	
Maximum Total / Daily Penalty Authority:	\$100,000.00	\$10,000.00
Date:	3/12/2015	
Name of Employee Calculating Penalty:		

Penalty Calculation #1
Description of Violation: RCR violated ARM 17.30.1105(1)(a) by conducting construction activities at Reflections without submittal of an NOI to obtain coverage under the General Permit for storm water discharges associated with construction activities.

**I. BASE PENALTY**

**Nature**

Explanation: Conducting construction activities prior to submitting a NOI poses the potential to harm human health and the environment because there is no assurance the required storm water pollution controls are implemented, therefore creating the potential for an uncontrolled storm water discharge to state waters.	
Potential to Harm Human Health or the Environment	<b>X</b>
Potential to Impact Administration	

**Gravity and Extent**

Gravity Explanation: Conducting construction activity prior to submitting an NOI has major Gravity per ARM 17.4.303(5)(a).	
Extent Explanation: RCR conducted construction activities at Reflections without submitting an NOI from at least 2006 until December 23, 2013. Given the size of Reflections (30 acres), the duration of the violation and the fact that the failure to submit an NOI is a major deviation from the regulatory requirement, the Extent is major per ARM 17.4.303(4)(a).	

**Harm to Human Health or the Environment**

**Gravity**

<b>Extent</b>	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor: <b>0.85</b>

**Impact to Administration**

**Gravity**

Major	Moderate	Minor	
0.50	0.40	0.30	Gravity Factor:

**BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor): \$8,500.00**

**II. ADJUSTED BASE PENALTY**

**A. Circumstances (up to 30% added to Base Penalty)**

Explanation:  
As a large and experienced developer, RCR was aware of the requirement to submit an NOI. The City of Billings sent RCR a notice of violation in August 2012 to notify RCR of observed violations, yet RCR failed take reasonable precautions to prevent the violation. RCR exhibited a major degree of culpability in committing the violation, therefore the Department is adjusting the penalty upward by 30% for Circumstances per ARM 17.4.304(2).

Circumstances Percent:	0.30
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$2,550.00

**B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)**

Explanation:  
The Department is unaware of any Good Faith and Cooperation (GFC) by RCR, therefore the Department is not adjusting the penalty for GFC.

Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$0.00

**C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)**

Explanation:  
The Department is unaware of any AVE by RCR above and beyond what is necessary to come into compliance with the permit, therefore the Department is not adjusting the penalty for AVE.

AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

**ADJUSTED BASE PENALTY SUMMARY**

Base Penalty	\$8,500.00
Circumstances	\$2,550.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
<b>ADJUSTED BASE PENALTY</b>	<b>\$11,050.00</b>
<b>Maximum penalty authority</b>	<b>\$10,000.00</b>

**III. DAYS OF VIOLATION**

Explanation:  
RCR actively conducted construction activities prior to submitting an NOI from 2006 to December 23, 2013. In consideration of the 2-year statute of limitations, the maximum days of violation allowable is 730 which results in a penalty that exceeds the statutory maximum.

Number of Days:	730
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**ADJUSTED BASE PENALTY x NUMBER OF DAYS:**

**IV. OTHER MATTERS AS JUSTICE MAY REQUIRE**

Explanation:  
Not applicable.

<b>OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:</b>	<b>\$0.00</b>
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**V. ECONOMIC BENEFIT**

**Explanation:**

By not submitting an NOI to obtain permit coverage, RCR has realized an economic benefit from delaying payment of application fees and preparing an NOI package including a SWPPP. The new permit application fee for areas between 25 and 100 acres is \$2,000; Total delayed costs are \$2,000 for permit application fees. By industry estimates it costs \$48,826 to initially prepare and comply with the NOI and SWPPP requirements. Total delayed costs for the NOI submittal is \$48,826. The Department used EPA's economic benefit model (BEN) to calculate the economic benefit from delayed costs associated with the permit application fees at \$276 and from costs associated with NOI and SWPPP preparation and compliance at \$3,366. The total economic benefit realized by the RCR is \$3,642.

**ECONOMIC BENEFIT REALIZED: \$3,642.00**

Responsible Party Name:	Reflections at Copper Ridge LLC (RCR) at Reflections at Copper Ridge Subdivision (Reflections)	
FID:	2288	
Statute:	Water Quality Act	
Maximum Total / Daily Penalty Authority:	\$100,000.00	\$10,000.00

Penalty Calculation #2	
Description of Violation:	
RCR violated Section 75-5-605(2)(c), MCA, by discharging storm water into state waters without a permit.	

**I. BASE PENALTY**

**Nature**

Explanation:	
Discharging storm water without a permit has the potential to harm human health or the environment by allowing the uncontrolled discharge of sediments and other pollutants to state waters.	
Potential to Harm Human Health or the Environment	X
Potential to Impact Administration	

**Gravity and Extent**

Gravity Explanation:	
Discharging storm water associated with construction activities may result in the release of regulated substances (sediments, oils, grease, etc.) that have the potential to harm human health or the environment; therefore, Gravity is major per ARM 17.4.303(5)(a).	
Extent Explanation:	
RCR discharged storm water associated with construction activity to state waters from at least 2006 until December 23, 2013, without a permit, therefore Extent is major per ARM 17.4.303(4)(a).	

**Harm to Human Health or the Environment**

**Gravity**

	<b>Gravity</b>			
<b>Extent</b>	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor: 0.85

**Impact to Administration**

**Gravity**

	<b>Gravity</b>			
	Major	Moderate	Minor	
	0.50	0.40	0.30	Gravity Factor:

**BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor): \$8,500.00**

**II. ADJUSTED BASE PENALTY**

**A. Circumstances (up to 30% added to Base Penalty)**

Explanation:	
As a large and experienced developer, RCR was aware that storm water discharges without a permit are prohibited by law. RCR failed take reasonable precautions to prevent the violation. RCR exhibited a major degree of culpability in committing the violation, therefore the Department is adjusting the penalty upward by 30% for Circumstances per ARM 17.4.304(2).	
Circumstances Percent:	0.30
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$2,550.00

**B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)**

Explanation:

The Department is unaware of any Good Faith and Cooperation (GFC) by RCR, therefore the Department is not adjusting the penalty for GFC.

Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$0.00

**C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)**

Explanation:

The Department is unaware of any AVE by RCR above and beyond what is necessary to come into compliance with the permit, therefore the Department is not adjusting the penalty for AVE.

AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

**ADJUSTED BASE PENALTY SUMMARY**

Base Penalty	\$8,500.00
Circumstances	\$2,550.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
<b>ADJUSTED BASE PENALTY</b>	<b>\$11,050.00</b>
<b>Maximum penalty authority</b>	<b>\$10,000.00</b>

**III. DAYS OF VIOLATION**

Explanation:

The Department believes that a rainfall event of 0.25 inches or greater or snowmelt which causes visible surface erosion will cause a discharge to state waters. NOAA weather station Billings 7.1 W, NT US located on East Copper Ridge Loop indicates there have been 21 storm or snowmelt events between March 26, 2013, and December 23, 2013. The calculation for 21 days exceeds the statutory maximum penalty of \$100,000.

Number of Days:	21
<b>ADJUSTED BASE PENALTY x NUMBER OF DAYS:</b>	

**IV. OTHER MATTERS AS JUSTICE MAY REQUIRE**

Explanation:

Not applicable.

<b>OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:</b>	<b>\$0.00</b>
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**V. ECONOMIC BENEFIT**

Explanation:

The Department has determined the economic benefit RCR realized for discharging without a permit is included in the economic benefit calculated in Violation #1.

<b>ECONOMIC BENEFIT REALIZED:</b>	<b>\$0.00</b>
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Responsible Party Name:	Reflections at Copper Ridge LLC (RCR) at Reflections at Copper Ridge Subdivision (Reflections)	
FID:	2288	
Statute:	Water Quality Act	
Maximum Total / Daily Penalty Authority:	\$100,000.00	\$10,000.00

Penalty Calculation #3	
Description of Violation:	RCR violated Section 75-5-605(1)(a), MCA, by placing a waste where it will cause pollution.

**I. BASE PENALTY**

**Nature**

Explanation:	Placing a waste where it will cause pollution has the potential to harm human health or the environment.	
	Potential to Harm Human Health or the Environment	X
	Potential to Impact Administration	

**Gravity and Extent**

Gravity Explanation:	Placing a waste where it will cause pollution of state waters poses a serious threat to water quality, therefore Gravity is major per ARM 17.4.304(5)(a).
Extent Explanation:	RCR has actively placed wastes where they will cause pollution since at least May 2012 to present. Considering the long-term duration of this violation, Extent is major per ARM 17.4.303(4)(a).

**Harm to Human Health or the Environment**

	Gravity			
Extent	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor: 0.85

**Impact to Administration**

	Gravity			
Major	Moderate	Minor		
0.50	0.40	0.30	Gravity Factor:	

**BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor):** **\$8,500.00**

**II. ADJUSTED BASE PENALTY**

**A. Circumstances (up to 30% added to Base Penalty)**

Explanation:	RCR has been developing Reflections since at least 2006, it should have been aware that controls were necessary to prevent waste materials from being introduced to state waters where it will cause pollution. RCR did not take reasonable precautions to prevent the introduction of waste materials into storm water and should have known the impacts associated with waste materials entering storm water. RCR showed a major amount of culpability, therefore the Department is adjusting the base penalty upward by 30% for circumstances per ARM 17.4.304(2).	
	Circumstances Percent:	0.30

Circumstances Adjustment (Base Penalty x Circumstances Percent) \$2,550.00

**B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)**

Explanation:  
The Department is unaware of any Good Faith and Cooperation (GFC) by RCR, therefore the Department is not adjusting the penalty for GFC.

Good Faith & Coop. Percent:	
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$0.00

**C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)**

Explanation:  
The Department is unaware of any AVE by RCR above and beyond what is necessary to come into compliance with the permit, therefore the Department is not adjusting the penalty for AVE.

AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

**ADJUSTED BASE PENALTY SUMMARY**

Base Penalty	\$8,500.00
Circumstances	\$2,550.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
<b>ADJUSTED BASE PENALTY</b>	<b>\$11,050.00</b>
<b>Maximum penalty authority</b>	<b>\$10,000.00</b>

**III. DAYS OF VIOLATION**

Explanation:  
RCR has been documented to be placing a waste where it will cause pollution since at least 2012. The statutory maximum of 730 days results in a calculation that exceeds the maximum allowable penalty of \$100,000.

Number of Days:	730
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**ADJUSTED BASE PENALTY x NUMBER OF DAYS:**

**IV. OTHER MATTERS AS JUSTICE MAY REQUIRE**

Explanation:  
Not applicable.

<b>OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:</b>	<b>\$0.00</b>
--	---------------

**V. ECONOMIC BENEFIT**

Explanation:  
The Department has determined the economic benefit RCR realized for placing a waste where it will cause pollution is included in the economic benefit calculated in Violation #1.

<b>ECONOMIC BENEFIT REALIZED:</b>	<b>\$0.00</b>
-----------------------------------	---------------

Responsible Party Name:	Reflections at Copper Ridge LLC (RCR) at Reflections at Copper Ridge Subdivision (Reflections)	
FID:	2288	
Statute:	Water Quality Act	
Maximum Total / Daily Penalty Authority:	\$100,000.00	\$10,000.00

Penalty Calculation #4	
Description of Violation:	
RCR violated Section 75-5-605(1)(b), MCA, and sections 2.1.1; 2.1.4; 2.3; 2.3.5; 2.5; 3.1.1; 3.1.3 of the general permit by failing to implement the provisions of the General Permit, failing to develop an adequate SWPPP, failing to implement an adequate SWPPP; failing to maintain records, conduct inspections, and install and maintain BMPs in operable conditions.	

**I. BASE PENALTY**

**Nature**

Explanation:	
Failure to implement the provisions of the General Permit poses the potential to harm human health and the environment by allowing uncontrolled pollutants to enter storm water which discharges to state water.	
Potential to Harm Human Health or the Environment	X
Potential to Impact Administration	

**Gravity and Extent**

Gravity Explanation:	
Failure to operate in accordance with the requirements of a permit has is moderate Gravity per ARM 17.4.304(5)(b)(ii).	
Extent Explanation:	
RCR failed to implement provisions of the General Permit and failed to implement their SWPPP for at least 10 months from January to October 2014. In consideration of the number of items that were inadequate and the duration of the violations, the Extent is major per ARM 17.4.303(4)(a).	

**Harm to Human Health or the Environment**

<b>Gravity</b>				
<b>Extent</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor: 0.70

**Impact to Administration**

<b>Gravity</b>			
<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
0.50	0.40	0.30	Gravity Factor:

**BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor): \$7,000.00**

**II. ADJUSTED BASE PENALTY**

**A. Circumstances (up to 30% added to Base Penalty)**

Explanation:	
RCR was aware of the requirement to properly implement the provisions of the General Permit and the SWPPP, had complete control of over the violation and did not take reasonable precautions to prevent the violation. Therefore RCR exhibited a high degree of culpability and the base penalty is adjusted upward by 30% for Circumstances per ARM 17.4.305(2).	
Circumstances Percent:	0.30

Circumstances Adjustment (Base Penalty x Circumstances Percent) \$2,100.00



**B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)**

Explanation:	
The Department is unaware of any Good Faith and Cooperation (GFC) by RCR, therefore the Department is not adjusting the penalty for GFC.	
Good Faith & Coop. Percent:	
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$0.00

**C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)**

Explanation:	
The Department is unaware of any AVE by RCR above and beyond what is necessary to come into compliance with the permit, therefore the Department is not adjusting the penalty for AVE.	
AVE Percent:	
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

**ADJUSTED BASE PENALTY SUMMARY**

Base Penalty	\$7,000.00
Circumstances	\$2,100.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
<b>ADJUSTED BASE PENALTY</b>	<b>\$9,100.00</b>

**III. DAYS OF VIOLATION**

Explanation:	
RCR failed to implement the provisions of the General Permit and failed to implement their SWPPP from December 23, 2014, to at least October 21, 2014, for 303 days. The calculation for 303 days exceeds the maximum allowable penalty of \$100,000.	
Number of Days:	303

**ADJUSTED BASE PENALTY x NUMBER OF DAYS:**

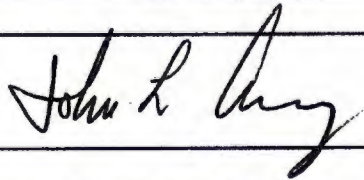
**IV. OTHER MATTERS AS JUSTICE MAY REQUIRE**

Explanation:	
Not applicable.	
<b>OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:</b>	<b>\$0.00</b>

**V. ECONOMIC BENEFIT**

Explanation:	
The Department believes the economic benefit for this violation has been captured in the economic benefit calculation for Violation #1.	
<b>ECONOMIC BENEFIT REALIZED:</b>	<b>\$0.00</b>

**Department of Environmental Quality - Enforcement Division  
Penalty Calculation Summary**

Responsible Party Name:	Reflections at Copper Ridge LLC (RCR) at Reflections at Copper Ridge Subdivision (Reflections)		
FID:	2288		
Statute:	Water Quality Act		
Maximum Total / Daily Penalty Authority:	\$100,000.00	\$10,000.00	
Date:	3/27/2015		
Signature of Employee Calculating Penalty:	John L. Arrigo		

**Penalty #1    Penalty #2    Penalty #3    Penalty #4**

<b>I. Base Penalty (Maximum Penalty Authority x Matrix Factor)</b>				
Maximum Penalty Authority:	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
Percent Harm - Gravity and Extent:	0.85	0.85	0.85	0.70
Percent Impact - Gravity:	0.00	0.00	0.00	0.00
<b>Base Penalty:</b>	<b>\$8,500.00</b>	<b>\$8,500.00</b>	<b>\$8,500.00</b>	<b>\$7,000.00</b>
<b>II. Adjusted Base Penalty</b>				
Base Penalty:	\$8,500.00	\$8,500.00	\$8,500.00	\$7,000.00
Circumstances:	\$2,550.00	\$2,550.00	\$2,550.00	\$2,100.00
Good Faith and Cooperation:	\$0.00	\$0.00	\$0.00	\$0.00
Amount Voluntarily Expended:	\$0.00	\$0.00	\$0.00	\$0.00
<b>Adjusted Base Penalty:</b>	<b>\$11,050.00</b>	<b>\$11,050.00</b>	<b>\$11,050.00</b>	<b>\$9,100.00</b>
<b>Maximum Per Violation:</b>	<b>\$10,000.00</b>	<b>\$10,000.00</b>	<b>\$10,000.00</b>	
<b>III. Days of Violation or Number of Occurrences</b>				
	730	21	730	303
<b>Total Adjusted Penalty:</b>				
<b>Statutory maximum penalty:</b>	<b>\$100,000.00</b>	<b>\$100,000.00</b>	<b>\$100,000.00</b>	<b>\$100,000.00</b>
<b>IV. Other Matters as Justice May Require</b>				
	\$0.00	\$0.00	\$0.00	\$0.00
<b>V. Economic Benefit</b>				
	\$3,642.00	\$0.00	\$0.00	\$0.00
<b>VI. History*</b>				
Subtotal(s)				\$0.00

**Total penalty: \$100,000.00**

\*RCR does not have a prior history of violations of the Water Quality Act documented in either an administrative order, judicial order, or judgment within the last three years.

1                   **BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**  
2                   **OF THE STATE OF MONTANA**

3 **IN THE MATTER OF:**  
4 **VIOLATIONS OF THE WATER**  
5 **QUALITY ACT BY REFLECTIONS AT**  
6 **COPPER RIDGE, LLC AT**  
7 **REFLECTIONS AT COPPER RIDGE**  
8 **SUBDIVISION, BILLINGS,**  
9 **YELLOWSTONE COUNTY, MONTANA.**  
10 **(MTR105377) [FID 2289, DOCKET NO.**  
11 **WQ-15-08]**

**CASE NO. BER 2015-02 WQ**

12                   **FIRST PREHEARING ORDER**

13 Reflections At Copper Ridge, LLC (Appellant), has filed a "Notice of Appeal and  
14 Request for Hearing" regarding the Department of Environmental Quality's  
15 (Department) notice of violation, dated March 27, 2015, issued for Appellant's  
16 development in Billings, Montana. The following guidelines and rules are provided  
17 to assist the parties in an orderly resolution of this contested case.

18           1.     REFERENCES: This matter is governed by the Montana  
19 Administrative Procedure Act, Contested Cases, Mont. Code Ann. Tit. 2, ch. 4,  
20 pt. 6, and Mont. Admin. R. 17.4.101, by which the Board of Environmental Review  
21 (Board) has adopted the Attorney General's Model Rules for contested cases, Mont.  
22 Admin. R. 1.3.211 through 1.3.225, and by Mont. Code Ann. Tit. 75, Ch. 5, pts. 6.

23           2.     FILING: Except for discovery requests and responses (which are not  
24 routinely filed), **original** documents shall be sent for filing with the Board,  
25 addressed as follows:

26                   MS. JOYCE WITTENBERG  
27                   Secretary, Board of Environmental Review  
                      Department of Environmental Quality  
                      1520 East Sixth Avenue  
                      P.O. Box 200901  
                      Helena, MT 59620-0901

1 One copy of each document that is filed should be sent to the Hearing  
2 Examiner addressed as follows:

3 BENJAMIN REED  
4 Hearing Examiner  
5 Agency Legal Services Bureau  
6 1712 Ninth Avenue  
7 P.O. Box 201440  
8 Helena, MT 59620-1440

9 Although discovery documents are not normally filed, when a motion or brief  
10 is filed making reference to discovery documents, the party filing the motion or  
11 brief should also attach the relevant discovery documents.

12 3. SERVICE Copies of all documents filed with the Board and  
13 provided to the Hearing Examiner, including correspondence, must be served upon  
14 the opposing party. A certificate of service should be provided.

15 4. EX PARTE COMMUNICATIONS: The Montana Administrative  
16 Procedure Act in Mont. Code Ann. § 2-4-613, and the Attorney General's Model  
17 Rule 18 in Mont. Admin. R. 1.3.222, prohibit *ex parte* communications with a  
18 hearing examiner concerning any issue of fact or law in a contested case. In  
19 addition to observing this rule, please contact the opposing party before you  
20 communicate with the undersigned Interim Hearing Examiner, even on purely  
21 procedural matters such as the need for a continuance.

22 5. SCHEDULING: The parties are requested to consult with each  
23 other and propose to the undersigned a schedule upon which they agree by  
24 May 22, 2015. The schedule should include the following dates:

- 25 (a) for joinder/intervention of additional parties;  
26 (b) for disclosure by each party to the other parties of: (1) the  
27 name and address of each individual likely to have discoverable information that the  
disclosing party may use to support its claims or defenses; and, (2) a copy of, or a  
description by category and location of, all documents and tangible things that are in

1 the possession, custody, or control of the disclosing party and that the disclosing  
2 party may use to support its claims or defenses;

3 (c) for completion of discovery (if any party wishes to conduct  
4 discovery);

5 (d) for exchange of lists of witnesses and copies of documents that  
6 each party intends to offer at the hearing;

7 (e) for submitting any motions and briefs in support;

8 (f) for a prehearing conference to hear argument on any motions  
9 and resolve other prehearing matters; and,

10 (g) for the contested case hearing, as well as the place of hearing.

11 DATED this 1<sup>st</sup> day of May, 2015.



13 BENJAMIN REED  
14 Hearing Examiner  
15 Agency Legal Services Bureau  
16 1712 Ninth Avenue  
17 P.O. Box 201440  
18 Helena, MT 59620-1440

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing

Caption to be mailed to:

Ms. Joyce Wittenberg  
Secretary, Board of Environmental Review  
Department of Environmental Quality  
1520 East Sixth Avenue  
P.O. Box 200901  
Helena, MT 59620-0901  
**(original)**

Ms. Kirsten Bowers  
Legal Counsel  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Mr. John Arrigo, Administrator  
Enforcement Division  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Mr. William W. Mercer  
Holland & Hart LLP  
401 N. 31st Street, Suite 1500  
P.O. Box 639  
Billings, MT 59103-0639

DATED: May 5, 2015 Denise M. Hagen



Montana Department of  
**ENVIRONMENTAL QUALITY**

**MEMO**

TO: Benjamin Reed, Hearing Examiner  
Board of Environmental Review

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

*Joyce Wittenberg*  
for Joyce Wittenberg

DATE: April 20, 2015

SUBJECT: Board of Environmental Review case, Case No. BER 2015-02 WQ

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF:  
VIOLATIONS OF THE WATER QUALITY  
ACT BY COPPER RIDGE DEVELOPMENT  
CORPORATION AT COPPER RIDGE  
SUBDIVISION, BILLINGS, YELLOWSTONE  
COUNTY, MONTANA. (MTR105377) [FID  
2289, DOCKET NO. WQ-15-08]

Case No. BER 2015-02 WQ

TITLE

BER has received the attached request for hearing. Also attached is DEQ's administrative document relating to this request (Enforcement Case FID 2289, Docket No. WQ-15-08).

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

Kirsten Bowers  
Legal Counsel  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

John Arrigo, Administrator  
Enforcement Division  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Attachments



**William W. Mercer**  
Phone (406) 896-4607  
Fax (406) 252-1669  
WWMercer@hollandhart.com

April 17, 2015

**RECEIVED**

APR 20 2015

DEQ DIRECTORS  
OFFICE

*SENT VIA U.S. MAIL AND ELECTRONIC MAIL*

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

Re: Administrative Compliance and Penalty Order Docket No. WQ-15-08

Dear Board Secretary:

Pursuant to Mont. Code Ann. § 75-5-611(4), Copper Ridge Development Corporation appeals the March 27, 2015, Administrative Order issued by the Department of Environmental Quality regarding alleged violations of the Water Quality Act. Copper Ridge Development Corporation requests a hearing be set on the matter within a reasonable time after completion of discovery and resolution of any pre-hearing motion.

Sincerely,

William W. Mercer  
of Holland & Hart LLP

WWM/asf

cc: Kirsten Bowers, DEQ Legal Unit (kbowers@mt.gov)

7695223\_1

Filed with the  
MONTANA BOARD OF  
ENVIRONMENTAL REVIEW  
This 17 day of April, 2015  
at 2 o'clock 55 m.  
By: Hillary Howe

Holland & Hart LLP

Phone [406] 252-2166 Fax [406] 252-1669 [www.hollandhart.com](http://www.hollandhart.com)

401 North 31st Street Suite 1500 Billings, MT 59101 Mailing Address P.O. Box 639 Billings, MT 59103-0639

Aspen Boulder Carson City Colorado Springs Denver Denver Tech Center Billings Boise Cheyenne Jackson Hole Las Vegas Reno Salt Lake City Santa Fe Washington, D.C.



BER 2015-02 WQ

**Wittenberg, Joyce**

---

**From:** Bill Mercer <WWMercer@hollandhart.com>  
**Sent:** Friday, April 17, 2015 2:55 PM  
**To:** Wittenberg, Joyce  
**Cc:** Bowers, Kirsten  
**Subject:** FW: Administrative Compliance and Penalty Order Docket No. WQ-15-08  
**Attachments:** Letter to the Board Secretary, Board of Environmental Review (Docket No. WQ-15-08).pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** BER

Ms. Wittenberg:

Attached is correspondence seeking an appeal in WQ-15-08.

If you have questions or concerns regarding this appeal, please contact me.

Thank you,

William W. Mercer  
Holland & Hart LLP  
401 N. 31st Street, Suite 1500  
P.O. Box 639  
Billings, MT 59103-0639  
(406) 896-4607 Office  
(406) 647-3223 Mobile  
[wwmerc@hollandhart.com](mailto:wwmerc@hollandhart.com)

Billings, MT	Boulder, CO	Las Vegas, NV	Cheyenne, WY	Santa Fe, NM
Salt Lake City, UT	Colorado Springs, CO	Reno, NV	Boise, ID	Washington D.C.
Denver, CO	Carson City, NV	Jackson Hole, WY	Aspen, CO	

PRIVILEGED AND CONFIDENTIAL  
ATTORNEY-CLIENT COMMUNICATION  
ATTORNEY WORK-PRODUCT

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**From:** Arlene Forney  
**Sent:** Friday, April 17, 2015 2:43 PM  
**To:** Bill Mercer  
**Subject:** Administrative Compliance and Penalty Order

Docket No. WQ-15-08

HOLLAND & HART <sup>LLP</sup>



**William W. Mercer**  
Phone (406) 896-4607  
Fax (406) 252-1669  
WWMercer@hollandhart.com

April 17, 2015

***SENT VIA U.S. MAIL AND ELECTRONIC MAIL***

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

Re: Administrative Compliance and Penalty Order Docket No. WQ-15-08

Dear Board Secretary:

Pursuant to Mont. Code Ann. § 75-5-611(4), Copper Ridge Development Corporation appeals the March 27, 2015, Administrative Order issued by the Department of Environmental Quality regarding alleged violations of the Water Quality Act. Copper Ridge Development Corporation requests a hearing be set on the matter within a reasonable time after completion of discovery and resolution of any pre-hearing motion.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. Mercer".

William W. Mercer  
of Holland & Hart <sup>LLP</sup>

WWM/asf

cc: Kirsten Bowers, DEQ Legal Unit (kbowers@mt.gov)

7695223\_1

**Holland & Hart <sup>LLP</sup>**

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Filed with the  
MONTANA BOARD OF  
ENVIRONMENTAL REVIEW  
of April 2015  
at 2 o'clock 55 m.  
By Hillary Hoyle

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

IN THE MATTER OF:  
VIOLATIONS OF THE WATER QUALITY ACT  
BY COPPER RIDGE DEVELOPMENT  
CORPORATION AT COPPER RIDGE  
SUBDIVISION, BILLINGS, YELLOWSTONE  
COUNTY, MONTANA. (MTR105377; FID 2289)

ADMINISTRATIVE COMPLIANCE AND  
PENALTY ORDER

Docket No. WQ-15-08

**I. NOTICE OF VIOLATION**

Pursuant to the authority of Sections 75-5-611 and 75-5-617, Montana Code Annotated (MCA), the Department of Environmental Quality (Department) hereby issues this administrative order to Copper Ridge Development Corporation, hereinafter referred to as "CR," based upon the allegations set forth below for violations of the Water Quality Act (WQA) (Title 75, chapter 5, part 6, MCA) and the Administrative Rules of Montana (ARM) (Title 17, chapter 30) adopted thereunder at Copper Ridge Subdivision in Billings, Yellowstone County, Montana (herein "Copper Ridge").

**II. PARTIES**

1. The Department is an agency of the executive branch of government of the State of Montana, created and existing under the authority of Section 2-15-3501, MCA.
2. The Department is charged with the administration and enforcement of the Montana WQA, Title 75, chapter 5, parts 1 through 11, MCA, and the administrative rules adopted under the WQA. The Department's principal office is located in Helena, Montana.
3. CR is an active corporation registered to do business in the State of Montana.
4. CR's principal office is located in Billings, Montana.

**III. GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5. CR is the owner and/or operator of Copper Ridge; and is developing 90 acres of land within that subdivision.

1 6. It is a violation of the Montana WQA, Section 75-5-605(1)(a), MCA, to cause  
2 pollution of state waters or to place or cause to be placed wastes where they will cause pollution of  
3 state waters.

4 7. It is a violation of the Montana WQA, Section 75-5-605(1)(b), MCA, to "violate  
5 any provision set forth in a permit or stipulation, including but not limited to limitations and  
6 conditions contained in the permit."

7 8. It is a violation of the Montana WQA, Section 75-5-605(2), MCA, to construct or  
8 use any outlet for the discharge of wastes to state waters, or to discharge any wastes to state waters  
9 without a current permit.

10 9. Storm water runoff from sites disturbed by construction activity impairs water  
11 quality by contributing sediment and other pollutants, such as concrete, petroleum, pesticides, and  
12 other wastes, to waters of the state.

13 10. Pursuant to Section 75-5-401, MCA, the Board of Environmental Review (BER)  
14 adopted rules at Administrative Rules of Montana (ARM) Title 17, chapter 30, subchapters 11, 12,  
15 and 13 governing application for and issuance of permits to discharge sewage, industrial wastes, or  
16 other wastes to state waters.

17 11. ARM 17.30.1105(1)(a) requires any person who discharges or proposes to  
18 discharge storm water from a point source to obtain coverage under an MPDES general permit or  
19 another MPDES permit for discharges associated with construction activity.

20 12. ARM 17.30.1102(28) defines "storm water discharge associated with construction  
21 activity" as "a discharge of storm water from construction activities including clearing, grading,  
22 and excavation that result in the disturbance of equal to or greater than one acre of total land area.  
23 For purposes of these rules, construction activities include clearing, grading, excavation,  
24 stockpiling earth materials, and other placement or removal of earth material performed during

1 construction projects. Construction activity includes the disturbance of less than one acre of total  
2 land area that is a part of a larger common plan of development or sale if the larger common plan  
3 will ultimately disturb one acre or more.”

4 13. ARM 17.30.1102(13) defines “municipal separate storm sewer” system”, as “a  
5 conveyance or system of conveyances (including roads with drainage systems, municipal streets,  
6 catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that discharges to  
7 surface waters...”

8 14. The City of Billings municipal separate storm sewer system (MS4) (herein  
9 “Billings MS4”) is authorized by the Department to discharge storm water to state waters under  
10 the MPDES General Permit for Storm Water Discharge Associated with Small Municipal  
11 Separate Storm Sewer Systems. The Billings MS4 ultimately discharges to the Yellowstone  
12 River, a state surface water.

13 15. A person who discharges or proposes to discharge storm water associated with  
14 construction activity shall submit a notice of intent (NOI) to the Department that meets the  
15 requirements set forth under ARM 17.30.1115(1). Authorization to discharge under the General  
16 Permit for Storm Water Discharges Associated with Construction Activity Permit No. MTR100000  
17 (herein “the General Permit”) is effective upon receipt by the Department of a complete NOI package,  
18 which includes the NOI, Storm Water Pollution Prevention Plan (SWPPP), and the permit fee.

19 16. The General Permit defines "disturbance" related to construction activity to mean:  
20 “areas that are subject to clearing, excavating, grading, stockpiling earth materials, and  
21 placement/removal of earth material performed during construction projects.”

22 17. Section 1.1.1 of the General Permit states that “storm water which discharges into a  
23 drain inlet and/or storm sewer system from the site is regulated as a discharge to state surface  
24 waters if the inlet or system itself ultimately discharges into state surface water.”

1 18. ARM 17.30.1102(7) defines "illicit discharge" as "any discharge to a municipal  
2 separate storm sewer that is not composed entirely of storm water except discharges pursuant to an  
3 MPDES permit (other than the MPDES permit for discharges from the municipal separate storm  
4 sewer) and discharges resulting from firefighting activities."

5 19. Section 75-5-103(4), MCA, defines "contamination" as "impairment of the quality  
6 of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health."

7 20. Section 75-5-103(24), MCA, defines "other wastes" as "garbage, municipal refuse,  
8 decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat,  
9 chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid  
10 waste, and all other substances that may pollute state waters."

11 21. Section 75-5-103(30)(a), MCA, defines "pollution" as "(i) contamination or other  
12 alteration of the physical, chemical, or biological properties of state waters that exceeds that  
13 permitted by Montana water quality standards, including but not limited to standards relating to  
14 change in temperature, taste, color, turbidity or odor; or (ii) the discharge, seepage, drainage,  
15 infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will  
16 or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public  
17 health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife."

18 22. CR, as the "owner or operator," pursuant to Section 75-5-103(25), MCA, of a storm  
19 water discharge associated with construction activity, is required to obtain and maintain  
20 authorization to discharge storm water under the General Permit. The General Permit also refers  
21 to the owner or operator as the "permittee."

22 23. The permittee is required to install, and maintain effective erosion and sediment  
23 control, including best management practices (BMPs) identified in the SWPPP, designed to  
24 minimize discharge of pollutants from the construction site. See Part 2 of the General Permit.

1 24. The permittee must specify a Primary SWPPP Administrator, a Secondary  
2 SWPPP Administrator (as applicable), and any other designated SWPPP Administrator(s) in the  
3 SWPPP. A SWPPP Administrator is responsible for developing, implementing, maintaining,  
4 revising, and updating the SWPPP. The SWPPP Administrator must have knowledge of the  
5 principles and practices of erosion, sediment control, and pollution prevention. The SWPPP  
6 Administrator must address all aspects of the SWPPP from initiation of construction activities  
7 until final site stabilization is achieved and the permit authorization is terminated. *See* Part 3.2 of  
8 the General Permit.

9 25. The General Permit requires control of storm water discharges from the  
10 construction site to meet applicable water quality standards. *See* Part 2.2 of the General Permit.

11 26. The General Permit requires regular site inspections in accordance with a schedule  
12 that is documented in the SWPPP until final stabilization of the construction site is achieved. *See*  
13 Part 2.3 of the General Permit.

14 27. The General Permit requires that all BMPs identified in the SWPPP be maintained  
15 in effective operating condition. *See* Part 2.3.5 of the General Permit.

16 28. The General Permit requires that if BMPs identified in the SWPPP must be  
17 modified, if additional BMPs are necessary, if additional or corrective measures must be  
18 completed before the next storm event, all changes must be documented in the SWPPP and  
19 summarized in a SWPPP Revision/Update Log. *See* Part 2.4 and Part 3.12.2. of the General  
20 Permit.

21 29. The General Permit requires that certain records be retained and made available at  
22 the construction site immediately upon request by the Department, EPA, or local officials, or their  
23 representatives. *See* Part 2.5 of the General Permit.

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1 30. The General Permit requires that the owner/operator or permittee notify the  
2 Department in writing of any changes in the SWPPP Administrator. *See* Part 3.2.1 of the General  
3 Permit.

4 31. The SWPPP must include a description of the intended sequence of construction  
5 activity, and clearly describe the relationship between phases of construction activity and the  
6 implementation and maintenance of BMPs. *See* Part 3.3 of the General Permit.

7 32. The SWPPP must contain a narrative description of the construction activity,  
8 including, but not limited to: construction-related storm water discharges; total site area; area of  
9 the site expected to undergo construction-related disturbance; site soil characteristics; nearby state  
10 surface waters; outfall locations; and expected storm water flow. *See* Part 3.4 of the General  
11 Permit.

12 33. The SWPPP must identify potential sources of pollution. *See* Part 3.6 of the General  
13 Permit.

14 34. Section 3.1.1 of the General Permit states the SWPPP must be developed and  
15 implemented in accordance with good engineering, hydrologic, and pollution control practices, and  
16 pursuant to Section 3.1.3 of the General Permit, the SWPPP must be implemented as stated in the  
17 Primary SWPPP Administrator's up-to-date field copy.

18 35. Storm water from Copper Ridge ultimately discharges to state waters through catch  
19 basin inlets, swales, pipes, detention ponds, and overland flow to Cove Ditch, its tributary  
20 drainages, and to the Billings MS4.

21 36. Beginning in 1992, the Department has issued the General Permit, which is  
22 effective for five-year periods, or longer if administratively extended. The current General Permit,  
23 MTR100000, is effective January 1, 2013, through December 31, 2017.

24 37. Land disturbing activities began at Copper Ridge in 2005.



1 38. In response to a citizen complaint, representatives of the City of Billings (City)  
2 conducted site inspections at Copper Ridge Subdivision in May and again in August of 2012.  
3 During its inspections, the City observed soil stockpiles near storm drain inlets, sediment  
4 tracking, sediment build-up in the curb line, erosion, and a lack of BMPs installed to control the  
5 discharge of pollutants.

6 39. After the August 2012 inspection, the City sent a Notice of Violation (NOV) to  
7 Gary Oakland of Oakland Companies advising Mr. Oakland of the observed violations at Copper  
8 Ridge and indicating that if compliance was not achieved, the City may refer the matter to the  
9 Montana Department of Environmental Quality for further enforcement action.

10 40. Between August 9, 2012, and July 9, 2013, the City conducted six site inspections  
11 at Copper Ridge. During this period, the City observed and photographed continued sediment  
12 tracking in the streets, sediment build-up in curbs and streets, discharges of sediment and debris  
13 into storm drains, soil stockpiling, and no BMP installation to control pollutant discharges.

14 41. On March 26, 2013, the City contacted the Department for guidance and  
15 assistance in dealing with the lack of compliance and non-responsiveness of CR at Copper  
16 Ridge. The Department informed the City that CR did not have an active permit authorizing  
17 discharges from Copper Ridge.

18 42. On September 9, 2013, a Department inspector (Inspector) conducted a compliance  
19 evaluation inspection at Copper Ridge (September 2013 CEI). At the time of the September 2013  
20 CEI, CR had not submitted an NOI to obtain coverage under the General Permit for the discharge  
21 of storm water associated with construction activities, and CR was not authorized to discharge  
22 storm water associated with construction activity under any other MPDES permit.

23 43. During the September 2013 CEI, the Inspector documented homes under  
24 construction and areas disturbed by associated construction activity such as cleared and graded

1 areas, excavations, soil stockpiles, concrete washout areas, and sediment tracking in the streets.  
2 The Inspector also noted that there were no BMPs installed at Copper Ridge to control and  
3 mitigate the introduction of pollutants associated with storm water runoff from these construction  
4 activities. The Inspector also observed that storm water had discharged from Copper Ridge into  
5 Cove Ditch through storm water ponds, storm drains, swales and drainage ditches.

6 44. On September 23, 2013, the Department sent a violation letter to notify CR and  
7 Reflections at Copper Ridge, LLC (RCR) that they were in violation of the WQA for conducting  
8 construction activities prior to submitting an NOI, discharging storm water into state waters  
9 without a permit, and placing a waste where it will cause pollution of state waters. This violation  
10 letter notified CR and RCR that each of these separate subdivisions are part of a "larger common  
11 plan of development or sale" as defined in ARM 17.30.1102(28); and that CR and RCR were  
12 being recommended for a formal enforcement action.

13 45. On September 27, 2013, a representative of CR and RCR responded to the  
14 Department's September 23, 2013 violation letter. In its response, CR stated that "Copper Ridge  
15 Development Corporation and Reflections at Copper Ridge, LLC are separate entities, owning  
16 and developing separate parcels of real estate. Development plans, permits, and daily operations  
17 are kept separate and distinct." The response also included a request for two separate violation  
18 letters, one for each subdivision.

19 46. In a letter dated October 8, 2013, the Department responded to CR and RCR that  
20 it had determined that both subdivisions are part of a larger common plan of development that  
21 was operated by a common registered agent.

22 47. On October 29, 2013, CR responded to the Department's October 8, 2013 letter and  
23 reiterated that the two subdivisions are separate and distinct legal entities with separate and unique  
24 land developments and are not part of a larger common plan of development.

1 48. In response to CR's October 29, 2013 letter, the Department issued a violation letter  
2 on November 8, 2013, separating and distinguishing the violations that occurred at Copper Ridge  
3 from those that occurred at Reflections at Copper Ridge Subdivision.

4 49. The Department received a Notice of Intent (NOI) and associated SWPPP from  
5 CR on December 23, 2013. On January 8, 2014, the Department sent a confirmation letter to CR  
6 issuing permit number MTR105377 authorizing coverage under the General Permit for  
7 construction-related storm water discharges from Copper Ridge.

8 50. On October 17, 2014, the Department contacted CR via phone to schedule an  
9 appointment for a CEI for MTR105377. At that time, the areas under permit coverage included  
10 what are known as the 3<sup>rd</sup> and 4<sup>th</sup> filings of Copper Ridge Subdivision. The October 17, 2014  
11 telephone conversation was followed by an email in which the Department described the  
12 inspection procedure and listed the records that would need to be provided for review at the time  
13 of the inspection.

14 51. On October 20, 2014, CR contacted the Department via email stating that the  
15 inspection was scheduled on the same day as a storm water training class in Billings. The  
16 Department confirmed there were CR staff registered to attend the October 21, 2014 training  
17 course.

18 52. On October 20, 2014, the Department contacted CR via telephone and offered to  
19 reschedule the October 2014 CEI so as not to disrupt attendance at the training. CR declined to  
20 reschedule. The Department followed up with CR via email, again offering to reschedule the  
21 October 2014 CEI. CR again declined and stated they would proceed with the October 2014 CEI.

22 53. Two Department Inspectors (Inspectors) arrived at Copper Ridge at 1:00 P.M. on  
23 October 21, 2014, to conduct the October 2014 CEI. CR had 3 representatives in attendance  
24 during the October 2014 CEI. The Inspectors requested CR to provide the records previously

1 identified in the October 17, 2014 email. Signed copies of the NOI, SWPPP, and the Delegation of  
2 Authority Form were not made available for review during the October 2014 CEI as requested.

3 54. During the October 2014 CEI, the Inspectors found that the SWPPP had not been  
4 adequately developed to the standards listed in the Permit.

5 55. During the October 2014 CEI, the Inspectors found that CR was not conducting  
6 inspections at a minimum once every 7 days as indicated in their SWPPP.

7 56. During the October 2014 CEI, the Inspectors found that BMPs were not installed  
8 according to manufacturer's specifications; BMPs were not installed to standard engineering  
9 specifications, and BMPs were not implemented to minimize the discharge of sediment and non-  
10 sediment pollutant sources.

11 57. On December 9, 2014, the Department sent CR a violation letter outlining the  
12 violations observed during the October 2014 CEI, and requesting corrective actions be completed  
13 to address the violations by December 31, 2014.

14 58. On December 17, 2014, CR requested an extension to mid-January for their  
15 response to the December 9, 2014 violation letter. On December 23, 2014, the Department  
16 agreed to extend the deadline for response to January 9, 2015.

17 59. On January 12, 2015, the Department received a letter from CR describing the  
18 corrective actions taken, which included a copy of their updated SWPPP.

#### 19 IV. VIOLATIONS

##### 20 A. *Conducting construction activity without submittal of an NOI*

21 60. The Department incorporates and restates Paragraphs 1 through 59.

22 61. Construction activities, including clearing, grubbing, grading and excavating  
23 began at Copper Ridge Subdivision in 2005.

24 //

1 62. CR submitted an NOI for the 3<sup>rd</sup> and 4<sup>th</sup> filings to the Department on December 23,  
2 2013.

3 63. On January 8, 2014, the Department sent a confirmation letter to CR authorizing  
4 storm water discharges associated with construction activities under the General Permit, and  
5 issued CR permit MTR105377.

6 64. CR violated ARM 17.30.1105 from 2005 until December 23, 2013, by conducting  
7 construction activities that discharged storm water to state waters prior to submitting an NOI.

8 **B. *Discharging storm water without a permit***

9 65. The Department incorporates and restates Paragraphs 1 through 64.

10 66. A discharge of storm water associated with construction activity will likely occur  
11 during and after a precipitation event of 0.25 inches or greater.

12 67. During the City's inspections and during the Department's September CEI, the  
13 City and the Department Inspector observed and documented storm water discharges to state  
14 water through catch basin inlets, overland flow, and overflow from on-site retention ponds to  
15 Cove Ditch.

16 68. CR violated Section 75-5-605(2)(c), MCA, from at least 2005 to December 23,  
17 2013 by illicitly discharging storm water associated with construction activities to state water  
18 without a permit.

19 **C. *Placing a waste where it will cause pollution***

20 69. The Department incorporates and restates Paragraphs 1 through 68.

21 70. ARM 17.30.611(1)(b) classifies the Yellowstone River drainage area from the  
22 Laurel water supply intake to the Billings water supply intake as B-2. ARM 17.30.624(2),  
23 standards for B-2 Classified waters, states: No person may violate the following specific water  
24 quality standards for waters classified B-2:...(f) No increases are allowed above naturally

1 occurring concentrations of sediment or suspended sediment (except as permitted in Section 75-5-  
2 318, MCA), settleable solids, oils, or floating solids, which will or are likely to create a nuisance or  
3 render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare,  
4 livestock, wild animals, birds, fish, or other wildlife.

5 71. Section 2.2.1 of the General Permit states that a storm water discharge associated  
6 with construction activity may not cause or contribute to an exceedance of applicable water quality  
7 standards.

8 72. Sediment is considered "other waste" pursuant to Section 75-5-103(24), MCA, and  
9 can be harmful to plants and animals living in aquatic environments by decreasing oxygen,  
10 decreasing food availability and visibility, clogging gills of fish, harming aquatic insects, and  
11 increasing water temperature. Other pollutants such as oil, grease, and nutrients can be transported  
12 by storm water runoff from construction sites causing pollution of state waters.

13 73. During the May 2012 inspection, the City documented soil stockpiles placed near  
14 a storm drain inlet, sediment tracking in the streets, concrete washout areas without BMPs, and a  
15 general lack of BMPs installed to prevent the introduction of sediment and other pollutants into  
16 storm water that discharges to state waters.

17 74. During the August 2012 inspection, the City documented excessive sediment tracking  
18 in the streets, soil stockpiles, sediment build-up in the curb line, erosion, and a lack of BMPs installed  
19 to prevent the introduction of sediments and other pollutants into storm water discharges.

20 75. The City conducted six inspections between August 2012 and July 2013, and  
21 documented continued sediment tracking in the streets, sediment build-up in curbs and streets,  
22 discharges of sediment and debris into storm drains, soil stockpiling, and no BMP installation to  
23 prevent the introduction of sediment and other pollutants into storm water discharges from  
24 Copper Ridge.

1 76. Between July and October 2013, the City documented continued sediment  
2 tracking in the streets, sediment build-up in curbs and streets, discharges of sediment and debris  
3 into storm drains, soil stockpiling, sediment build-up in curb line, erosion, and a lack of BMPs  
4 installed to prevent the introduction of sediments and other pollutants into storm water  
5 discharges from Copper Ridge.

6 77. During the September 2013 CEI, the Inspector documented homes under construction,  
7 areas disturbed by associated construction activity, such as graded areas, soil stockpiles and concrete  
8 washout areas. There were no BMPs installed at Copper Ridge to prevent the introduction of  
9 sediments and other pollutants into storm water discharges from these construction activities. The  
10 Inspector also observed that storm water had discharged from Copper Ridge into Cove Ditch through  
11 catch basin inlets, storm water ponds, storm drains, swales and drainage ditches.

12 78. CR violated Section 75-5-605(1)(a), MCA, ARM 17.30.624(2)(f) and ARM  
13 17.30.629(2)(f) from at least May 2012 to at least October 21, 2014, by placing waste where it  
14 will cause pollution and by contributing sediments and other pollutants that will increase the  
15 concentration of sediment, oils, settleable solids, and other debris above levels that are naturally  
16 occurring in state surface waters.

17 ***D. Violating provisions of the General Permit***

18 79. The Department incorporates and restates Paragraphs 1 through 78.

19 80. During the October 2014 CEI, the Inspectors documented that the SWPPP had not  
20 been developed in accordance with good engineering, hydrologic, and pollution control practices;  
21 the SWPPP had not been implemented as stated in the Primary SWPPP Administrator's up- to-date  
22 field copy; the SWPPP had not been updated to reflect current on-site conditions; and the SWPPP  
23 was not signed.

24 //

1 81. CR violated Section 75-5-605(1)(b), MCA, and Sections 3.1.1 and 3.1.3 of the  
2 Permit by failing to develop an adequate SWPPP and failing to implement the SWPPP as written.

3 82. Section 2.1.1 of the General Permit states permittees must design, install, and  
4 maintain effective erosion and sediment controls to minimize the discharge of potential pollutants.  
5 Section 2.1.4 of the General Permit states that permittees must design, install, implement, and  
6 maintain effective pollution prevention measures to minimize the discharge of pollutants.

7 83. During the October 2014 CEI, the Inspectors documented the improper installation  
8 of BMPs, improper maintenance of BMPs, and absence of BMPs at Copper Ridge that would result  
9 in the discharge of sediments and other pollutants to storm water that discharges to state water.

10 84. CR violated Sections 2.1.1 and 2.1.4 of the General Permit by failing to install,  
11 implement, and maintain BMPs at Copper Ridge.

12 85. Section 2.3 of the General Permit states that regular inspections must be  
13 performed by a SWPPP Administrator. The initial SWPPP submitted with the NOI Package  
14 must specify which inspection schedule will be utilized and this inspection schedule must be  
15 used until final stabilization is achieved for all areas of the construction activity. The permittee  
16 cannot switch between the inspection schedule options ... during the life of the permit  
17 authorization. The General Permit provides the following two inspection schedules options: (1)  
18 Section 2.3.1 states that a SWPPP Administrator must, at a minimum, conduct a routine  
19 inspection at least once every 7 calendar days; or (2) Section 2.3.2 states that a SWPPP  
20 Administrator must, at a minimum, conduct a routine inspection at least once every 14 calendar  
21 days, and a post-storm event inspection must be conducted by a SWPPP Administrator within 24  
22 hours of the end of a rainfall event of 0.25 inches or greater, and within 24 hours of snowmelt  
23 due to thawing conditions which cause visible surface erosion at the site.

24 //



1 86. During the October 2014 CEI, the Inspectors documented that the SWPPP for  
2 Copper Ridge Subdivision called for inspections to be conducted once every 7 calendar days.  
3 Inspection records maintained onsite at Copper Ridge Subdivision indicated that 14 inspections  
4 were not conducted in accordance with the schedule indicated in the SWPPP between January 15,  
5 2014, and October 10, 2014.

6 87. CR violated Section 75-5-605(1)(b), MCA, and Section 2.3 of the General Permit  
7 by failing to conduct inspections as scheduled in the SWPPP.

8 88. Section 2.5 of the General Permit states that the primary SWPPP Administrator  
9 must retain certain records at the construction site including: a copy of the General Permit; a  
10 copy of the completed and signed NOI form; a copy of the Department's Confirmation Letter for  
11 receipt of the complete NOI Package; a copy of the latest up-to-date and signed SWPPP; BMP  
12 installation and design standards for all BMPs installed and detailed in the SWPPP; and the  
13 SWPPP Administrator(s) documentation requirements, including the SWPPP Administrator's  
14 training records; the SWPPP Administrator Delegation Form; the SWPPP Revision/Update Log  
15 as required under Part 3.12.2.; all inspection records required under Part 2.3. of this permit; and  
16 all reports of noncompliance under Part 4 of this permit. These documents are to be made  
17 available at the site immediately upon request from a Department representative, EPA official, or  
18 local official.

19 89. During the October 2014 CEI, the Inspectors requested CR to provide documents  
20 identified in the Department's October 17, 2014 email for review. CR did not provide signed  
21 copies of the NOI, the SWPPP, or the SWPPP Administrator Delegation Form to the Inspectors for  
22 review upon request as required by the General Permit.

23 90. CR violated Section 75-5-605(1)(b), MCA, and Section 2.5 of the General Permit  
24 by failing to maintain the required documents onsite.

1 91. Section 2.3.5 of the General Permit states all BMPs identified in the SWPPP must  
2 be maintained in effective operating condition. Proper selection and installation of BMPs, and  
3 implementation of comprehensive inspection and maintenance procedures, in accordance with the  
4 SWPPP, is important to ensure permit compliance.

5 92. During the October 2014 CEI, the Inspectors documented that BMPs were not  
6 properly installed to minimize the discharge of sediments, specifically Filtrexx sediment control  
7 devices were not staked to manufacturer's specifications, earthen berms were not installed to  
8 standard engineering specifications and concrete waste was observed with no BMPs installed to  
9 control the discharge of concrete waste to storm water.

10 93. CR violated Section 75-5-605(1)(b), MCA, and Section 2.3.5 of the general  
11 permit by failing to implement, install and maintain BMPs in an effective operating condition.

## 12 V. ADMINISTRATIVE ORDER

13 This Administrative Compliance and Penalty Order (Order) is issued to CR pursuant to  
14 the authority vested in the State of Montana, acting by and through the Department under the  
15 WQA and administrative rules adopted thereunder. Based on the foregoing Findings of Fact and  
16 Conclusions of Law and the authority cited above, the Department hereby ORDERS CR to take  
17 the following actions to comply with the WQA within the timeframes specified in this Order:

### 18 A. *Corrective Actions*

19 94. At least one executive-level manager from CR will attend each of the following  
20 classes offered by the Department, or acceptable equivalents, no later than December 1, 2015:  
21 BMP 101,102, 201 and 202. Any classes that are not offered by the Department shall be approved  
22 by the Department prior to registration and attendance.

23 95. No later than December 31, 2015, a certificate of completion for each class listed in  
24 Paragraph 94 shall be submitted to the Department at the address listed in Paragraph 98.

1 96. Within 60 days of receipt of this Order, CR shall install, replace and/or repair all  
2 BMPs necessary at Copper Ridge in accordance with its current SWPPP.

3 97. Within 90 days of receipt of this Order, CR shall submit an updated SWPPP and a  
4 report describing the actions taken to install, replace and/or repair BMPs at Copper Ridge, and  
5 describe daily housekeeping procedures that will be used to prevent pollutants from entering storm  
6 water and the Billings MS4 from Copper Ridge. The report shall include photographic  
7 documentation of the BMPs and clean up and be sent to the address in Paragraph 98.

8 98. CR shall submit a summary report of activities conducted at Copper Ridge under its  
9 current SWPPP; a SWPPP revision/update log; a revised site map; a BMP maintenance log; and  
10 inspection reports for Copper Ridge to the Department on a quarterly basis for two years or until  
11 final stabilization has been achieved and a Notice of Termination has been submitted and accepted  
12 by the Department. The aforementioned documents shall be due: July 10, 2015; October 10, 2015;  
13 January 10, 2016; April 10, 2016; July 10, 2016; October 10, 2016; January 10, 2017, and April  
14 10, 2017, and sent to:

15 Susan Bawden  
16 Enforcement Division  
17 Department of Environmental Quality  
18 1520 East 6<sup>th</sup> Avenue  
19 P.O. Box 200901  
20 Helena, MT 59620-0901

19 **B. *Administrative Penalty***

20 99. CR is hereby assessed an administrative penalty in the amount of \$100,000 for the  
21 violations cited herein.

22 100. Within 60 days of receipt of this Order, CR shall pay to the Department the  
23 \$100,000 administrative penalty. The penalty must be paid by check or money order, made  
24 payable to the "Montana Department of Environmental Quality," and sent to:

1 John L. Arrigo, Administrator  
2 Enforcement Division  
3 Department of Environmental Quality  
4 1520 East Sixth Avenue  
5 P.O. Box 200901  
6 Helena, MT 59620-0901

7 101. Failure to take the required corrective actions and pay the assessed penalty by the  
8 specified deadlines, as ordered herein, constitutes a violation of Title 75, chapter 5, part 6, MCA,  
9 and may result in the Department seeking a court order assessing civil penalties of up to \$25,000  
10 per day of violation pursuant to Section 75-5-631, MCA.

11 102. None of the requirements in this Order are intended to relieve CR from complying  
12 with all applicable state, federal, and local statutes, rules, ordinances, orders, and permit  
13 conditions.

14 103. The Department may take any additional enforcement action against CR, including  
15 the right to seek injunctive relief, civil penalties, and other available relief for any violation of, or  
16 failure or refusal to comply with, this Order.

#### 17 VI. NOTICE OF APPEAL RIGHTS

18 104. CR may appeal this Order under Section 75-5-611(4), MCA, by having your  
19 attorney file a written request for a hearing before the Montana Board of Environmental Review  
20 no later than 30 days after service of this Order. Any request for a hearing must be sent to:

21 Board Secretary  
22 Board of Environmental Review  
23 P.O. Box 200901  
24 Helena, MT 59620-0901

25 105. Hearings are conducted as provided in the Montana Administrative Procedure Act,  
26 Title 2, chapter 4, and part 6, MCA. Hearings are normally conducted in a manner similar to court  
27 proceedings, with witnesses being sworn and subject to cross-examination. Proceedings prior to

1 the hearing may include formal discovery procedures, including interrogatories, requests for  
2 production of documents, and depositions. Because CR is not an individual, CR may not appear  
3 on its own behalf through an agent other than an attorney. See ARM 1.3.231(2) and Section 37-  
4 61-201, MCA.

5 106. If a hearing is not requested within 30 days after service of this Order, the  
6 opportunity for a contested case appeal is waived.

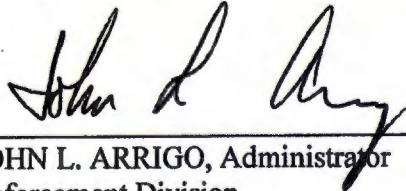
7 107. Service by mail is complete on the date of receipt.

8 108. This Order becomes effective upon signature of the Department.

9 IT IS SO ORDERED:

10 DATED this 27<sup>th</sup> day of March, 2015.

11 STATE OF MONTANA  
12 DEPARTMENT OF ENVIRONMENTAL QUALITY

13   
14 \_\_\_\_\_

15 JOHN L. ARRIGO, Administrator  
16 Enforcement Division  
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**Department of Environmental Quality - Enforcement Division  
Penalty Calculation Worksheet**

Responsible Party Name:	Copper Ridge Development Corporation (CR) at Copper Ridge Subdivision (Copper Ridge)		
FID:	2289		
Statute:	Water Quality Act		
Maximum Total / Daily Penalty Authority:	\$100,000.00	\$10,000.00	
Date:	3/12/2015		
Name of Employee Calculating Penalty:			

**Penalty Calculation #1**

<b>Description of Violation:</b>
CR violated ARM 17.30.1105(1)(a) by conducting construction activities at Copper Ridge without submittal of an NOI to obtain coverage under the General Permit for storm water discharges associated with construction activities.

**I. BASE PENALTY**

**Nature**

<b>Explanation:</b>	
Conducting construction activities prior to submitting a NOI poses the potential to harm human health and the environment because there is no assurance the required storm water pollution controls are implemented, therefore creating the potential for an uncontrolled storm water discharge to state waters.	
Potential to Harm Human Health or the Environment	<b>X</b>
Potential to Impact Administration	

**Gravity and Extent**

<b>Gravity Explanation:</b>
Conducting construction activity prior to submitting an NOI has major gravity per ARM 17.4.303(5)(a).
<b>Extent Explanation:</b>
CR conducted construction activities at Copper Ridge without submitting an NOI from at least 2005 until December 23, 2013. Given the size of Copper Ridge (90 acres), the duration of the violation and the fact that the failure to submit an NOI is a major deviation from the regulatory requirement, the Extent is major per ARM 17.4.303(4)(a).

**Harm to Human Health or the Environment  
Gravity**

Extent	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor: 0.85

**Impact to Administration  
Gravity**

Major	Moderate	Minor	
0.50	0.40	0.30	Gravity Factor:

**BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor):** **\$8,500.00**

**II. ADJUSTED BASE PENALTY**

**A. Circumstances (up to 30% added to Base Penalty)**

Explanation:  
As a large and experienced developer, CR was aware of the requirement to submit an NOI. The City of Billings sent CR a notice of violation in August 2012 to notify CR of observed violations, yet CR failed take reasonable precautions to prevent the violation. CR exhibited a major degree of culpability in committing the violation, therefore the Department is adjusting the penalty upward by 30% for Circumstances per ARM 17.4.304(2).

Circumstances Percent:	0.30
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$2,550.00

**B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)**

Explanation:  
The Department is unaware of any Good Faith and Cooperation (GFC) by CR, therefore the Department is not adjusting the penalty for GFC.

Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$0.00

**C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)**

Explanation:  
The Department is unaware of any AVE by CR above and beyond what is necessary to come into compliance with the permit, therefore the Department is not adjusting the penalty for AVE.

AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

**ADJUSTED BASE PENALTY SUMMARY**

Base Penalty	\$8,500.00
Circumstances	\$2,550.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
<b>ADJUSTED BASE PENALTY</b>	<b>\$11,050.00</b>
<b>Maximum penalty authority</b>	<b>\$10,000.00</b>

**III. DAYS OF VIOLATION**

Explanation:  
CR actively conducted construction activities prior to submitting an NOI from 2005 to December 23, 2013. In consideration of the 2-year statute of limitations, the maximum days of violation allowable is 730 which results in a penalty that exceeds the statutory maximum.

Number of Days:	730
<b>ADJUSTED BASE PENALTY x NUMBER OF DAYS:</b>	

**IV. OTHER MATTERS AS JUSTICE MAY REQUIRE**

Explanation:  
Not applicable.

<b>OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:</b>	<b>\$0.00</b>
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**V. ECONOMIC BENEFIT**

**Explanation:**

By not submitting an NOI to obtain permit coverage, CR has realized an economic benefit from delaying payment of application fees and preparing an NOI package including a SWPPP. The new permit application fee for areas between 25 and 100 acres is \$2000 ; Total delayed costs are \$2,000 for permit application fees. By industry estimates it costs \$48,826 to initially prepare and comply with the NOI and SWPPP requirements. Total delayed costs for the NOI submittal is \$48,826. The Department used EPA's economic benefit model (BEN) to calculate the economic benefit from delayed costs associated with the permit application fees at \$276 and from costs associated with NOI and SWPPP preparation and compliance at \$3,366. The total economic benefit realized by the CR is \$3,642.

**ECONOMIC BENEFIT REALIZED: \$3,642.00**



Responsible Party Name:	Copper Ridge Development Corporation (CR) at Copper Ridge Subdivision (Copper Ridge)		
FID:	2289		
Statute:	Water Quality Act		
Maximum Total / Daily Penalty Authority:	\$100,000.00	\$10,000.00	

**Penalty Calculation #2**

Description of Violation:
CR violated Section 75-5-605(2)(c), MCA, by discharging storm water into state waters without a permit.

**I. BASE PENALTY**

**Nature**

Explanation:	
Discharging storm water without a permit has the potential to harm human health or the environment by allowing the uncontrolled discharge of sediments and other pollutants to state waters.	
Potential to Harm Human Health or the Environment	X
Potential to Impact Administration	

**Gravity and Extent**

Gravity Explanation:
Discharging storm water associated with construction activities may result in the release of regulated substances (sediments, oils, grease, etc.) that have the potential to harm human health or the environment; therefore, gravity is major per ARM 17.4.303(5)(a).
Extent Explanation:
CR discharged storm water associated with construction activity to state waters from at least 2005 until December 23, 2013, without a permit, therefore extent is major per ARM 17.4.303(4)(a).

**Harm to Human Health or the Environment**

**Gravity**

Extent	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor: 0.85

**Impact to Administration**

**Gravity**

Major	Moderate	Minor	
0.50	0.40	0.30	Gravity Factor:

**BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor):** **\$8,500.00**

**II. ADJUSTED BASE PENALTY**

**A. Circumstances (up to 30% added to Base Penalty)**

Explanation:	
As a large and experienced developer, CR was aware that storm water discharges without a permit are prohibited by law. CR failed take reasonable precautions to prevent the violation. CR exhibited a major degree of culpability in committing the violation, therefore the Department is adjusting the penalty upward by 30% for Circumstances per ARM 17.4.304(2).	
Circumstances Percent:	0.30
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$2,550.00

**B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)**

Explanation:  
The Department is unaware of any Good Faith and Cooperation (GFC) by CR, therefore the Department is not adjusting the penalty for GFC.

Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$0.00

**C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)**

Explanation:  
The Department is unaware of any AVE by CR above and beyond what is necessary to come into compliance with the permit, therefore the Department is not adjusting the penalty for AVE.

AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

**ADJUSTED BASE PENALTY SUMMARY**

Base Penalty	\$8,500.00
Circumstances	\$2,550.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
<b>ADJUSTED BASE PENALTY</b>	<b>\$11,050.00</b>
<b>Maximum penalty authority</b>	<b>\$10,000.00</b>

**III. DAYS OF VIOLATION**

Explanation:  
The Department believes that a rainfall event of 0.25 inches or greater or snowmelt which causes visible surface erosion will cause a discharge to state waters. NOAA weather station Billings 7.1 W, NT US located on East Copper Ridge Loop indicates there have been 21 storm or snowmelt events between March 26, 2013, and December 23, 2013. The calculation for 21 days exceeds the statutory maximum penalty of \$100,000.

Number of Days:	21
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**ADJUSTED BASE PENALTY x NUMBER OF DAYS:**

**IV. OTHER MATTERS AS JUSTICE MAY REQUIRE**

Explanation:  
Not applicable.

<b>OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:</b>	<b>\$0.00</b>
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**V. ECONOMIC BENEFIT**

Explanation:  
The Department has determined the economic benefit RCR realized for discharging without a permit is included in the economic benefit calculated in Violation #1.

<b>ECONOMIC BENEFIT REALIZED:</b>	<b>\$0.00</b>
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Responsible Party Name:	Copper Ridge Development Corporation (CR) at Copper Ridge Subdivision (Copper Ridge)	
FID:	2289	
Statute:	Water Quality Act	
Maximum Total / Daily Penalty Authority:	\$100,000.00	\$10,000.00

Penalty Calculation #3	
Description of Violation:	CR violated Section 75-5-605(1)(a), MCA, by placing a waste where it will cause pollution.

**I. BASE PENALTY**

**Nature**

Explanation:	
Placing a waste where it will cause pollution has the potential to harm human health or the environment.	
Potential to Harm Human Health or the Environment	X
Potential to Impact Administration	

**Gravity and Extent**

Gravity Explanation:	
Placing a waste where it will cause pollution of state waters poses a serious threat to water quality, therefore Gravity is major per ARM 17.4.304(5)(a).	
Extent Explanation:	
CR has actively placed wastes where they will cause pollution since at least May 2012 to present. Considering the long-term duration of this violation, Extent is major per ARM 17.4.303(4)(a).	

**Harm to Human Health or the Environment**

**Gravity**

<b>Extent</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	
				Gravity and Extent Factor: 0.85

**Impact to Administration**

**Gravity**

<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
0.50	0.40	0.30	Gravity Factor:

**BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor): \$8,500.00**

**II. ADJUSTED BASE PENALTY**

**A. Circumstances (up to 30% added to Base Penalty)**

Explanation:	
CR has been developing Copper Ridge since at least 2005, it should have been aware that controls were necessary to prevent waste materials from being introduced to state waters where it will cause pollution. CR did not take reasonable precautions to prevent the introduction of waste materials into storm water and should have known the impacts associated with waste materials entering storm water. CR showed a major amount of culpability, therefore the Department is adjusting the base penalty upward by 30% for circumstances per ARM 17.4.304(2).	

Circumstances Percent:	0.30
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$2,550.00

**B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)**

Explanation:

The Department is unaware of any Good Faith and Cooperation (GFC) by CR, therefore the Department is not adjusting the penalty for GFC.

Good Faith & Coop. Percent:

Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)

\$0.00

**C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)**

Explanation:

The Department is unaware of any AVE by CR above and beyond what is necessary to come into compliance with the permit, therefore the Department is not adjusting the penalty for AVE.

AVE Percent:

0.00

Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)

\$0.00

**ADJUSTED BASE PENALTY SUMMARY**

Base Penalty	\$8,500.00
Circumstances	\$2,550.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
<b>ADJUSTED BASE PENALTY</b>	<b>\$11,050.00</b>
<b>Maximum penalty authority</b>	<b>\$10,000.00</b>

**III. DAYS OF VIOLATION**

Explanation:

CR has been documented to be placing a waste where it will cause pollution since at least 2012. The statutory maximum of 730 days results in a calculation that exceeds the maximum allowable penalty of \$100,000.

Number of Days:

730

**ADJUSTED BASE PENALTY x NUMBER OF DAYS:**

**IV. OTHER MATTERS AS JUSTICE MAY REQUIRE**

Explanation:

Not applicable.

**OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:**

**\$0.00**

**V. ECONOMIC BENEFIT**

Explanation:

The Department has determined the economic benefit CR realized for placing a waste where it will cause pollution is included in the economic benefit calculated in Violation #1.

**ECONOMIC BENEFIT REALIZED:**

**\$0.00**

Responsible Party Name:	Copper Ridge Development Corporation (CR) at Copper Ridge Subdivision (Copper Ridge)	
FID:	2289	
Statute:	Water Quality Act	
Maximum Total / Daily Penalty Authority:	\$100,000.00	\$10,000.00

Penalty Calculation #4	
Description of Violation:	
CR violated Section 75-5-605(1)(b), MCA, and sections 2.1.1; 2.1.4; 2.3; 2.3.5; 2.5; 3.1.1; 3.1.3 of the general permit by failing to implement the provisions of the General Permit, failing to develop an adequate SWPPP, failing to implement an adequate SWPPP; failing to maintain records, conduct inspections, and install and maintain BMPs in operable conditions.	

## I. BASE PENALTY

### Nature

Explanation:	
Failure to implement the provisions of the General Permit poses the potential to harm human health and the environment by allowing uncontrolled pollutants to enter storm water which discharges to state water.	
Potential to Harm Human Health or the Environment	<b>X</b>
Potential to Impact Administration	

### Gravity and Extent

Gravity Explanation:	
Failure to operate in accordance with the requirements of a permit has is moderate Gravity per ARM 17.4.304(5)(b)(ii).	
Extent Explanation:	
CR failed to implement provisions of the General Permit and failed to implement their SWPPP for at least 10 months from January to October 2014 which is a major deviation of the applicable requirements, therefore extent is major per ARM 17.4.303(4)(a).	

#### Harm to Human Health or the Environment

##### Gravity

Extent	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	
				Gravity and Extent Factor:
				0.70

#### Impact to Administration

##### Gravity

	Major	Moderate	Minor	
	0.50	0.40	0.30	
				Gravity Factor:

**BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor):**

**\$7,000.00**

## II. ADJUSTED BASE PENALTY

### A. Circumstances (up to 30% added to Base Penalty)

Explanation:	
CR was aware of the requirement to properly implement the provisions of the General Permit and the SWPPP, had complete control of over the violation and did not take reasonable precautions to prevent the violation. Therefore CR exhibited a high degree of culpability and the base penalty is adjusted upward by 30% for Circumstances per ARM 17.4.305(2).	
	Circumstances Percent:
	0.30
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$2,100.00

**B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)**

Explanation:  
The Department is unaware of any Good Faith and Cooperation (GFC) by CR, therefore the Department is not adjusting the penalty for GFC.

Good Faith & Coop. Percent:	
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$0.00

**C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)**

Explanation:  
The Department is unaware of any AVE by CR above and beyond what is necessary to come into compliance with the permit, therefore the Department is not adjusting the penalty for AVE.

AVE Percent:	
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

**ADJUSTED BASE PENALTY SUMMARY**

Base Penalty	\$7,000.00
Circumstances	\$2,100.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
<b>ADJUSTED BASE PENALTY</b>	<b>\$9,100.00</b>

**III. DAYS OF VIOLATION**

Explanation:  
CR failed to implement the provisions of the General Permit and failed to implement their SWPPP from December 23, 2014, to at least October 21, 2014, for 303 days. The calculation for 303 days exceeds the maximum allowable penalty of \$100,000.

Number of Days:	303
<b>ADJUSTED BASE PENALTY x NUMBER OF DAYS:</b>	

**IV. OTHER MATTERS AS JUSTICE MAY REQUIRE**

Explanation:  
Not applicable.

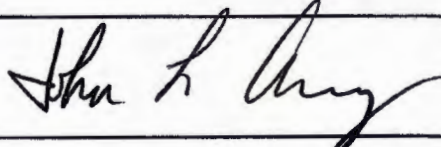
<b>OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:</b>	<b>\$0.00</b>
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**V. ECONOMIC BENEFIT**

Explanation:  
The Department believes the economic benefit for this violation has been captured in the economic benefit calculation for Violation #1.

<b>ECONOMIC BENEFIT REALIZED:</b>	<b>\$0.00</b>
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**Department of Environmental Quality - Enforcement Division  
Penalty Calculation Summary**

Responsible Party Name:	Copper Ridge Development Corporation (CR) at Copper Ridge Subdivision (Copper Ridge)		
FID:	2289		
Statute:	Water Quality Act		
Maximum Total / Daily Penalty Authority:	\$100,000.00	\$10,000.00	
Date:	3/27/2015		
Signature of Employee Calculating Penalty:	John L. Arrigo		

**Penalty #1    Penalty #2    Penalty #3    Penalty #4**

<b>I. Base Penalty (Maximum Penalty Authority x Matrix Factor)</b>				
Maximum Penalty Authority:	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
Percent Harm - Gravity and Extent:	0.85	0.85	0.85	0.70
Percent Impact - Gravity:	0.00	0.00	0.00	0.00
<b>Base Penalty:</b>	<b>\$8,500.00</b>	<b>\$8,500.00</b>	<b>\$8,500.00</b>	<b>\$7,000.00</b>
<b>II. Adjusted Base Penalty</b>				
Base Penalty:	\$8,500.00	\$8,500.00	\$8,500.00	\$7,000.00
Circumstances:	\$2,550.00	\$2,550.00	\$2,550.00	\$2,100.00
Good Faith and Cooperation:	\$0.00	\$0.00	\$0.00	\$0.00
Amount Voluntarily Expended:	\$0.00	\$0.00	\$0.00	\$0.00
<b>Adjusted Base Penalty:</b>	<b>\$11,050.00</b>	<b>\$11,050.00</b>	<b>\$11,050.00</b>	<b>\$9,100.00</b>
<b>Maximum Per Violation:</b>	<b>\$10,000.00</b>	<b>\$10,000.00</b>	<b>\$10,000.00</b>	
<b>III. Days of Violation or Number of Occurrences</b>				
	730	21	730	303
<b>Total Adjusted Penalty:</b>				
<b>Statutory maximum penalty:</b>	<b>\$100,000.00</b>	<b>\$100,000.00</b>	<b>\$100,000.00</b>	<b>\$100,000.00</b>
<b>IV. Other Matters as Justice May Require</b>				
	\$0.00	\$0.00	\$0.00	\$0.00
<b>V. Economic Benefit</b>				
	\$3,642.00	\$0.00	\$0.00	\$0.00
<b>VI. History*</b>				
Subtotal(s)				\$0.00
			<b>Total penalty:</b>	<b>\$100,000.00</b>

\*CR does not have a prior history of violations of the Water Quality Act documented in either an administrative order, judicial order, or judgment within the last three years.