

ENVIRONMENTAL QUALITY

CHAPTER 30

WATER QUALITY

Sub-Chapter 1

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Sub-Chapter 1

401 Certification

17.30.101 PURPOSE AND POLICY (1) The purpose of this subchapter is to establish procedures and criteria concerning applications for state water quality certifications submitted to the department pursuant to section 401 of the federal Clean Water Act, 33 USC section 1341, as amended.

(2) It is the policy of the board that the department shall ensure that any activity that requires a federal license or permit and that may result in a discharge to state waters shall fulfill the requirements of ARM Title 17, chapter 30 and thereby also fulfill the requirements of 33 USC sections 1311-1313, 1316, and 1317. (History: 75-5-401, MCA; IMP, 75-5-402, 75-5-403, MCA; NEW, 1991 MAR p. 2033, Eff. 11/1/91; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.102 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions in 75-5-103, MCA:

(1) "Applicant" means a person who applies for a license or permit issued by an agency of the federal government to conduct an activity that may result in discharge into state waters.

(2) "Licensing or permitting agency" means an agency of the federal government to which application is made for a license or permit to conduct an activity which may result in a discharge into state waters.

(3) "Regional administrator" means the administrator of Region VIII of the US environmental protection agency.

(4) "Discharge" means the injection, deposit, dumping, spilling, leaking, placing, or failure to remove, of any pollutant so that it or any constituent of the pollutant may enter into state waters. (History: 75-5-401, MCA; IMP, 75-5-402, 75-5-403, MCA; NEW, 1991 MAR p. 2033, Eff. 11/1/91; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.103 APPLICATION FOR CERTIFICATION (1) A person may not conduct or commence construction for any activity requiring state water quality certification under 33 USC section 1341, as amended, unless the department has issued certification, issued with conditions, or waived certification under this subchapter.

(2) An application for state water quality certification under this subchapter is not deemed complete until the permit fee required under ARM 17.30.201 is remitted to the department.

(3) The applicant, the licensing or permitting agency, or the regional administrator (under 40 CFR 121.13) shall submit to the department a complete description of the activity for which certification is sought, including:

- (a) the name and address of the applicant;
 - (b) a description of the facility or activity and of any discharge which may result from the facility or activity including, but not limited to:
 - (i) the volume of the discharge;
 - (ii) the biological, chemical, physical, and radiological characteristics of the discharge;
 - (iii) a description of the existing environment at the site of the discharge;
 - (iv) the size of the area affected;
 - (v) the location or locations at which the discharge may enter state waters;
- and
- (vi) any environmental impact assessment, information, maps, and photographs which have been provided to the licensing or permitting agency;
 - (c) a description of the function and operation of equipment, facilities, activities, or practices to minimize or to treat wastes or other effluents which may be discharged, including the degree of treatment expected to be attained;
 - (d) the date or dates on which the activity is proposed to begin and end, if known, and the date or dates on which the discharge will take place; and
 - (e) a description of the methods being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment, facilities, or activities employed in the treatment or control of pollutants.

(4) The department may exempt an applicant from the information requirements of (3)(b), (c), and (e) of this rule, if the applicant's federal permit application is to the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, 33 USC 1344, as amended, and the federal permit application provides the information required under these sections.

(5) The department shall review the application for completeness within 30 days of receipt of the application. If the application is not complete, the department shall notify the applicant of any additional materials reasonably necessary for review of the application.

(6) The applicant shall submit in timely fashion, at any time during the review process, any new information or modifications of the facility or activity which are pertinent to the department's certification responsibilities.

(7) An application is deemed complete if the applicant has provided all information included in (3), and the fee required in (2). (History: 75-5-401, MCA; IMP, 75-5-402, MCA; NEW, 1991 MAR p. 2033, Eff. 11/1/91; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2018 MAR p. 2517, Eff. 12/22/18.)

Rule 17.30.104 reserved

17.30.105 DEPARTMENT CERTIFICATION OPTIONS (1) Except as provided in (2), the department shall take one of the following actions upon completing its review of an application for certification submitted under this subchapter:

(a) deny certification for any activity which the department finds will result in a discharge that will violate any effluent limitation or water quality standard stated in or developed pursuant to ARM Title 17, chapter 30;

(b) issue certification for any activity which the department finds will not result in a discharge that will violate any effluent limitation or water quality standard stated in or developed pursuant to ARM Title 17, chapter 30; or

(c) issue conditional certification for any activity that with the conditions imposed will not result in a discharge that will violate any effluent limitation or water quality standard stated in or developed pursuant to ARM Title 17, chapter 30.

(2) The department may waive certification if the department finds that the activity will:

(a) cause minimal or no impacts to the quality of state waters; or

(b) require an application for a Montana pollutant discharge elimination system permit under ARM Title 17, chapter 30, subchapter 13, a Montana groundwater pollution control system permit under ARM Title 17, chapter 30, subchapter 10, a short-term exemption from water quality standards under 75-5-308, MCA, or a short-term narrative water quality standard under 75-5-318, MCA.

(History: 75-5-401, MCA; IMP, 75-5-402, 75-5-403, MCA; NEW, 1991 MAR p. 2033, Eff. 11/1/91; TRANS, from DHES, 1996 MAR p. 1499; AMD, 1999 MAR p. 2256, Eff. 10/8/99.)

17.30.106 TENTATIVE DETERMINATION BY THE DEPARTMENT (1) The department shall, within 30 days of receipt of a completed application, notify the applicant, the federal permitting or licensing agency, and the regional administrator of its tentative determination to either issue, issue with conditions, or deny certification.

(2) The department's tentative determination must be in writing and shall explain the reasons for denying, issuing, or conditionally issuing certification.

- (3) Notification of the department's tentative determination must include:
- (a) the name and address of the applicant; and
 - (b) a statement that the department has either:
 - (i) examined the complete application, specifically identifying the number or code affixed to the application, and based its determination upon an evaluation of the information contained in the application that is relevant to water quality; or
 - (ii) examined the application and other information furnished by the applicant sufficient to permit the department to reach its decision.
- (4) If a tentative issue of certification or conditional certification is made, the notification must also contain:
- (a) a statement that there is reasonable assurance the facility's or activity's construction and operation will not result in a violation of effluent limits or water quality standards; and
 - (b) a statement of conditions which the department deems necessary for allowing the discharge, including:
 - (i) necessary monitoring requirements; and
 - (ii) the applicant will be required to allow the department reasonable entry and access to the discharge site in order to inspect the discharge for compliance with the certification requirements applicable to the facility or activity.
- (5) If the department denies certification, the notification of tentative determination must include a statement explaining why the activity or permit will result in discharge of pollutants to state waters and detailing the effluent limits or water quality standards that will be violated.
- (6) Where a notice is issued by the department under ARM 17.30.108, the notification of tentative determination must include a statement that, unless a written request for a hearing is filed with the department within 15 days after publication of public notice, the department's decision will become final without public hearing.
- (7) The notification may also include other information as the department determines to be appropriate. (History: 75-5-401, MCA; IMP, 75-5-402, MCA; NEW, 1991 MAR p. 2033, Eff. 11/1/91; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2018 MAR p. 2517, Eff. 12/22/18.)

Rule 17.30.107 reserved

17.30.108 PUBLIC NOTICE AND FINAL DETERMINATION BY THE DEPARTMENT (1) Except as provided in (6) of this rule, the department shall provide public notice of the department's tentative determination. The department shall mail the notice to:

(a) the applicant;
(b) federal, state, and local government agencies with jurisdiction over the location of the proposed discharge;

(c) affected states; and
(d) any person on request.

(2) In addition, the department shall publish a legal notice for 2 consecutive weeks on the department's web page. The department may include additional notice which may involve:

(a) posting in the post office and public places of the municipality nearest the premises of the proposed activity;

(b) posting near the entrance to the applicant's premises and in nearby places; or

(c) any other notice that the department considers reasonable to encourage public participation in the decision.

(3) Notice under (1) and (2) of this rule shall contain the information required under ARM 17.30.106(3).

(4) If there is significant public interest in a proposed action under this rule, the department shall set a public hearing, which must be scheduled not less than 30 days after the hearing has been given public notice pursuant to (1) and (2) of this rule.

(5) The deadline for written comment is 30 days from the date of issuance of the public notice pursuant to (1) and (2) or, if a public hearing is conducted pursuant to (4) of this rule, 14 days after the date of the hearing.

(6) The requirements of this section are met if an application for a permit under 33 USC 1344 is given public notice by the United States Army Corps of Engineers, the public notice contains a statement referencing the department's certification responsibility under section 401 of the federal Clean Water Act, 33 USC section 1341, and the department has received a complete application under ARM 17.30.103.

(7) The department shall make its final decision within a reasonable amount of time, not to exceed one year after the close of the comment period, as determined pursuant to (5), if the project requires public notice under 33 USC section 1344, as amended, within a reasonable amount of time, not to exceed one year after the close of the comment period set by the United States Army Corps of Engineers pursuant to (6). (History: 75-5-401, MCA; IMP, 75-5-402, MCA; NEW, 1991 MAR p. 2033, Eff. 11/1/91; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2018 MAR p. 2517, Eff. 12/22/18.)

17.30.109 APPEAL TO THE BOARD (1) Within 30 days after the date of final action by the department under ARM 17.30.108, the applicant or any person or entity whose substantial interests are adversely affected by the action may appeal the department's action to the board. The appeal must be in writing and set forth the positions of the appealing party, the basis for the appeal, and the alleged errors of fact or law that were made by the department.

(a) Upon filing of an appeal under this section, the board shall appoint a hearing examiner.

(b) A hearing conducted under this section must be conducted pursuant to the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(2) If a decision of the department made under ARM 17.30.108 undergoes review by the board under this section, the department shall notify the licensing or permitting agency that certification is suspended for the period in which the department's decision is under review by the board.

(3) The final decision of the board is judicially reviewable as provided under the Montana Administrative Procedure Act, Title 2, chapter 4, part 7, MCA. (History: 75-5-401, MCA; IMP, 75-5-402, 75-5-403, MCA; NEW, 1991 MAR p. 2033, Eff. 11/1/91; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2018 MAR p. 2517, Eff. 12/22/18.)