

ENVIRONMENTAL QUALITY

CHAPTER 30

WATER QUALITY

Subchapter 12

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(MPDES), Effluent Limitations and Standards,
Standards of Performance, and Treatment Requirements

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Subchapter 12

Montana Pollutant Discharge Elimination
System (MPDES), Effluent Limitations and Standards,
Standards of Performance, and Treatment Requirements

17.30.1201 PURPOSE AND SCOPE (1) The purpose of this subchapter is to establish effluent limitations and standards, treatment requirements, standards of performance, and other requirements for point sources discharging wastes into state surface waters. These requirements, together with the rules in subchapter 13, are adopted to discharge the responsibilities of the board under Title 75, chapter 5, parts 3 and 4, Montana Code Annotated, the Montana Water Quality Act, to adopt effluent limitations and standards, standards of performance, and treatment requirements for permits issued to point sources discharging into state surface waters. These requirements are adopted in a manner that implements the national pollutant discharge elimination system (NPDES) established under sections 301, 302, 304, 306, 307, 316, 318, and 402 of the federal Clean Water Act. (History: 75-5-304, MCA; IMP, 75-5-304, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2011 MAR p. 2131, Eff. 10/14/11.)

17.30.1202 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter:

(1) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under section 316(a) of the federal Clean Water Act and this subchapter.

(2) "Annual mean flow" means the average of daily flows over a calendar year. Historical data, up to ten years, must be used where available.

(3) "Applicable standards and limitations" is defined in ARM 17.30.1304.

(4) "Balanced, indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic changes, presence of necessary food chain species, and a lack of domination by pollution-tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with section 301(b)(2) of the federal Clean Water Act, and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to section 316(a) of the federal Clean Water Act.

(5) "Board" means the Montana Board of Environmental Review established by 2-15-3502, MCA.

(6) "Closed-cycle recirculating system" means a system designed, using minimized makeup and blowdown flows, to withdraw water from a natural or other water source to support contact and/or noncontact cooling uses within a facility. The water is usually sent to a cooling canal or channel, lake, pond, or tower to allow waste heat to be dissipated to the atmosphere and then is returned to the system. Some facilities divert the waste heat to other process operations. New source water (make-up water) is added to the system to replenish losses that have occurred due to blowdown, drift, and evaporation.

(7) "Conventional pollutant" means the following list of pollutants:

- (a) biochemical oxygen demand (BOD);
- (b) total suspended solids (nonfilterable) (TSS);
- (c) pH;
- (d) fecal coliform; and
- (e) oil and grease.

(8) "Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process, either before or after it is used for cooling, is considered process water for the purposes of calculating the percentage of a new facility's intake flow that is used for cooling purposes in ARM 17.30.1211(6).

(9) "Cooling water intake structure" means the total physical structure and any associated constructed waterways used to withdraw cooling water from state surface water. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

(10) "Department" means the Montana Department of Environmental Quality established by 2-15-3501, MCA.

(11) "Design intake flow" means the value assigned, during the facility's design, to the total volume of water withdrawn from a source waterbody over a specific time period.

(12) "Design intake velocity" means the value assigned, during the design of a cooling water intake structure, to the average speed at which intake water passes through the open area of the intake screen, or other device, against which organisms might be impinged or through which they might be entrained.

(13) "Effluent limitation" means any restriction or prohibition imposed by the department on quantities, discharge rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources, other than new sources, into state surface waters, including schedules of compliance.

(14) "Effluent limitations guidelines" means a regulation published by EPA in 40 CFR Chapter I, Subchapter N, pursuant to the requirements in section 304(b) of the federal Clean Water Act to adopt or revise effluent limitations.

(15) "Effluent standard" is defined in 75-5-103, MCA, and is synonymous with the term "effluent limitation," as defined in this subchapter, with the exception that it does not include a schedule of compliance.

- (16) "Entrainment" means the incorporation of all life stages of fish and shellfish with intake water flow entering and passing through a cooling water intake structure and into a cooling water system.
- (17) "EPA" means the United States Environmental Protection Agency.
- (18) "Existing facility" means any facility that is not a new facility.
- (19) "Existing source" is defined in ARM 17.30.1304.
- (20) "Federal Clean Water Act" means the federal legislation at 33 USC 1251, et seq.
- (21) "Freshwater river or stream" means a lotic (free-flowing) system that does not receive significant inflows of water from oceans or bays due to tidal action. For the purposes of this subchapter, a flow-through reservoir with a retention time of seven days or less will be considered a freshwater river or stream.
- (22) "Hazardous substance" means any element or compound designated by EPA pursuant to section 311(b)(2)(A) of the federal Clean Water Act and listed in 40 CFR 116.4.
- (23) "Hydraulic zone of influence" means that portion of the source waterbody hydraulically affected by the cooling water intake structure withdrawal of water.
- (24) "Impingement" means the entrapment of all life stages of fish and shellfish on the outer part of an intake structure or against a screening device during periods of intake water withdrawal.
- (25) "Lake or reservoir" means any inland body of open water with some minimum surface area free of rooted vegetation and with an average hydraulic retention time of more than seven days. Lakes or reservoirs might be natural water bodies or impounded streams, usually fresh, surrounded by land or by land and a man-made retainer (e.g., a dam). Lakes or reservoirs might be fed by rivers, streams, springs, and/or local precipitation. Flow-through reservoirs with an average hydraulic retention time of seven days or less should be considered a freshwater river or stream.
- (26) "Maximize" means to increase to the greatest amount, extent, or degree reasonably possible.
- (27) "Minimize" means to reduce to the smallest amount, extent, or degree reasonably possible.
- (28) "MPDES" means the Montana pollutant discharge elimination system developed by the Board of Environmental Review and the Department of Environmental Quality for issuing permits for the discharge of pollutants from point sources into state waters.
- (29) "Natural thermal stratification" means the naturally occurring division of a waterbody into horizontal layers of differing densities as a result of variations in temperature at different depths.

(30) "New facility" means any building, structure, facility, or installation that meets the definition of a "new source" in ARM 17.30.1304(37)(a) and (b) or "new discharger" in ARM 17.30.1304(36) and that is a greenfield or stand-alone facility, commences construction after January 17, 2002, and uses either a newly constructed cooling water intake structure, or an existing cooling water intake structure whose design capacity is increased to accommodate the intake of additional cooling water. New facilities include only "greenfield" and "stand-alone" facilities. A greenfield facility is a facility that is constructed at a site at which no other source is located, or that totally replaces the process or production equipment at an existing facility. A stand-alone facility is a new, separate facility that is constructed on property where an existing facility is located and whose processes are substantially independent of the existing facility at the same site. New facility does not include new units that are added to a facility for purposes of the same general industrial operation (for example, a new peaking unit at an electrical generating station).

(a) Examples of "new facilities" include, but are not limited to, the following scenarios:

(i) A new facility is constructed on a site that has never been used for industrial or commercial activity. It has a new cooling water intake structure for its own use;

(ii) A facility is demolished and another facility is constructed in its place. The newly constructed facility uses the original facility's cooling water intake structure, but modifies it to increase the design capacity to accommodate the intake of additional cooling water;

(iii) A facility is constructed on the same property as an existing facility, but is a separate and independent industrial operation. The cooling water intake structure used by the original facility is modified by constructing a new intake bay for the use of the newly constructed facility or is otherwise modified to increase the intake capacity for the new facility.

(b) Examples of facilities that would not be considered a "new facility" include, but are not limited to, the following scenarios:

(i) A facility in commercial or industrial operation is modified and either continues to use its original cooling water intake structure or uses a new or modified cooling water intake structure.

(ii) A facility has an existing intake structure. Another facility (a separate and independent industrial operation), is constructed on the same property and connects to the facility's cooling water intake structure behind the intake pumps, and the design capacity of the cooling water intake structure has not been increased. This facility would not be considered a "new facility" even if routine maintenance or repairs that do not increase the design capacity were performed on the intake structure.

(31) "New source" is defined in ARM 17.30.1304.

(32) "Publicly owned treatment works" (POTW) is defined in ARM 17.30.1304.

(33) "Representative important species" means species that are representative, in terms of biological needs, of a balanced, indigenous community of shellfish, fish, and wildlife in the body of water into which a discharge of heat is made.

(34) "Source water" means the state waterbody (state surface waters) from which the cooling water is withdrawn.

(35) "Standard of performance" is defined in 75-5-103, MCA.

(36) "Toxic pollutant" means any pollutant designated by EPA under section 307(a)(1) of the federal Clean Water Act and listed in 40 CFR 401.15.

(37) "Variance" means any mechanism or provision under sections 301 or 316 of the federal Clean Water Act, or in the applicable "effluent limitations guidelines," which allows modification to, or waiver of, the generally applicable effluent limitation requirements or time deadlines. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on sections 301(c), 301(g), or 316(a) of the federal Clean Water Act.

(38) The board adopts and incorporates by reference the following federal regulations as part of the MPDES:

(a) 40 CFR 401.15 (July 1, 2010), which identifies the list of toxic pollutants designated pursuant to section 307(a)(1) of the federal Clean Water Act.

(b) 40 CFR 116.4 (July 1, 2010), which identifies elements and compounds designated as hazardous substances pursuant to section 311(b)(2)(A) of the federal Clean Water Act.

(c) Copies of these federal regulations may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620. (History: 75-5-304, MCA; IMP, 75-5-304, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2011 MAR p. 2131, Eff. 10/14/11.)

17.30.1203 CRITERIA AND STANDARDS FOR IMPOSING TECHNOLOGY-BASED TREATMENT REQUIREMENTS IN MPDES PERMITS - VARIANCE PROCEDURES

(1) Technology-based treatment requirements under section 301(b) of the federal Clean Water Act represent the minimum level of control that must be imposed in MPDES permits. Unless a more stringent effluent limitation applies under ARM 17.30.1344, permits issued by the department must contain the applicable technology-based treatment requirements provided in (2) and (3), according to the applicable deadlines.

(2) For POTWs, effluent limitations must be based upon:

(a) secondary treatment as defined in 40 CFR Part 133, from date of permit issuance; and

(b) the best practicable waste treatment technology, not later than July 1, 1983.

(3) For dischargers other than POTWs except as provided in ARM 17.30.1340(5), effluent limitations must require:

(a) the best practicable control technology currently available (BPT) in accordance with the following schedules:

(i) for effluent limitations promulgated under section 304(b) of the federal Clean Water Act after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance is required as expeditiously as practicable, but in no case later than March 31, 1989;

(ii) for effluent limitations established on a case-by-case basis based on best professional judgment (BPJ) under (5) in a permit issued after February 4, 1987, compliance is required as expeditiously as practicable, but in no case later than March 31, 1989;

(iii) for all other BPT effluent limitations compliance is required from the date of permit issuance.

(b) for conventional pollutants, the best conventional pollutant control technology (BCT) in accordance with the following schedule:

(i) for effluent limitations promulgated under section 304(b) of the federal Clean Water Act, compliance is required as expeditiously as practicable, but in no case later than such limitations are promulgated, and in no case later than March 31, 1989;

(ii) for effluent limitations established on a case-by-case basis based on BPJ under (5) in a permit issued after February 4, 1987, compliance is required as expeditiously as practicable, but in no case later than March 31, 1989.

(c) for all toxic pollutants identified in 40 CFR 401.15, the best available technology economically achievable (BAT) in accordance with the following schedule:

(i) for effluent limitations promulgated under section 304(b) of the federal Clean Water Act, compliance is required as expeditiously as practicable, but in no case later than March 31, 1989;

(ii) for permits issued on a case-by-case basis based on BPJ under (5) after February 4, 1987, compliance is required as expeditiously as practicable, but in no case later than March 31, 1989.

(d) for all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT in accordance with the following schedule:

(i) for effluent limitations promulgated under section 304(b) of the federal Clean Water Act, compliance is required as expeditiously as practicable, but in no case later than March 31, 1989;

(ii) for permits issued on a case-by-case basis based on BPJ under (5) after February 4, 1987, establishing BAT effluent imitations, compliance is required as expeditiously as practicable, but in no case later than March 31, 1989.

(4) The following variances from technology-based treatment requirements may be applied for and incorporated into MPDES permits:

(a) for dischargers other than POTWs, a variance from effluent limitations promulgated under sections 301 and 304 of the federal Clean Water Act based on fundamentally different factors in accordance with 40 CFR Part 125, Subpart D;

(b) for dischargers other than POTWs, a water quality related variance from BAT for certain nonconventional pollutants under section 301(g) of the federal Clean Water Act; and

(c) a thermal variance from BPT, BCT, and BAT under section 316(a) of the federal Clean Water Act in accordance with ARM 17.30.1210.

(5) Technology-based treatment requirements may be imposed through one of the following methods provided in (a) through (c):

(a) application of EPA-promulgated effluent limitations guidelines for dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been remanded or withdrawn. However, in the case of a court remand, determinations underlying effluent limitations must be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variances from these effluent limitations pursuant to 40 CFR, Part 125, Subpart D;

(b) on a case-by-case basis using BPJ to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors listed in (6) and shall consider:

(i) the appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information; and

(ii) any unique factors relating to the applicant.

(c) through a combination of the methods described in (a) and (b). Where promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutants, other aspects or activities are subject to regulation on a case-by-case basis in order to carry out the provisions of the federal Clean Water Act;

(d) limitations developed under (6)(b) may be expressed, where appropriate, in terms of toxicity (e.g., "the LC50 for fat head minnow of the effluent from outfall 001 shall be greater than 25%"), provided that the limits reflect the appropriate requirements (for example, technology-based or water quality-based standards) of the federal Clean Water Act.

- (6) In setting case-by-case limitations pursuant to (5), the permit writer shall consider the following factors:
- (a) for BPT requirements:
 - (i) the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;
 - (ii) the age of equipment and facilities involved;
 - (iii) the process employed;
 - (iv) the engineering aspects of the application of various types of control techniques;
 - (v) process changes; and
 - (vi) non-water quality environmental impact (including energy requirements).
 - (b) for BCT requirements:
 - (i) the reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;
 - (ii) the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources;
 - (iii) the age of equipment and facilities involved;
 - (iv) the process employed;
 - (v) the engineering aspects of the application of various types of control techniques;
 - (vi) process changes; and
 - (vii) non-water quality environmental impact (including energy requirements).
 - (c) for BAT requirements:
 - (i) the age of equipment and facilities involved;
 - (ii) the process employed;
 - (iii) the engineering aspects of the application of various types of control techniques;
 - (iv) process changes;
 - (v) the cost of achieving such effluent reduction; and
 - (vi) non-water quality environmental impact (including energy requirements).
- (7) Technology-based treatment requirements are applied prior to or at the point of discharge.
- (8) Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:
- (a) the technology-based treatment requirements applicable to the discharge are not sufficient to achieve the standards;
 - (b) the discharger agrees to waive any opportunity to request a variance under section 301(c), (g), or (h) of the federal Clean Water Act; and
 - (c) the discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(9) Technology-based effluent limitations must be established under this rule for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

(10) The department may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollution control technology BCT, or a limit for a nonconventional pollutant which must not be subject to modification under section 301(c) or (g) of the federal Clean Water Act where:

(a) effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant; or

(b) the limitation reflects BAT-level control of discharges of one or more toxic pollutants that are present in the waste stream, and a specific BAT limitation upon the toxic pollutant(s) is not feasible for economic or technical reasons;

(c) the permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

(d) the fact sheet required by ARM 17.30.1371 sets forth the basis for the limitation, including a finding that compliance with the limitation will result in BAT-level control of the toxic pollutant discharges identified in (c), and a finding that it would be economically or technically infeasible to directly limit the toxic pollutant(s).

(11) The department may set a permit limit for a conventional pollutant at a level more stringent than BCT when:

(a) effluent limitations guidelines specify the pollutant as an indicator for a hazardous substance; or

(b) the limitation reflects BAT-level control of discharges, or an appropriate level determined under section 301(c) or (g) of the federal Clean Water Act, of one or more hazardous substance(s) that are present in the waste stream, and a specific BAT or other appropriate limitation upon the hazardous substance(s) is not feasible for economic or technical reasons;

(c) the permit identifies which hazardous substances are intended to be controlled by use of the limitation; and

(d) the fact sheet required by ARM 17.30.1371 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level (or other appropriate level) control of the hazardous substances discharges identified in (c), and a finding that it would be economically or technically infeasible to directly limit the hazardous substance(s).

(e) Hazardous substances that are also toxic pollutants are subject to (10).

(12) The department may not set a more stringent limit under the preceding sections if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutant(s) or hazardous substance(s) controlled by the limit were limited directly.

(13) Toxic pollutants identified under (10) remain subject to the requirements of ARM 17.30.1343(1)(a) (notification of increased discharges of toxic pollutants above levels reported in the application form).

(14) The board adopts and incorporates by reference the following federal regulations as part of the MPDES:

(a) 40 CFR Part 133 (July 1, 2010), which sets forth the level of effluent quality attainable through the application of secondary treatment or equivalent treatment for POTWs;

(b) 40 CFR Part 125, Subpart D (July 1, 2010), which sets forth criteria and standards for determining fundamentally different factors under section 301 of the federal Clean Water Act;

(c) 40 CFR 401.15 (July 1, 2010), which is a list of toxic pollutants identified by EPA under section 307(a)(1) of the federal Clean Water Act.

(d) Copies of these federal regulations may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620. (History: 75-5-304, MCA; IMP, 75-5-304, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2011 MAR p. 2131, Eff. 10/14/11.)

Rules 17.30.1204 and 17.30.1205 reserved

17.30.1206 TOXIC POLLUTANT EFFLUENT STANDARDS (1) This rule is applicable to owners or operators of facilities specified in 40 CFR Part 129 that discharge into state surface waters.

(2) The effluent standards or prohibitions for toxic pollutants established in 40 CFR Part 129 shall be applicable to the sources and pollutants set forth in 40 CFR Part 129, and may be incorporated into any MPDES permit, renewed MPDES permit, or permit modification, in accordance with the provisions of 40 CFR Part 129.

(3) The effluent standards and prohibitions established in 40 CFR Part 129 apply to the following toxic pollutants:

(a) Aldrin, which means the compound aldrin as identified by the chemical name, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-1,4 -endo-5,8-exo-dimethanonaphthalene and Dieldrin, which means the compound dieldrin as identified by the chemical name 1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-1,4-endo-5,8-exo-dimethanonaphthalene;

(b) DDT, which means the compounds DDT, DDD, and DDE as identified by the chemical names: (DDT)-1,1,1-trichloro-2,2-bis(p-chlorophenyl) ethane and someo,p'-isomers; (DDD) or (TDE)-1,1-dichloro-2,2-bis(p-chlorophenyl) ethane and some o,p'-isomers; and (DDE)-1,1-dichloro-2,2-bis(p-chlorophenyl) ethylene;

(c) Endrin, which means the compound as identified by the chemical name 1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-1,4-endo-5,8-endodimethanonaphthalene;

(d) Toxaphene, which means a material consisting of technical grade chlorinated camphene having the approximate formula of C₁₀ H₁₀ Cl₈ and normally containing 67-69 percent chlorine by weight;

(e) Benzidine, which means the compound benzidine and its salts as identified by the chemical name 4,4'-diaminobiphenyl;

(f) Polychlorinated biphenyls (PCBs), which means a mixture of compounds composed of the biphenyl molecule which has been chlorinated to varying degrees.

(4) The board adopts and incorporates by reference 40 CFR Part 129 (July 1, 2010), which establishes toxic effluent standards pursuant to section 307 of the federal Clean Water Act, as part of the MPDES. A copy of the incorporated federal regulation may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620. (History: 75-5-304, MCA; IMP, 75-5-304, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2011 MAR p. 2131, Eff. 10/14/11.)

17.30.1207 EFFLUENT LIMITATIONS AND STANDARDS OF PERFORMANCE

(1) Permits issued to point source dischargers, other than POTWs, must include effluent limitations or standards of performance applicable to the point source that are set forth in 40 CFR Chapter I, Subchapter N, as provided below:

(a) for existing sources, effluent limitations representing the degree of effluent reduction attainable by the application of:

(i) the best practicable control technology currently achievable (BPT) for all pollutants;

(ii) the best available technology economically achievable (BAT) for toxic and nonconventional pollutants; and

(iii) the best conventional pollutant control technology (BCT) for conventional pollutants;

(b) for new sources, new source performance standards (NSPS) reflecting the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge.

(2) The department shall ensure that the applicable effluent limitations or standards of performance set forth in 40 CFR Chapter I, Subchapter N, are included in any new MPDES permit, renewed MPDES permit, or permit modification issued in accordance with ARM Title 17, chapter 30, subchapter 13.

(3) The board adopts and incorporates by reference 40 CFR Chapter I, Subchapter N (except 40 CFR Part 403) (July 1, 2010), which sets forth federal effluent limitations and standards for existing sources and standards of performance for new sources, which are promulgated by EPA under sections 301, 304(b), 306(b), and 316(b) of the federal Clean Water Act. 40 CFR Part 403, which is excluded from this incorporation by reference, sets forth general pretreatment requirements for new and existing sources. A copy of the incorporated federal regulations may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620. (History: 75-5-304, MCA; IMP, 75-5-304, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2011 MAR p. 2131, Eff. 10/14/11.)

17.30.1208 HAZARDOUS SUBSTANCES (REPEALED) (History: 75-5-304, MCA; IMP, 75-5-304, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499; REP, 2011 MAR p. 2131, Eff. 10/14/11.)

17.30.1209 SECONDARY TREATMENT (REPEALED) (History: 75-5-304, MCA; IMP, 75-5-304, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499; REP, 2011 MAR p. 2131, Eff. 10/14/11.)

17.30.1210 CRITERIA AND STANDARDS FOR DETERMINING
ALTERNATIVE EFFLUENT LIMITATIONS FOR THERMAL DISCHARGES

(1) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations, if the discharger demonstrates to the satisfaction of the department that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made. This demonstration must show that the alternative effluent limitation desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.

(2) In determining whether or not the protection and propagation of the affected species will be assured, the department may consider any information contained or referenced in any applicable thermal water quality criteria and thermal water quality information published by the EPA under section 304(a) of the federal Clean Water Act, or any other information the department deems relevant.

(3) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations must show:

(a) that no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge has been made; or

(b) that, despite the occurrence of such previous harm, the desired alternative effluent limitations, or appropriate modifications thereof, will nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.

(4) In determining whether or not prior appreciable harm has occurred under (3)(a), the department shall consider the length of time that the applicant has been discharging and the nature of the discharge.

(5) Any initial application for a variance from thermal effluent limitations pursuant to section 316(a) of the federal Clean Water Act must include the following early screening information:

(a) description of the alternative effluent limitation requested;

(b) a general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

(c) a general description of the type of data, studies, experiments, and other information which the discharger intends to submit for the demonstration; and

(d) such data and information as may be available to assist the department in selecting the appropriate representative important species.

(6) After submitting the early screening information under (5), the discharger shall consult with the department at the earliest practicable time, but not later than 30 days after the application is filed, to discuss the discharger's early screening information. Within 60 days after the application is filed, the discharger shall submit for department approval a detailed plan of study that the discharger will undertake to support its demonstration for a variance under section 316(a). The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical, and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies; representative important species; and other relevant information. In selecting representative important species, special consideration must be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the department shall either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies that the department subsequently determines are necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies that the discharger feels are appropriate to support the demonstration.

(7) Any discharger that intends to apply for a renewal of a section 316(a) thermal variance must notify the department of its intent in writing. Within 60 days after receipt of the notification, the department shall request that the discharger include in its renewal application only such information described in (5) and (6) that the department determines is necessary to evaluate the request.

(8) In making the demonstration, the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(9) If an applicant desires a ruling on a section 316(a) variance before the ruling on any other necessary permit terms and conditions, it shall make such request upon filing its application under (5). This request must be granted or denied at the discretion of the department.

(10) At the expiration of the permit, any discharger holding a thermal variance must support the continuation of the variance with studies based on the discharger's actual operation experience. (History: 75-5-305, 75-5-401, MCA; IMP, 75-5-305, 75-5-401, MCA; NEW, 2011 MAR p. 2131, Eff. 10/14/11.)

17.30.1211 TECHNOLOGY-BASED REQUIREMENTS FOR COOLING WATER INTAKE STRUCTURES FOR NEW FACILITIES (1) The purpose of this rule is to establish technology-based requirements that apply to the location, design, construction, and capacity of the cooling water intake structures at new facilities. This rule implements section 316(b) of the federal Clean Water Act for new facilities. These requirements are implemented through MPDES permits.

(2) Section 316(b) of the federal Clean Water Act provides that any standards established pursuant to sections 301 or 306 of the federal Clean Water Act and applicable to a point source must require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(3) New facilities that do not meet the threshold requirements regarding amount of water withdrawn or percentage of water withdrawn for cooling water purposes in (4) must meet requirements determined on a case-by-case, best professional judgment (BPJ) basis. The owner or operator of a new facility that does not meet the threshold requirements in (4) must submit the application information required in 40 CFR 122.21(r).

(4) This rule applies to a new facility if it:

(a) is a point source that uses or proposes to use a cooling water intake structure;

(b) has at least one cooling water intake structure that uses at least 25 percent of the water it withdraws for cooling purposes as specified in (6); and

(c) has a design intake flow greater than two million gallons per day (MGD).

(5) Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with an independent supplier, or multiple suppliers, of cooling water if the supplier or suppliers withdraw(s) water from state surface waters. Use of cooling water does not include obtaining cooling water from a public water system or the use of treated effluent that otherwise would be discharged to a state surface water. This provision is intended to prevent circumvention of these requirements by creating arrangements to receive cooling water from an entity that is not itself a point source.

(6) The threshold requirement that at least 25 percent of water withdrawn be used for cooling purposes must be measured on an average monthly basis. A new facility meets the 25 percent cooling water threshold if, based on the new facility's design, any monthly average over a year for the percentage of cooling water withdrawn is expected to equal or exceed 25 percent of the total water withdrawn.

(7) The owner or operator of a new facility that will withdraw equal to or greater than ten MGD shall comply with either the requirements of (9) or the following:

(a) reduce the facility's intake flow, at a minimum, to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system;

(b) design and construct each cooling water intake structure at the facility to a maximum through-screen design intake velocity of 0.5 feet per second;

(c) design and construct the cooling water intake structure at the facility such that the total design intake flow from all cooling water intake structures at the facility meets the following requirements:

(i) for cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than five percent of the source water annual mean flow;

(ii) for cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern, where present, of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency;

(d) select and implement design and construction technologies or operational measures for minimizing the impingement mortality of fish and shellfish if:

(i) there are threatened, endangered, or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure;

(ii) based on information submitted by any fishery management agency or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the department that pass through the hydraulic zone of influence of the cooling water intake structure; or

(iii) it is determined by the department, based on information submitted by any fishery management agency or other relevant information, that the proposed facility, after meeting the technology-based performance requirements in (7)(a), (b), and (c), would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(e) select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish if:

(i) there are threatened, endangered, or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(ii) based on information submitted by any fishery management agency or other relevant information, there are or would be undesirable cumulative stressors affecting entrainable life stages of species of concern to the department and the department determines that the proposed facility, after meeting the technology-based performance requirements in (7)(a), (b), and (c), would still contribute unacceptable stress to the protected species, critical habitat of those species, or these species of concern;

(f) submit the application information required in 40 CFR 122.21(r) and ARM 17.30.1212(2);

(g) implement the monitoring requirements specified in 40 CFR 125.87; and

(h) implement the recordkeeping requirements in 40 CFR 125.88.

(8) The owner or operator of a new facility that will withdraw equal to or greater than 2 MGD and less than ten MGD, and that chooses not to comply with (7), shall comply with either the requirements of (9) or the following:

(a) design and construct each cooling water intake structure at the facility to a maximum through-screen design intake velocity of 0.5 feet per second;

(b) design and construct the cooling water intake structure at the facility such that the total design intake flow from all cooling water intake structures at the facility meets the following requirements:

(i) for cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than five percent of the source water annual mean flow;

(ii) for cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern, where present, of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency;

(c) select and implement design and construction technologies or operational measures for minimizing the impingement mortality of fish and shellfish if:

(i) there are threatened, endangered, or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure;

(ii) based on information submitted by any fishery management agency or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the department that pass through the hydraulic zone of influence of the cooling water intake structure; or

(iii) it is determined by the department, based on information submitted by any fishery management agency or other relevant information, that the proposed facility, after meeting the technology-based performance requirements in (8)(a) and (b), would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(d) select and implement design and construction technologies or operational measures that minimize entrainment of entrainable life stages of fish and shellfish;

(e) submit the application information required in 40 CFR 122.21(r) and ARM 17.30.1212(2)(b), (c), (d);

(f) implement the monitoring requirements specified in 40 CFR 125.87; and

(g) implement the recordkeeping requirements specified in 40 CFR 125.88.

(9) The owner or operator of a new facility that will withdraw equal to or greater than two MGD, and that chooses not to comply with (7) or (8), shall comply with the following:

(a) demonstrate to the department that the technologies employed will reduce the level of adverse environmental impact from the cooling water intake structure located at the facility to a level comparable to that which would be achieved if the facility implemented the requirements of (7)(a) and (b). This demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those that would result if the facility implemented the requirements of (7)(a) and (b). This showing may include consideration of impacts other than impingement mortality and entrainment, including measures that will result in increases in fish and shellfish, but it must demonstrate comparable performance for species that the department identifies as species of concern. In identifying such species, the department may consider information provided by any fishery management agency along with data and information from other sources;

(b) design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures at the facility meet the following requirements:

(i) for cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than five percent of the source water annual mean flow; and

(ii) for cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern, where present, of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency;

(c) submit the application information required in 40 CFR 122.21(r) and ARM 17.30.1212(3);

(d) implement the monitoring requirements specified in 40 CFR 125.87; and

(e) implement the recordkeeping requirements specified in 40 CFR 125.88.

(10) In addition to the technology-based requirements of (7), (8), and (9), the owner or operator of a new facility must comply with any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure or monitoring requirements that the department determines are reasonably necessary to comply with applicable water quality standards adopted by the board pursuant to 75-5-301 and 75-5-303, MCA.

(11) The board adopts and incorporates by reference the following federal regulations as part of the MPDES:

(a) 40 CFR 125.87 (July 1, 2010), which sets forth monitoring requirements for new facilities with cooling water intake structures;

(b) 40 CFR 125.88 (July 1, 2010), which sets forth record and reporting requirements for new facilities with cooling water intake structures; and

(c) 40 CFR 122.21(r) (July 1, 2010), which sets forth application requirements for new facilities with cooling water intake structures.

(d) Copies of these federal regulations may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620. (History: 75-5-305, 75-5-401, MCA; IMP, 75-5-305, 75-5-401, MCA; NEW, 2011 MAR p. 2131, Eff. 10/14/11.)

17.30.1212 INFORMATION REQUIREMENTS FOR COOLING WATER INTAKE STRUCTURES FOR NEW FACILITIES

(1) The owner or operator of a new facility with cooling water intake structures shall submit to the department a statement specifying its intent to comply with the technology-based requirements in either (7), (8), or (9) of ARM 17.30.1211.

(2) The owner or operator of a new facility that chooses to comply with the requirements of either (7) or (8) of ARM 17.30.1211 shall, in addition to meeting the application requirements of 40 CFR 122.21(r), collect and submit to the department the following information, when applying for a new or reissued permit, to demonstrate compliance with (7) or (8) of ARM 17.30.1211. (The information required under (a) applies only to an owner or operator that chooses to comply with (7) of ARM 17.30.1211):

(a) flow reduction information demonstrating a reduction in flow to a level that is commensurate with that which can be attained by a closed-cycle recirculating cooling water system, including:

(i) a narrative description of the facility's system that has been designed to reduce the facility's intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system and any engineering calculations, including documentation demonstrating that make-up and blowdown flows have been minimized; and

(ii) if the flow reduction requirement is met entirely, or in part, by reusing or recycling water withdrawn for cooling purposes in subsequent industrial processes, documentation that the amount of cooling water that is not reused or recycled has been minimized;

(b) velocity information demonstrating that the facility complies with the requirement to meet a maximum through-screen design intake velocity of no more than 0.5 feet per second at each cooling water intake structure as required in (7)(b) and (8)(a) of ARM 17.30.1211, including:

(i) a narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and

(ii) design calculations showing that the velocity requirement will be met at minimum ambient source water surface elevations, based on best professional judgment using available hydrological data, and maximum head loss across the screens or other device;

(c) source waterbody flow information demonstrating that the facility's cooling water intake structure meets the flow requirements in (7)(c) and (8)(b) of ARM 17.30.1211, including:

(i) for cooling water intake structures located in a freshwater river or stream, the annual mean flow and any supporting documentation and engineering calculations to show that the facility's cooling water intake structure meets the flow requirements; and

(ii) for cooling water intake structures located in a lake or reservoir, a narrative description of the waterbody thermal stratification and any supporting documentation and engineering calculations to show that the natural thermal stratification and turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish, supporting documentation and a written concurrence from any fisheries management agency with responsibility for fisheries potentially affected by the facility's cooling water intake structure(s); and

(d) a design and construction technology plan demonstrating compliance with (7)(d) and (e) or (8)(c) and (d) of ARM 17.30.1211, including:

(i) information to demonstrate whether or not the facility meets the criteria of (7)(d) and (e) or (8)(c) and (d) of ARM 17.30.1211;

(ii) delineation of the hydraulic zone of influence for the facility's cooling water intake structure; and

(iii) new facilities required to install design and construction technologies and/or operational measures must develop a plan explaining the technologies and measures that have been selected based on information collected for the source water biological baseline characterization required by 40 CFR 122.21(r)(3).

(Examples of appropriate technologies include, but are not limited to, wedgewire screens, fine mesh screens, fish handling and return systems, barrier nets, aquatic filter barrier systems, and similar technologies. Examples of appropriate operational measures include, but are not limited to, seasonal shutdowns or reductions in flow, continuous operations of screens, and similar measures.) The plan must contain the following information:

(A) a narrative description of the design and operation of the design and construction technologies, including fish-handling and return systems, that will be used to maximize the survival of those species expected to be most susceptible to impingement, including species-specific information that demonstrates the efficacy of the technology;

(B) a narrative description of the design and operation of the design and construction technologies that will be used to minimize entrainment of those species expected to be the most susceptible to entrainment, including species-specific information that demonstrates the efficacy of the technology; and

(C) design calculations, drawings, and estimates to support the descriptions provided in (2)(d)(iii)(A) and (B).

(3) The owner or operator of a new facility that chooses to comply with (9) of ARM 17.30.1211 shall, in addition to meeting the application requirements of 40 CFR 122.21(r), collect and submit to the department the following information, when applying for a new or reissued permit, to demonstrate compliance with (9) of ARM 17.30.1211:

(a) source waterbody flow information to demonstrate that the facility's cooling water intake structure meets the source waterbody requirements in (9)(b) of ARM 17.30.1211:

(i) for cooling water intake structures located in a freshwater river or stream, the annual mean flow and any supporting documentation and engineering calculations to show that the facility's cooling water intake structure meets the flow requirements; and

(ii) for cooling water intake structures located in a lake or reservoir, a narrative description of the waterbody thermal stratification, and any supporting documentation and engineering calculations to show that the natural thermal stratification and turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish, supporting documentation and a written concurrence from any fisheries management agency with responsibility for fisheries potentially affected by the facility's cooling water intake structure(s);

(b) a comprehensive demonstration study to characterize the source water baseline in the vicinity of the cooling water intake structure(s), to characterize operation of the cooling water intake(s), and to confirm that the technology(ies) proposed and/or implemented for the facility's cooling water intake structure reduce the impacts to fish and shellfish to levels comparable to those achieved by implementing the requirements of (7)(a) and (b) in ARM 17.30.1211. To meet the "comparable level" requirement, the owner or operator shall demonstrate that:

(i) there is a reduction in both impingement mortality and entrainment of all life stages of fish and shellfish to 90 percent or greater of the reduction that would be achieved through (7)(a) and (b) of ARM 17.30.1211; or

(ii) if the demonstration includes consideration of impacts other than impingement mortality and entrainment, that the measures taken will maintain the fish and shellfish in the waterbody at a level substantially similar to that which would be achieved through (7)(a) and (b) of ARM 17.30.1211;

(c) a plan containing a proposal for how information will be collected to support the comprehensive demonstration study required in (3)(b). The plan must include:

(i) a description of the proposed and/or implemented technology(ies) to be evaluated in the study;

(ii) a list and description of any historical studies characterizing the physical and biological conditions in the vicinity of the proposed or actual intakes and their relevancy to the proposed study. If an owner or operator proposes to rely on existing source waterbody data, it must be no more than five years old, and the owner or operator must demonstrate that the existing data are sufficient to develop a scientifically valid estimate of potential impingement and entrainment impacts and provide documentation showing that the data were collected using appropriate quality assurance and quality control procedures;

(iii) any public participation or consultation with federal or state agencies undertaken in developing the plan; and

(iv) a sampling plan for data that will be collected using actual field studies in the source waterbody. The sampling plan must document all methods and quality assurance procedures for sampling and data analysis. The proposed sampling and data analysis methods must be appropriate for a quantitative survey and must be based on consideration of methods used in other studies performed in the source waterbody. The sampling plan must include:

(A) a description of the study area, including the area of influence of the cooling water intake structure and at least 100 meters beyond;

(B) taxonomic identification of the sampled or evaluated biological assemblages, including all life stages of fish and shellfish; and

(C) a description of all sampling and data analysis methods; and

(d) documentation of the results of the comprehensive demonstration study required in (3)(b), including:

(i) a source water biological study, which must include:

(A) a taxonomic identification and characterization of aquatic biological resources including:

(I) a summary of historical and contemporary aquatic biological resources;

(II) determination and description of the target populations of concern (those species of fish and shellfish and all life stages that are most susceptible to impingement and entrainment); and

(III) a description of the abundance and temporal/spatial characterization of the target populations based on the collection of multiple years of data to capture the seasonal and daily activities (such as, spawning, feeding, and water column migration) of all life stages of fish and shellfish found in the vicinity of the cooling water intake structure;

(B) an identification of all threatened or endangered species that might be susceptible to impingement and entrainment by the proposed cooling water intake structure(s); and

(C) a description of additional chemical, water quality, and other anthropogenic stresses on the source waterbody;

(ii) an evaluation of potential cooling water intake structure effects, which must include:

(A) calculations of the reduction in impingement mortality and entrainment of all life stages of fish and shellfish that would need to be achieved by the technologies that have been selected to implement and to meet requirements under (9) of ARM 17.30.1211. In order to do the calculation, the owner or operator shall determine the reduction in impingement mortality and entrainment that would be achieved by implementing the requirements of (7)(a) and (b) of ARM 17.30.1211 at the facility; and

(B) an engineering estimate of efficacy for the proposed or implemented technologies used to minimize impingement mortality and entrainment of all life stages of fish and shellfish and maximize survival of impinged life stages of fish and shellfish. The estimate of efficacy must include a demonstration that the proposed or implemented technologies reduce impingement mortality and entrainment of all life stages of fish and shellfish to a comparable level to that which would be achieved if the requirements in (7)(a) and (b) of ARM 17.30.1211 were implemented. The efficacy projection must also include a site-specific evaluation of the technology's suitability for reducing impingement mortality and entrainment based on the results of the source water biological study described in (3)(d)(i). The efficacy estimates may be determined based on case studies that have been conducted in the vicinity of the cooling water intake structure or site-specific technology prototype studies;

(iii) an evaluation of proposed restoration measures, if the owner or operator proposes to use restoration measures to maintain the fish and shellfish as allowed in (9)(a) of ARM 17.30.1211. The evaluation must include the following:

(A) information and data to show coordination with the appropriate fishery management agency(ies); and

(B) a plan that provides a list of the measures proposed to be implemented and an explanation of how the owner or operator will demonstrate and continue to ensure that the proposed restoration measures will maintain the fish and shellfish in the waterbody to a substantially similar level to that which would be achieved through (7)(a) and (b) of ARM 17.30.1211; and

(iv) a verification monitoring plan that must include:

(A) a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or implemented technologies and operational measures. The verification plan must begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the facility is reducing the level of impingement and entrainment to the level documented in (3)(d)(ii). The plan must describe the frequency of monitoring and the parameters to be monitored. The department will use the verification monitoring to confirm that the facility is meeting the level of impingement mortality and entrainment reduction required in (9) of ARM 17.30.1211; and

(B) a plan to conduct monitoring to verify that the restoration measures will maintain the fish and shellfish in the waterbody to a substantially similar level as that which would be achieved through (7)(a) and (b) of ARM 17.30.1211.

(4) The department shall review the materials submitted by an owner or operator of a new facility with cooling water intake structures and impose appropriate requirements and conditions in permits to ensure compliance with ARM 17.30.1211, in accordance with 40 CFR 125.89.

(5) The board adopts and incorporates by reference the following federal regulations as part of the MPDES:

(a) 40 CFR 125.89 (July 1, 2010), which sets forth procedures and requirements for imposing permit conditions for new facilities with cooling water intake structures; and

(b) 40 CFR 122.21(r) (July 1, 2010), which sets forth application requirements for new facilities with cooling water intake structures.

(c) Copies of these federal regulations may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620. (History: 75-5-305, 75-5-401, MCA; IMP, 75-5-305, 75-5-401, MCA; NEW, 2011 MAR p. 2131, Eff. 10/14/11.)

17.30.1213 ALTERNATIVE REQUIREMENTS FOR COOLING WATER INTAKE STRUCTURES FOR NEW FACILITIES

(1) Any interested person may request that alternative requirements less stringent than those required in ARM 17.30.1211(7) through (10) be imposed in a permit. The department may establish alternative requirements less stringent than the requirements of ARM 17.30.1211(7) through (10) only if:

- (a) there is an applicable requirement under ARM 17.30.1211(7) through (10);
- (b) the department determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to the costs EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets;
- (c) the alternative requirement requested is no less stringent than justified by the wholly out of proportion costs or the significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets; and
- (d) the alternative requirement will ensure compliance with other applicable provisions of the Montana Water Quality Act, Title 75, chapter 5, MCA, and the federal Clean Water Act.

(2) The burden is on the person requesting the alternative requirement to demonstrate that alternative requirements should be authorized. (History: 75-5-305, 75-5-401, MCA; IMP, 75-5-305, 75-5-401, MCA; NEW, 2011 MAR p. 2131, Eff. 10/14/11.)

17.30.1214 TECHNOLOGY-BASED REQUIREMENTS FOR COOLING WATER INTAKE STRUCTURES FOR EXISTING FACILITIES

(1) The purpose of this rule is to establish technology-based requirements that apply to the location, design, construction, and capacity of the cooling water intake structures at existing facilities. This rule implements section 316(b) of the federal Clean Water Act for existing facilities. These requirements are implemented through MPDES permits.

(2) Section 316(b) of the federal Clean Water Act provides that any standards established pursuant to section 301 and 306 of the federal Clean Water Act and applicable to point sources shall require that the location, design, construction, and capacity of the cooling water intake structure reflect the best technology available for minimizing adverse environmental impact.

(3) Existing facilities with cooling water intake structures that are not subject to technology-based requirements under ARM 17.30.1211 must meet the requirements of section 316(b) of the federal Clean Water Act, as determined by the department on a case-by-case, best professional judgment (BPJ) basis. (History: 75-5-305, 75-5-401, MCA; IMP, 75-5-305, 75-5-401, MCA; NEW, 2011 MAR p. 2131, Eff. 10/14/11.)

