

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.30.1101, 17.30.1102, 17.30.1105, )  
17.30.1106, 17.30.1107, 17.30.1111, )  
17.30.1341 and 17.30.1342 pertaining to )  
Montana pollutant discharge elimination )  
system (MPDES) permits, purpose and )  
scope, definitions, permit requirements, )  
exclusions, designation procedures: )  
small municipal separate storm sewer )  
systems (MS4s), application procedures, )  
permit requirements, general permits )  
and conditions applicable to all permits )  
and repeal of ARM 17.30.1110, )  
17.30.1115 and 17.30.1117 application )  
procedures: general, notice of intent )  
procedures, and transfer of permit )  
coverage pertaining to storm water )  
discharges )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT AND  
REPEAL

(WATER QUALITY)

TO: All Concerned Persons

1. On August 27, 2014, at 9:30 a.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 and repeal 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., August 18, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.30.1101 PURPOSE AND SCOPE (1) This subchapter is intended to be applied together with ARM Title 17, chapter 30, subchapters 12 and 13 to establish a system for regulating the discharges of potential pollutants from point sources ~~discharges of storm waters into surface~~ to state waters. This subchapter and subchapters 12 and 13 of ARM Title 17, chapter 30, ~~which regulate storm water discharges through Montana pollutant discharge elimination system (MPDES) general permits, permit authorizations, and notices of intent,~~ are intended to be

compatible with the national pollutant discharge elimination system (NPDES) as established by the United States Environmental Protection Agency pursuant to section 402 of the federal Clean Water Act (CWA), 33 USC 1251, et seq. ~~Except as expressly modified in this subchapter, all requirements in ARM Title 17, chapter 30, subchapters 12 and 13 remain effective pertaining to point source discharges of storm water.~~

~~(2) The rules in this subchapter pertain to point source discharges of storm water that do not contain routine process wastewater and that do not contain non-storm water discharges except for the potential non-storm water discharges from MS4s that are listed in ARM 17.30.1111(6)(c)(iii). ARM Title 17, chapter 30, subchapter 13 contains additional requirements pertaining to point source discharges of storm water that routinely contain process wastewater or non-storm water discharges (other than the potential non-storm water discharges for MS4s listed in ARM 17.30.1111(6)(c)(iii)) that are regulated using an individual MPDES permit.~~

AUTH: 75-5-201, 75-5-401, MCA  
IMP: 75-5-401, MCA

REASON: For the reasons set forth below, the board is proposing to amend (1) to clarify a person's duty to apply for an MPDES permit for any discharge of pollutants to state waters, unless the discharge is excluded under ARM 17.30.1310 or 17.30.1106. The term "discharge of pollutant" is defined in ARM 17.30.1102 and 17.30.1304 and means the addition of any pollutant or combination of pollutants to state waters from any point source. The board is also proposing to remove the term "potential" in reference to pollutants because the discharge of "potential pollutants" is not regulated under state or federal permit requirements. The board is proposing to remove the term "surface water" and replace it with "state water," as defined in 75-5-103, MCA. The board is also proposing to remove text from (1) stating that the requirements in subchapter 11 modify the requirements in subchapters 12 and 13. This change is necessary because subchapters 12 and 13 apply to all MPDES permits and are not modified by subchapter 11.

The board is also proposing to remove (2) to provide consistency between storm water discharge permit requirements and ARM 17.30.1322 (pertaining to all MPDES permit application requirements) and to clarify that storm water discharge permits are subject to the provisions of subchapter 13, which pertain to all MPDES permits. These amendments to (2) are necessary to provide storm water discharge permit requirements that are consistent with the applicable federal regulations and board rules pertaining to all discharge permits.

17.30.1102 DEFINITIONS (1) through (4) remain the same.

~~(5) "Final stabilization" means the time at which all soil-disturbing activities at a site have been completed and a vegetative cover has been established with a density of at least 70% of the pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. Final stabilization using vegetation must be accomplished using seeding mixtures or forbs, grasses, and shrubs that are adapted to the conditions of the site. Establishment of a vegetative~~

~~cover capable of providing erosion control equivalent to pre-existing conditions at the site will be considered final stabilization.~~

(6) through (21) remain the same, but are renumbered (5) through (20).

(21) "Significant materials" includes, but is not limited to:

(a) raw materials;

(b) fuels;

(c) materials such as solvents, detergents, and plastic pellets;

(d) finished materials such as metallic products;

(e) raw materials used in food processing or production;

(f) substances designated as hazardous under section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) 42 U.S.C. 9601(14);

(g) any chemical the facility is required to report pursuant to the reporting requirements under section 313 of the federal Emergency Planning and Community Right to Know Act (EPCRA) created under the Superfund Amendments and Reauthorization Act (SARA) also known as SARA Title III, 42 U.S.C. 11001 - 11050;

(h) fertilizers;

(i) pesticides; and

(j) waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

(22) through (27) remain the same.

~~(28) "Storm water discharge associated with construction activity" means a discharge of storm water from construction activities including clearing, grading, and excavation that result in the disturbance of equal to or greater than one acre of total land area. For purposes of these rules, construction activities include clearing, grading, excavation, stockpiling earth materials, and other placement or removal of earth material performed during construction projects. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more.~~

~~(a) Regardless of the acreage of disturbance resulting from a construction activity, this definition includes any other discharges from construction activity designated by the department pursuant to ARM 17.30.1105(1)(f).~~

~~(b) For construction activities that result in disturbance of less than five acres of total land area, the acreage of disturbance does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.~~

~~(c) For construction activities that result in disturbance of five acres or more of total land area, this definition includes those requirements and clarifications stated in (29)(a), (b), (d) and (e).~~

~~(29) (28) "Storm water discharge associated with industrial activity" means a discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.~~

~~(a) remains the same.~~

~~(b) For the categories of industries identified in (e)(ix) of this definition, the term includes only storm water discharges from all the areas (except access roads~~

and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water.

(c) remains the same, but is renumbered (b).

~~(d)~~ (c) Industrial facilities, ~~(including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in ~~(e)~~ (d)(i) through ~~(ix)~~ and (30))~~ (x), include those facilities designated under the provisions of ARM 17.30.1105(1)(f) (d).

(e) remains the same, but is renumbered (d).

(i) facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (Effluent Guidelines and Standards Part 405-471), ~~(except facilities with toxic pollutant effluent standards that are exempted under category ~~(e)~~ (d)(ix)~~ (x) of this definition);

(ii) remains the same.

(iii) facilities classified as standard industrial classifications 10 through 14 (mineral industry) including active and inactive mining operations, except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or areas of non-coal mining operations that have been released from applicable state or federal reclamation requirements after December 17, 1990; oil and gas exploration, production, processing, or treatment operations; and transmission facilities that discharge storm water by contact with, or that come into contact with, any overburden, raw material, intermediate material, finished products, byproducts, or waste products located on the site of such operations. Inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator. Inactive mining operations do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim;

(iii) remains the same, but is renumbered (iv).

~~(iv)~~ (v) landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition, ~~or under the definitions of "storm water discharge associated with mining and oil and gas activities," and "storm water discharge associated with construction activity" that will result in construction-related disturbance of five acres or more of total land area~~) including those that are subject to regulation under subtitle D of RCRA;

(v) through (ix) remain the same, but are renumbered (vi) through (x).

(xi) construction activities including clearing, grading, and excavating except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger plan will ultimately disturb five acres or more.

~~(30) "Storm water discharge associated with mining and oil and gas activity" means the same as the definition for "storm water discharges associated with~~

~~industrial activity" except that the term pertains only to discharges from facilities classified as standard industrial classifications 10 through 14 (mineral industry) that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on the site of such operations. Such facilities include active and inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, and except for areas of non-coal mining operations that have been released from applicable state or federal reclamation requirements after December 17, 1990); and oil and gas exploration, production, processing, or treatment operations; and transmission facilities. "Inactive mining operations" are mining sites that are not being actively mined but that have an identifiable owner/operator, but do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.~~

(29) "Storm water discharge associated with small construction activity" means:

(a) the discharge of storm water from construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The department may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where the conditions given in ARM 17.30.1105(3) are satisfied; and

(b) any other construction activity designated by the department under ARM 17.30.1105, or by the EPA regional administrator, based on the potential of the discharge to contribute to a violation of a water quality standard or to contribute significant pollutants to state surface water.

~~(31) "Storm water pollution prevention plan (SWPPP)" means a document developed to help identify sources of pollution potentially affecting the quality of storm water discharges associated with a facility or activity, and to ensure implementation of measures to minimize and control pollutants in storm water discharges associated with a facility or activity. The department determines specific requirements and information to be included in a SWPPP based on the type and characteristics of a facility or activity, and on the respective MPDES permit requirements.~~

~~(32) "Surface waters" means any waters on the earth's surface including, but not limited to, streams, lakes, ponds, and reservoirs, and irrigation and drainage systems discharging directly into a stream, lake, pond, reservoir, or other surface water. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.~~

(33) through (35) remain the same, but are renumbered (30) through (32).

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend definitions found in ARM 17.30.1102 to add several new definitions found in 40 CFR 122.26(b), the federal rule defining terms used in the federal storm water regulations, and to remove several definitions that are no longer used in this subchapter. The board is also proposing to modify several definitions to ensure consistency with federal storm water regulations found at 40 CFR 122.26. The board's specific reasons for amending these definitions follow.

The board is proposing to remove the definition of final stabilization as this term does not appear in federal storm water regulations found at 40 CFR 122.26. The General Permit for Storm Water Discharges Associated with Construction Activity (General Permit No. MTR1000000) covers storm water discharges associated with construction activity from initiation of construction-related ground disturbance to "final stabilization" of that disturbance. The term "final stabilization" is defined in Part 5 of General Permit No. MTR1000000, to describe the point at which coverage under General Permit No. MTR1000000 may be terminated, but the term does not appear in subchapter 11.

The board is proposing to add a definition of "significant materials" to define materials that may be discharged with storm water and have the potential to impact human health or the environment. The proposed definition at (21) is consistent with the federal definition of "significant materials" at 40 CFR 122.26(b)(12).

The board is proposing to remove the definition of storm water discharges associated with construction activity at (28) and replace it with two new definitions. The first of these definitions is at proposed (28)(d)(xi) and would place construction activities that disturb more than five acres of total land area under the definition of storm water discharges associated with industrial activity. The second definition pertains to storm water discharges associated with small construction activity at proposed (29), which would include the disturbance of less than five acres of total land area. These amendments are necessary to ensure consistency with the federal definitions of storm water discharge associated with construction activities at 40 CFR 122.26(b).

The board is proposing the amendments at current (29) (proposed to be renumbered (28)) to define the term "storm water discharges associated with industrial activity" to include mining and oil and gas activities, currently defined in (30), and construction activities greater than five acres. The board is also proposing to make other minor editorial changes and to renumber the definitions in this rule. This amendment is necessary to provide consistency with the federal definition of industrial activities at 40 CFR 122.26(b)(14). The board is proposing to delete what is currently numbered (29)(b) as the text is not part of the federal definition of industrial activities in 40 CFR 122.26(b)(14). The board is proposing to amend current (29)(e) (proposed to be renumbered (28)(d)) to make minor editorial changes and to correct internal references. The board is proposing to amend current (29)(e)(i) (proposed to be renumbered (28)(d)(i)) to change the reference to subparts

of this definition. The board is also proposing to amend current (29)(d)(iv) (proposed to be renumbered (28)(d)(v)) to remove language that is no longer necessary due to the inclusion of mining and oil and gas activities that were defined in (30) and are now defined in proposed (28) as amended.

The board is proposing to remove the definition of "storm water discharges associated with mining and oil and gas activities," currently at (30), and to include this category of industrial discharge in proposed (28), along with other similar industrial activities. This amendment will provide consistency between the state and federal definitions of storm water discharge associated with industrial activity.

The board is proposing a new definition in (29) to define "storm water discharges associated with small construction activity" consistent with 40 CFR 122.26(b)(15). This amendment is necessary to maintain consistency with federal regulations defining storm water discharges and different application and permitting requirements for small construction in ARM Title 17, chapter 30, subchapter 13.

The board is proposing to delete the definition of "storm water pollution prevention plan" (SWPPP), currently in (31), as this term is no longer used in this subchapter and does not appear in federal storm water regulations found at 40 CFR 122.26. The General Permit for Storm Water Discharges Associated with Construction Activity (General Permit No. MTR1000000) covers storm water discharges associated with construction activity. In order to achieve compliance with the conditions of General Permit No. MTR1000000, the permittee is required to develop a Storm Water Pollution Prevention Plan (SWPPP). The term "SWPPP" is defined in Part 5 of General Permit No. MTR1000000 to describe a document developed to identify sources of pollution potentially affecting the quality of storm water discharges associated with a facility or activity and to ensure implementation of measures to minimize and control pollutants in storm water discharges associated with a facility or activity. The department determines specific requirements and information to be included in a SWPPP based on the type and characteristics of a facility or activity and on the respective MPDES permit requirements.

The board is proposing to remove the definition of "surface waters," currently at (32), because this definition is unnecessary. Surface waters are included in the definition of state water at 75-5-103, MCA. The provisions of this subchapter apply to discharges of storm water to state water unless excluded under ARM 17.30.1106. The board is proposing to renumber current (33) through (35) as (30) through (32). The proposed amendments to these definitions are necessary to ensure consistency and equivalency with the federal definitions found in 40 CFR 122.2 and 40 CFR 122.26(b) and with the definitions found in the board rules at ARM 17.30.1304 and 17.30.1202.

17.30.1105 PERMIT REQUIREMENT (1) Any person who discharges or proposes to discharge storm water from a point source must obtain coverage under an MPDES general permit or another MPDES permit for discharges. On or after October 1, 1994, operators must obtain an MPDES permit for discharges composed entirely of storm water that are not required by (4) to obtain a permit only if:

(a) the discharge is associated with small construction activity as defined in ARM 17.30.1102;

(b) associated with industrial activity;

~~(c) associated with mining and oil and gas activity;~~

~~(d) (b) the discharge is from a small municipal separate storm sewer systems that are as identified defined in ARM 17.30.1102 or as designated pursuant to ARM 17.30.1107;~~

~~(e) (c) for which the department determines that storm water controls are needed based on wasteload allocations that are part of TMDLs that address the pollutants of concern; and or~~

~~(f) (d) that the department determines are that the discharge is contributing to a violation of a water quality standard or are is a significant contributors of pollutants to surface waters.~~

~~(2) For point source discharges of storm water identified in (1)(a) through (f) that are routinely composed entirely of storm water, authorization under an MPDES general permit must be obtained pursuant to this subchapter, unless the discharge is covered under an individual MPDES permit that is issued pursuant to ARM Title 17, chapter 30, subchapter 13 to the same owner or operator for other point source discharges.~~

~~(3) For point source discharges of storm water identified in (1)(a) through (f) that are not routinely composed of storm water, and that routinely discharge pollutants, coverage under an individual MPDES storm water permit or under an MPDES general permit must be obtained pursuant to ARM Title 17, chapter 30, subchapter 13.~~

~~(4) remains the same, but is renumbered (2).~~

~~(5) (3) The department may waive the permit requirements in this subchapter for a storm water discharge associated with construction activity that disturbs less than five acres of total land area if either of the following two conditions exist:~~

~~(a) the value of the rainfall erosivity factor ("R" in the revised universal soil loss equation) is less than five during the period of construction activity. ~~The period of construction activity extends through to final stabilization.~~ The rainfall erosivity factor must be determined using a state-approved method. The owner or operator must certify to the department that the construction activity will take place only during a period when the value of the rainfall erosivity factor is less than five. If unforeseeable conditions occur that are outside of the control of the waiver applicant, and which will extend the construction activity beyond the dates initially applied for, the owner or operator shall reapply for the waiver or obtain authorization under the general permit for storm water discharges associated with construction activity. The waiver reapplication or notice of intent must be submitted within two business days after the unforeseeable condition becomes known; or~~

~~(b) remains the same.~~

~~(6) (4) Prior to October 1, 1994, discharges composed entirely of storm water are not required to obtain an MPDES permit except for:~~

~~(a) discharges with respect to which an individual MPDES permit has been issued prior to February 4, 1987; and~~

~~(b) discharges listed in (1)(a), (b), (c), and (f), except that, for discharges listed in (1)(a), this requirement applies only to storm water discharges associated with construction activity that will result in construction-related disturbance of five acres or more of total land area a discharge associated with an industrial activity; or~~

~~(c) a discharge that the department or EPA regional administrator determines~~

contributes to a violation of a water quality standard or is a significant contributor of pollutants to state waters.

~~(7) (5)~~ For storm water discharges designated by the department under (1) ~~(e) (c)~~ and ~~(f) (d) or (4)(c)~~, the owner or operator shall apply for a permit within 180 days of receipt of the department's notice of designation, unless the department grants a later date.

~~(8) (6)~~ Except as provided in ~~(9) (7)~~, if ~~not authorized under a storm water general permit~~, a permit application or notice of intent must be submitted to the department for storm water discharges existing as of any storm water discharge associated with an industrial activity as defined in ARM 17.30.1102 that is not covered under an existing MPDES permit must submit a permit application to the department by October 1, 1992, that are associated with:

~~(a) industrial activity;~~

~~(b) mining and oil and gas activity; and~~

~~(c) construction activity that will result in construction-related disturbances of five acres or more of total land area and for which storm water discharges are not authorized by a storm water general permit.~~

~~(9) (7)~~ The permit requirements in this subchapter are effective beginning March 10, 2003, for discharges identified in (8)(a) through (c) that are not authorized by a general or individual MPDES permit, and which are any storm water discharge associated with industrial activity from a facility, other than an airport, powerplant, or uncontrolled sanitary landfill, that is owned or operated by a municipality with a population of under 100,000, that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill the permit requirements in this subchapter are effective beginning March 10, 2003.

(10) and (11) remain the same, but are renumbered (8) and (9).

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

**REASON:** The board is proposing to amend the permit requirements for discharges composed entirely of storm water in ARM 17.30.1105 to maintain consistency with the equivalent federal regulations set forth in 40 CFR 122.26(a) and the permit requirements set forth in ARM Title 17, chapter 30, subchapter 13. The proposed amendments to the definitions of "storm water discharges associated with small construction" and "storm water discharges associated with industrial activity" in ARM 17.30.1102 allow for streamlining and better alignment of this subchapter with the applicable federal regulations and board rules in ARM Title 17, chapter 30, subchapter 13. Under 40 CFR 123.25, the permit requirements in ARM 17.30.1105 are a required element of a delegated state's NPDES permit program. The board is also proposing minor changes to wording, punctuation, formatting, and renumbering the provisions in this rule. The board's specific reasons for proposing these amendments follow.

The board is proposing to amend (1) to maintain consistency with the equivalent federal rules at 40 CFR 122.26(a)(9). This federal rule requires permit coverage for certain discharges that are composed entirely of storm water after October 1, 1994. Permit coverage under this rule is limited to: discharges

associated with small construction activity; discharges from designated small municipal separate storm sewer systems; storm water discharges which require a waste load allocation; and discharges which contribute to a violation of water quality standards or are required by current (6) (proposed to be renumbered (4)) to obtain permit coverage. Unless specifically required by (1) or proposed (4) of this rule, discharges composed entirely of storm water are not subject to permit requirements under this subchapter. The board is proposing to amend (1)(a) to reflect the proposed change in the definition of small construction activity in ARM 17.30.1102, which would include construction activities that are greater than one acre and less than five acres. The board is proposing to delete industrial facilities from (1) since they are addressed in (4). The board is also proposing to delete mining and oil and gas activities from (1) since these activities are proposed to be included in the definition of industrial activity in ARM 17.30.1102. The board is also proposing to amend (1)(d) to make minor wording changes and to renumber it (1)(b).

The board is proposing to delete (2) which requires a storm water discharger to obtain coverage under a general permit unless the discharge is covered under an individual permit because this requirement is not found in equivalent federal rules set forth in 40 CFR 122.21, 122.26, and 122.28. When it qualifies for general permit coverage, a facility may obtain coverage under that general permit unless directed by the department to obtain coverage under an individual permit. A facility may also request to be excluded from coverage under the general permit, in accordance with 40 CFR 122.28(b)(3) or ARM 17.30.1341 and obtain an individual permit.

The board is proposing to delete (3) because the board rules in ARM Title 17, chapter 30, subchapter 13, have been updated to include storm water discharges as well as discharges of process wastewater and other types of wastewater making the requirements set forth in (3) unnecessary. A facility that discharges both storm water and other forms of wastewater must submit the applicable information as specified in a general permit issued under ARM 17.30.1341 or individual permit under ARM 17.30.1322.

The board is proposing to amend (6) and renumber it (4). The proposed amendments reflects changes to the definition of "discharges from small construction activity and industrial activity" proposed in ARM 17.30.1102 and are necessary to maintain consistency with 40 CFR 122.26(a)(1). In order to maintain consistency with the equivalent federal rule at 40 CFR 122.26(a)(i), which does not restrict this permitting requirement to discharges for which individual permits were issued prior to February 4, 1987, the board is proposing to delete the word "individual." The board is also proposing to amend (b) to maintain consistency with 40 CFR 122.26(a)(ii) to reflect the proposed amendment in the definition which will include discharges from mining, oil and gas, and construction activities greater than five acres. The board is also proposing a new (c) to maintain consistency with 40 CFR 122.26(a)(v) which is a federal rule requiring discharges of storm water that contribute to a violation of water quality standards, or are a significant contributor of pollutants, to obtain permit coverage.

The board is proposing to amend (7) to make minor word changes and renumber (7) as (5). This amendment is necessary to incorporate changes in the definitions, to incorporate the proposed deletion and renumbering of two subsections in (1), and to incorporate the proposed addition of (4)(c).

The board is proposing to amend (8) and renumber it as (6). The proposed amendment also deletes (8)(a) through (c), which would no longer be necessary if the amendments are adopted as proposed. The proposed amendments to the definition of "storm water discharges associated with industrial activity" at ARM 17.30.1102 will incorporate the activities described in existing (a) through (c).

The board is proposing to amend (9) and renumber it as (7). The proposed amendments maintains consistency with 40 CFR 122.26(e)(1)(ii), which is a federal rule establishing application deadlines for certain categories of industrial activities.

17.30.1106 EXCLUSIONS (1) In addition to the exclusions stated in ARM 17.30.1310, the following storm water discharges do not require MPDES permits:

(a) remains the same.

(b) existing or new discharges composed entirely of storm water from oil or gas exploration, production, processing, or treatment operations, or transmission facilities, unless the operation or facility:

(i) has had, at any time since November 16, 1987, a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6, 40 CFR 117.21, or 40 CFR 302.6; or

(ii) contributes to a violation of a water quality standard; ~~or~~

~~(iii) has a storm water discharge associated with construction activity, as defined in this subchapter;~~

(c) ~~existing or new discharges composed entirely of storm water from mining operations, unless the discharge has come into contact with any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations~~ of storm water runoff from mining operations, from oil and gas exploration, production, processing, treatment operations, or transmission facilities, if such existing or new discharges are composed entirely of flows which are from conveyances or systems of conveyances including, but not limited to, pipes, conduits, ditches, and channels, used for collection and conveying precipitation runoff and which have not come into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operation. For purposes of this rule only, "oil and gas exploration, production, processing, treatment operations or transmission facilities" means all field activities or operations associated with exploration, production, processing, or treatment operations or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend ARM 17.30.1106 to maintain consistency with 40 CFR 122.26(c)(1)(iii) and 40 CFR 122.26(a)(2), which are federal rules that exclude field activities or operations associated with oil and gas exploration, production, processing, or treatment from the permit coverage requirements of ARM Title 17, chapter 30, subchapters 11 and 13 for certain

discharges composed entirely of storm water.

The board is proposing to amend (1)(b)(i) and (ii) to make minor editorial changes to reflect the proposed deletion of (1)(b)(iii). The board is proposing to remove (1)(b)(iii) (the exception from the exclusion for oil and gas operations when the activity is associated with construction) because it is not found in the equivalent federal rules at 40 CFR 122.26(c)(1)(iii) and 40 CFR 122.26(a)(2) and the board has determined that it is unnecessary to maintain the exception for construction activities to protect human health and the environment because the proposed rule amendments maintain the authority to require an MPDES permit for storm water discharges associated with oil or gas exploration, production, processing, treatment operations, or transmission facilities when the operation or facility has had a storm water discharge resulting in a reportable quantity for which notification is or was required; or a storm water discharge that contributes to a violation of a water quality standard. These federal rules exclude storm water discharges from mining and from operations associated with oil and gas exploration, production, processing, treatment, or transmission facilities, including construction and other field activities from storm water discharge permit requirements provided these discharges do not come into contact with overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operation.

The board is proposing to amend (1)(c) to expand the scope of this exclusion to oil and gas operations, consistent with 40 CFR 122.26(a)(2) (July 1, 2005) (the later version was vacated by the Ninth Circuit in *NRDC v. U.S. EPA*, 526 F.3d 591 (2008)) and with 33 USC 1342(l)(2) (CWA § 402(l)(2)), which exclude these activities from regulation under the national pollutant discharge elimination system. The board is proposing new (1)(c)(i) to clarify, for the purposes of this exclusion, the meaning of the term "oil and gas exploration, production, processing, treatment operations, or transmission facilities." This definition is consistent with 33 USC 1362(24) (§ 323 of the Energy Policy Act). These amendments are necessary to implement the storm water discharge permitting exclusions for mining and oil and gas activities provided under the federal Clean Water Act.

17.30.1107 DESIGNATION PROCEDURES: SMALL MS4S (1) through (3) remain the same.

(4) The department may designate an MS4 other than those identified in ARM 17.30.1102(23) pursuant to the criteria in ARM 17.30.1105(1) ~~(e)~~ (c) or ~~(f)~~ (d).

(5) through (13) remain the same.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend ARM 17.30.1107(4) to reflect changes that are proposed in ARM 17.30.1105(1). The changes in ARM 17.30.1105(1) reflect the changes in the definition of storm water discharges associated with industrial activity to include mining, oil and gas activities, and large construction activities. The proposed changes are also necessary to maintain the correct internal cross reference to this rule and to maintain consistency with the federal definitions at 40 CFR 122.26(a)(9) and 122.26(b).

17.30.1111 APPLICATION PROCEDURES, PERMIT REQUIREMENTS: SMALL MS4S (1) Owners or operators of small MS4s shall apply for authorization under an MPDES permit as provided in ARM 17.30.1110 and this rule obtain coverage under an MPDES general or individual permit and are subject to the following requirements:

(a) and (b) remain the same.

(2) Small MS4s shall complete ~~an application for authorization~~ a notice of intent in accordance with the requirements ~~in ARM 17.30.1110~~ specified in a general permit issued pursuant to ARM 17.30.1341 or submit an application for an individual permit and comply with the application requirements set forth in (19). The ~~application general permit must, also include at a minimum, require~~ the following information:

(a) through (18) remain the same.

(19) An operator of a small MS4 that does not obtain coverage under a general permit must obtain coverage by the dates established in (1) and submit an application for an individual permit that includes the required permit application information specified in 40 CFR 122.26(d).

(20) The board adopts and incorporates by reference 40 CFR Part 122.26(d) (July 1, 2013), which sets forth application requirements for large or medium municipal separate storm sewers or for municipal separate storm sewers that are designated subject to permit requirements, as part of the Montana pollutant discharge elimination system. Copies of these federal regulations may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend the application procedures in ARM 17.30.1111 to reflect proposed changes in the general permit rule in ARM 17.30.1341, the proposed repeal of ARM 17.30.1110, and to maintain consistency with the federal regulations related to permit applications for small MS4s at 40 CFR 122.33. This federal rule sets forth application procedures and timeframes for small MS4s and is a required element of a delegated state's permit program as required by 40 CFR 123.25(a)(42). The proposed amendments are necessary to correct citations to the appropriate state regulation governing the application requirements for general permits. The permit requirements for small MS4 operators given in this rule remain unchanged. The board's specific reasons for proposing these amendments follow.

The board is proposing to amend (1) to provide that an operator of an MS4 must obtain permit coverage under a general permit or an individual permit and to remove the reference to ARM 17.30.1110 which is proposed for repeal. The proposed amendment is necessary to maintain consistency with 40 CFR 122.28(b), which sets forth the general administrative requirements for all general permits.

The board is proposing to amend (2) to provide that the operator of a small MS4 may submit a notice of intent to be covered under the general permit or submit

an application for an individual permit and that the application requirements are found in new (19). ARM 17.30.1341 and the federal rule at 40 CFR 122.28(b) require the contents of the notice of intent to be specified in the general permit. The board is also proposing to amend (2) to clarify that the general permit must at minimum contain the elements in (a) through (c). These amendments are necessary to maintain consistency with the equivalent federal rule related to permit applications for small MS4s found at 40 CFR 122.33 and 122.34, which are required by 40 CFR 123.25(42) to be part of a delegated state's permit program.

The board is proposing to add new (19) to the application requirements for a small MS4 to maintain consistency with the equivalent federal rule found at 40 CFR 122.33, which is required by 40 CFR 123.25(42) to be part of a delegated state's permit program.

The board is proposing new (20) to incorporate 40 CFR 122.26(d) and the federal application requirements applicable to large or medium MS4s, or to small MS4s that are either designated or choose to obtain a permit for their discharges in order to retain state primacy under the federal Clean Water Act.

17.30.1341 GENERAL PERMITS (1) The department may issue general permits for the following categories of point sources which the board has determined are appropriate for general permitting under the criteria listed in 40 CFR 122.28 as stated in ARM 17.30.1105 in accordance with the following:

- ~~(a) cofferdams or other construction dewatering discharges;~~
- ~~(b) ground water pump test discharges;~~
- ~~(c) fish farms;~~
- ~~(d) placer mining operations;~~
- ~~(e) suction dredge operations using suction intakes no larger than four inches in diameter;~~
- ~~(f) oil well produced water discharges for beneficial use;~~
- ~~(g) animal feedlots;~~
- ~~(h) domestic sewage treatment lagoons;~~
- ~~(i) sand and gravel mining and processing operations;~~
- ~~(j) point source discharges of storm water;~~
- ~~(k) treated water discharged from petroleum cleanup operations;~~
- ~~(l) discharges from public water supply systems, as determined under Title 75, chapter 6, MCA;~~
- ~~(m) discharges to wetlands that do not contain perennial free surface water;~~
- ~~(n) discharges from road salting operations;~~
- ~~(o) asphalt plant discharges;~~
- ~~(p) discharges of hydrostatic testing water;~~
- ~~(q) discharges of noncontact cooling water;~~
- ~~(r) swimming pool discharge;~~
- ~~(s) septic tank pumper disposal sites; and~~
- ~~(t) pesticide application.~~

(a) The general permit must be written to cover one or more categories or subcategories of discharges or facilities described in the permit under (b), except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries such as:

(i) designated planning area under sections 208 and 303 of the federal Clean Water Act;

(ii) sewer districts or sewer authorities;

(iii) city, county, or state political boundaries;

(iv) state highway systems;

(v) standard metropolitan statistical areas as defined by the federal Office of Management and Budget;

(vi) urbanized areas as designated by the U.S. Bureau of Census; or

(vii) any other appropriate division or combination of boundaries.

(b) the general permit may be written to regulate one or more categories or subcategories of discharges or facilities, within the area described in (1)(a), where the sources within a covered subcategory of discharges are either:

(i) storm water point sources; or

(ii) one or more categories or subcategories of point sources, other than storm water point sources, if the sources within each category or subcategory all:

(A) involve the same or substantially similar types of operations;

(B) discharge the same types of wastes;

(C) require the same effluent limitations or operating conditions;

(D) require the same or similar monitoring; and

(E) in the opinion of the department, are more appropriately controlled under a general permit than under individual permits.

(c) Where sources within a specific category or subcategory of discharges are subject to water quality-based limits imposed pursuant to 40 CFR 122.44, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

(d) The general permit must clearly identify the applicable conditions for each category or subcategory of discharges covered by the permit.

(e) The general permit may exclude specified sources or areas from coverage.

(2) Although MPDES general permits may be issued for a category of point sources located throughout the state, they may also be restricted to more limited geographical areas. General permits may be issued, modified, revoked and reissued, or terminated by the department in accordance with applicable requirements of ARM 17.30.1363 through 17.30.1365, and ARM 17.30.1370 through 17.30.1378. Unless EPA comments upon, objects to, or makes recommendations with respect to a proposed general permit in accordance with 40 CFR 123.44, the effective date of an MPDES general permit is 90 days after the receipt of the proposed permit by EPA.

(3) Prior to issuing a MPDES general permit, the department shall prepare provide a public notice which includes the equivalent of information listed in ARM 17.30.1372(6) and shall publish the same as follows: in accordance with the requirements of ARM 17.30.1372 and shall adhere to the requirements of ARM 17.30.1373 through 17.30.1377 regarding public comments and public hearings. The department shall provide a copy of the public notice

(a) prior to publication, notice to the U.S. Environmental Protection Agency;

(b) direct mailing of notice to the Water Pollution Control Advisory Council and to any persons who may be affected by the proposed general permit;

~~(c) publication of notice in a daily newspaper in Helena and in other daily newspapers of general circulation in the state or affected area;~~

~~(d) after publication, a hearing must be held and a 30-day comment period allowed as provided in ARM 17.30.1372 through 17.30.1377 and 17.30.1383.~~

~~(4) A person owning or proposing to operate a point source who wishes to operate obtain coverage under a MPDES general permit shall complete submit to the department a standard MPDES application or written notice of intent form available from the department for the particular to be covered by the general permit. A discharger who fails to submit a written notice of intent in accordance with the terms of the general permit may not discharge under the permit. A complete and timely notice of intent to be covered in accordance with general permit requirements fulfills the requirements for permit application for purposes of ARM 17.30.1023, 17.30.1105, 17.30.1313, and 17.30.1322. Except for notices of intent, the department shall, within 30 days of receiving a completed application, either issue to the applicant an authorization to operate under the MPDES general permit, or shall notify the applicant that the source does not qualify for authorization under a MPDES general permit, citing one or more of the following reasons as the basis for denial:~~

~~(a) the specific source applying for authorization appears unable to comply with the following requirements:~~

~~(i) effluent standards, effluent limitations, standards of performance for new sources of pollutants, toxic effluent standards and prohibitions, and pretreatment standards;~~

~~(ii) water quality standards established pursuant to 75-5-301, MCA;~~

~~(iii) prohibition of discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;~~

~~(iv) prohibition of any discharge which the secretary of the army acting through the chief of engineers finds would substantially impair anchorage and navigation;~~

~~(v) prohibition of any discharges to which the regional administrator has objected in writing;~~

~~(vi) prohibition of any discharge which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Act; and~~

~~(vii) any additional requirements that the department determines are necessary to carry out the provisions of 75-5-101, et seq., MCA.~~

~~(b) the discharge is different in degree or nature from discharges reasonably expected from sources or activities within the category described in the MPDES general permit;~~

~~(c) an MPDES permit or authorization for the same operation has previously been denied or revoked;~~

~~(d) the discharge sought to be authorized under a MPDES general permit is also included within an application or is subject to review under the Major Facility Siting Act, 75-20-101, et seq., MCA;~~

~~(e) the point source will be located in an area of unique ecological or recreational significance. Such determination must be based upon considerations of Montana stream classifications adopted under 75-5-301, MCA, impacts on fishery resources, local conditions at proposed discharge sites, and designations of wilderness areas under 16 USC 1132 or of wild and scenic rivers under 16 USC~~

1274.

~~(5) Where authorization to operate under a MPDES general permit is denied, or a notice of intent under ARM 17.30.1115 is not applicable, the department shall proceed, unless the application or notice of intent is withdrawn, to process the application or notice of intent through the individual MPDES permit requirements under this subchapter. Subject to (a) and (b), the contents of the written notice of intent must be specified in the general permit and must contain information necessary for adequate program implementation including, at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). A notice of intent must be signed in accordance with ARM 17.30.1323. In addition to these general requirements, the following specific provisions apply:~~

(a) Subject to the department's approval, a general permit for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative information and meet notice of intent requirements.

(b) Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information required in the Notice of Intent for MPDES Application for New and Existing Concentrated Animal Feeding Operation (CAFO Notice of Intent) provided by the department and the information specified in 40 CFR 122.21(i)(1), including a topographic map of the area in which the CAFO is located.

~~(6) Every MPDES general permit must have a fixed term not to exceed five years. Except as provided in (10), every authorization to operate under a MPDES general permit expires at the same time the MPDES general permit expires. Each general permit must specify the deadline for submitting notices of intent to be covered and the dates(s) when a discharger is authorized to discharge under the permit.~~

(7) A general permit must specify, by one of the following methods, whether a discharger that has submitted a complete and timely notice of intent to be covered under the general permit is authorized to discharge under the permit:

(a) upon receipt of the notice of intent by the department;

(b) after a waiting period specified in the general permit;

(c) on a date specified in the general permit; or

(d) upon receipt of written notification of authorization from the department.

~~(7) (8) Where authorization to operate discharge under a MPDES general permit is denied solely because the source is already issued to, or a notice of intent received from, a point source covered by an individual MPDES permit, the department owner or operator may request shall, upon issuance of the authorization to operate or receipt of the notice of intent under termination of the MPDES individual general permit, terminate the individual MPDES permit and coverage for that point source under the general permit. Upon termination of the individual permit, the general permit applies to the source.~~

(8) (9) Any person authorized or eligible to operate discharge under a MPDES general permit may at any time, upon providing reasons supporting the request or application, apply for an individual MPDES permit according to the

procedures in this subchapter. Upon issuance of the individual MPDES permit, the department shall terminate any MPDES general permit authorization or notice of intent held by such person authorization to discharge under the general permit automatically terminates.

~~(9)~~ (10) The department, on its own initiative or upon the petition of any interested person, may ~~modify, suspend, or revoke in whole or in part a MPDES general permit or an authorization or notice of intent to operate under a MPDES general permit during its term in accordance with the provisions of ARM 17.30.1361 for any cause listed in ARM 17.30.1361 or~~ require any discharger authorized by a general permit to obtain an individual permit for under any of the following causes circumstances:

(a) ~~the approval of a water quality management plan has been approved that contains~~ containing requirements applicable to categories or subcategories of discharges or facilities point sources covered in the MPDES a general permit;

(b) ~~determination by the department has determined that the discharge from any the authorized source is a significant contributor to pollution as determined by the factors set forth in 40 CFR 122.26(c)(2) 122.28(b)(3) including the location of the discharge, the size of the discharge, the quantity and nature of the pollutants discharged, and other relevant factors; or~~

(c) ~~a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to a the source or to a category of sources or subcategory of discharges or facilities;~~

(d) ~~occurrence of one or more of the following circumstances: the discharger is not in compliance with the conditions of the general permit;~~

~~(i) violation of any conditions of the permit; or~~

~~(ii) obtaining an MPDES permit by misrepresentation or failure to disclose fully all relevant facts;~~

(e) circumstances have changed since the time of the request to be covered by the general permit so that the discharger is no longer appropriately controlled under the general permit;

(f) effluent limitations guidelines (ELGs) have been promulgated for the source, or a category or subcategory of discharges or facilities covered under the general permit; or

~~(iii)~~ (g) there is a change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge authorized under the general permit; or

~~(iv) a failure or refusal by the permittee to comply with the requirements of 75-5-602, MCA.~~

(10) (11) ~~The department may reissue an authorization to operate under a MPDES general permit provided that the requirements for reissuance of MPDES permits specified in ARM 17.30.1322 are met. The department may require any owner or operator authorized to discharge under a general permit to apply for an individual permit as provided in (10) only upon written notice to the owner or operator that an individual permit application is required. This notice must include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual permit the general permit as it applies to the~~

individual permittee will automatically terminate. The department may grant additional time upon request of the applicant.

~~(11)~~ (12) The department shall maintain and make available to the public a register of all sources and activities authorized to discharge ~~operate, or with notices of intent to discharge,~~ under each MPDES general permit, including the location of such sources and activities, and shall provide copies of such registers upon request.

(12) remains the same, but is renumbered (13).

~~(13)~~ (14) For purposes of this rule, the board adopts and incorporates by reference the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620-0901:

~~(a) 40 CFR 122.28 (July 1, 2012), which sets forth criteria for selecting categories of point sources appropriate for general permitting;~~

~~(b) 40 CFR 124.10(d)(1) (July 1, 2012), which sets forth minimum contents of public notices; and~~

~~(c) (a) 40 CFR 122.23(h) (July 1, 2012), which sets forth procedures for CAFOs seeking coverage under a general permit;~~

(b) 40 CFR 122.44 (July 1, 2013), which sets forth procedures for establishing limitations, standards, and other permit conditions;

(c) 40 CFR 123.44(a)(2) (July 1, 2013), which sets forth timeframes for EPA to object to general permits; and

(d) 40 CFR 122.21(i)(1) (July 1, 2013), which sets forth application requirements for new and existing concentrated animal feeding operations.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend the general permit requirements in ARM 17.30.1341 in order to maintain consistency with the federal requirements set forth in 40 CFR 122.28 and provide a uniform rule for the issuance and administration of general permits under both the MPDES and ground water pollution control system (GWPCS) programs. The board is proposing to adopt these federal requirements because they are required elements of a delegated state's permit program and are required to implement the federal Clean Water Act's national pollutant discharge elimination system (NPDES) program. See 40 CFR 123.25. In general, the proposed amendments add criteria for coverage and administrative requirements, clarify public notice and public hearing requirements, and update incorporations by reference to applicable federal rules. The board's specific reasons for adopting the federal requirements into various sections of ARM 17.30.1341 follow. The proposed amendments also make minor changes to wording and punctuation to conform to standard practices for rule formatting.

The board is proposing to amend (1) by adding, consistent with 40 CFR 122.28(a)(1) and (2), criteria with which the department can issue general permits and by removing the specific categories of discharges, which had been listed in (1), as general permits were not developed for some of those categories and some of the categories are not subject to permits such as discharges from road salting and septic systems. Categories of discharges currently listed may still be covered by a

general permit provided they meet the criteria now proposed in (1).

The board is proposing new language in (2) to provide that general permits are subject to the same requirements for issuance, modification, revocation and reissuance, and termination as set forth in ARM Title 17, chapter 30, subchapter 13 except that the issuance date is delayed for 90 days to allow EPA to review and object to state-issued general permits. The amendment is necessary to maintain consistency with 40 CFR 123.44(a)(2), which is the equivalent federal rule. Existing text in (2) that is redundant with the requirements and categories for issuing general permits given in (1) and in ARM Title 17, chapter 30, subchapter 13 is proposed to be stricken.

It is necessary to amend the public notice requirements for general permits, as the board proposed in (3), in order for the rules in subchapter 11 to reference the public comment and public hearing provisions in subchapter 13 and to be consistent with the board's public notice rules in ARM 17.30.1372 through 17.30.1377, which set forth procedures for responding to public comment and for holding public hearings. After these amendments become effective, permits issued under subchapter 11 will follow the public comment and public hearing provisions in subchapter 13. The board is proposing to retain the requirement in (3) that notice of the general permit be provided to the Water Pollution Control Advisory Council (WPCAC) and to any person affected by the general permit.

The board is proposing to amend the requirements to obtain coverage under a general permit, set forth in (4), to be consistent with the federal rule at 40 CFR 122.28(b)(2). The proposed amendments are necessary to remove the requirement that an owner or operator submit a complete application form because these proposed amendments will instead require an owner or operator wishing to obtain coverage under a general permit to submit a notice of intent. Standardizing the format and procedure serves an objective of general permitting, which is to expedite permitting and lessen the department's administrative burden for groups of similar discharges. The board is also proposing to remove the current rule's requirement to cite one of several specifically listed reasons when coverage is denied. Many of these "reasons" appear in 40 CFR 122.4 and ARM 17.30.1311 and are not specific to general permits. Federal regulations at 40 CFR 122.28 do not include any such requirements for denial of general permit coverage. Instead, conditions for requiring an individual permit, the equivalent of denial of coverage under a general permit, are given in (11), as amended.

The board proposes amendments to (5) to set forth the contents of a notice of intent that are necessary for the program to identify the owner or operator and the discharging facility, properly implement the storm water program, and specify that the signatory requirements for a notice of intent are given in ARM 17.30.1323. It is also necessary that the board propose removal of language regarding denial of general permit coverage as coverage under a general permit is not denied, rather the discharger is required to obtain individual permit coverage. Proposed (5)(a) is necessary to address specific situations where alternative notice of intent requirements may be necessary for certain storm water discharges from inactive facilities on federally owned lands. Proposed (5)(b) is necessary to provide that notices of intent to obtain coverage under a general permit for concentrated animal feeding operations (CAFOs) must be consistent with the federal rule at 40 CFR

122.21(i)(1).

The board is proposing to amend (6) to remove duplicative language and the condition that all authorizations expire on the date the general permit expires and replace it with new language to clarify that the general permit must specify the deadline for submitting a notice of intent and when permit coverage begins. ARM 17.30.1346 specifies that all MPDES permits are effective for a fixed term not to exceed five years, which applies to general permits as well. ARM 17.30.1313 addresses the continuation of expiring permits. The new language is necessary to maintain consistency with the federal requirements at 40 CFR 122.28(b)(2)(iii).

The board is proposing new (7) to specify the method in the general permit by which the permittee will be informed that it is authorized to discharge. The four methods for informing a permittee that it is authorized to discharge under a general permit are: upon receipt of the notice of intent; after a waiting period specified in the permit; on a specific date; or upon written notification by the department. These provisions are necessary to maintain consistency with 40 CFR 122.28(b)(2)(iv).

The board is proposing to amend (7) and renumber it as (8). The proposed amendments remove language that is specific to MPDES permits in order to include and accommodate ground water permits and to remove language that refers to a notice of intent, because that requirement is not consistent with the federal or state regulations governing individual permits and adds nothing to the intent of the rule, which is to provide a process for transferring coverage from an individual to a general permit. The board is also proposing to change the term 'operate' to 'discharge' to clarify that permits only authorize the discharge of pollutants and do not control other aspects of the facilities operations. These provisions are necessary to maintain consistency with the federal requirements for transferring coverage from an individual permit to a general permit in 40 CFR 122.28(b)(3)(v).

The board is proposing to amend (8) and renumber it as (9). The proposed amendments are necessary to remove language specific to MPDES permits, remove language referring to receipt of a notice of intent, and add a requirement that the permittee submit the reasons for requesting an individual permit along with the permit application. Such a requirement for "reasons" is consistent with 40 CFR 122.28 (b)(3)(iii), which provides a process for an owner or operator to request exclusion from the coverage of a general permit by applying for an individual permit. The request will be granted by issuing an individual permit if the reasons cited by the owner or operator are adequate to support the request. This provides the department reasonable discretion to deny coverage under an individual permit in the case where a discharger is already properly covered by a general permit. An objective of general permitting is to ease the department's administrative burdens. Therefore, dischargers should not be able to routinely opt out of coverage by requesting an individual permit. The new language also specifies that the authorization to discharge under the general permit is terminated upon issuance of the individual permit.

The board is proposing to amend (9) and renumber it as (10). The proposed amendments are necessary to remove language that allows the department, on its own initiative or upon request by any interested person, to modify, suspend, or revoke, in whole or in part, a general permit, an authorization, or notice of intent to operate under a general permit. In accordance with (2), general permits are issued,

modified, revoked and reissued, or terminated in accordance with applicable provisions of ARM Title 17, chapter 30, subchapter 13. The proposed language in (10) is consistent with the federal rule at 40 CFR 122.28(b)(3), which specifies the conditions under which an individual discharger authorized under a general permit may be required to obtain an individual permit. The result of the proposed change to (10) is that interested persons may petition the department to require that a discharger, covered by a general permit, be required to obtain an individual permit where the conditions in (10)(a) through (g) are present. These provisions are necessary to maintain consistency with the federal requirements in 40 CFR 122.28(b)(3) for requiring a discharger authorized by a general permit to obtain an individual permit.

The board is proposing to amend (10) and renumber it as (11). The proposed amendments are necessary to remove provisions related to reissuance of an authorization to discharge under a general permit when the requirements of ARM 17.30.1322 are met. This proposed amendment is necessary because ARM 17.30.1322 establishes extensive application requirements for MPDES permits, but excludes "persons covered by general permits under ARM 17.30.1341" from the application requirements. The equivalent federal rule at 40 CFR 122.28(b)(2)(i) states that "[a] complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications." The equivalent language is proposed in the amendments to (4). The board is proposing new language in (11) that will require written notification from the department when a discharger under a general permit is required to submit an application for an individual permit. This notification must include the basis for the decision, appropriate application form(s), and timeframes for submittal of the individual permit application. The new language also specifies that coverage under the general permit terminates upon the effective date of the individual permit. This requirement is consistent with 40 CFR 122.28(b)(3)(ii) for EPA-issued permits.

The board is proposing to amend (11) and renumber it as (12). This amendment is necessary to make technical corrections, to remove language referring to the notice of intent, and to remove language specific to MPDES permits.

The board is proposing to amend (13) and renumber it as (14). The amendments are necessary to incorporate by reference federal rules that support ARM 17.30.1341 and are proposed for incorporation by reference. Two of the federal rules currently incorporated by reference are no longer necessary to support this rule and will be deleted because the criteria for categories of point sources appropriate for general discharge permits are now set forth in (1) and the criteria for public notice in subchapter 13 will apply to general permits. In order to maintain state primacy, the board is proposing to incorporate by reference the following federal rules: 40 CFR 122.44, which sets forth procedures for establishing limitations, standards, and other permit conditions necessary to support the categories of general permits in proposed (1)(c); 40 CFR 123.44(a)(2), which sets forth timeframes for EPA to object to state-issued general permits necessary to support general permit actions by the department under proposed (2); and 40 CFR 122(i)(1), which sets forth application requirements for CAFOs necessary to define notice of intent requirements for such facilities in proposed (5)(b).

17.30.1342 CONDITIONS APPLICABLE TO ALL PERMITS (1) The following conditions described in this rule apply to all MPDES permits. Additional conditions applicable to MPDES permits are set forth in ARM 17.30.1343 ~~17.30.1344~~. All conditions applicable to MPDES permits must be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these rules must be given in the permit.

(~~1~~) (2) The permittee shall comply with all standard conditions in 40 CFR 122.41 and all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(~~a~~) (3) The permittee shall comply with effluent standards or prohibitions established under the Act and rules adopted thereunder including limitations ARM 17.30.1206 for toxic pollutants in ARM 17.30.1206 and is required by federal law to comply with technology-based effluent limitations for solids, sludge, and other pollutants removed in the course of wastewater treatment set forth in ARM Title 17, chapter 30, subchapter 12 within the time provided in the rules that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(~~b~~) (4) The Act provides that any person who violates a permit condition or limitation is subject to a civil penalty not to exceed ~~\$10,000~~ 25,000 per day ~~of such~~ for each violation. Any person who willfully or negligently violates 75-5-605, MCA, including a permit condition or limitation, is subject to ~~a fine~~ criminal penalties not to exceed \$25,000 per day of violation, ~~or~~ imprisonment for not more than one year, or both. In the case of a second or subsequent conviction for a willful or negligent violation, a person is subject to a fine of not more than \$50,000 per day of violation, imprisonment of not more than two years, or both. The Act provides that any person who violates a permit condition or limitation may be assessed an administrative penalty by the department not to exceed \$10,000 per violation per day, with the maximum penalty assessed not to exceed \$100,000 for any related series of violations.

(2) remains the same, but is renumbered (5).

(~~3~~) (6) It ~~may~~ is not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(4) through (8) remain the same, but are renumbered (7) through (11).

(~~9~~) (12) The permittee shall allow the department, or an authorized representative, including an authorized contractor acting as a representative of the department, upon the presentation of credentials and other documents as may be required by law, to:

(a) through (d) remain the same.

(~~10~~)(~~a~~) (13) Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

(~~b~~) (14) Except for records and monitoring information required by this permit that are related to the permittee's sewage sludge use and disposal activities, which must be retained for a period of at least five years, or longer, ~~the~~ permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring

instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the department at any time.

~~(e)~~ Records of monitoring information must include:

(i) through (vi) remain the same, but are renumbered (a) through (f).

~~(d)~~ (15) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit another method is required under 40 CFR 503.8 or Subchapter N.

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

~~(41)~~ (17) All applications, reports, or information submitted to the department must be signed and certified. ~~(See ARM 17.30.1323.)~~ as required by ARM 17.30.1323.

~~(42)(a)~~ (18) The permittee shall give notice to the department, as soon as possible, of any planned physical alterations or additions to the permitted facility. ~~Notice is required only when:~~

~~(i)~~ (a) the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in ARM 17.30.1340~~(2)~~; or

(ii) remains the same, but is renumbered (b).

(b) remains the same, but is renumbered (19).

~~(e)~~ (20) This permit is not transferable to any person, except after notice to the department. The department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act. ~~(See ARM 17.30.1360; in some cases, modification or revocation and reissuance is mandatory.)~~ or mandatory, as required by ARM 17.30.1360 and the Act.

~~(d)~~ (21) Monitoring results must be reported at the intervals specified elsewhere in this permit and subject to the following requirements:

(i) remains the same, but is renumbered (a).

~~(ii)~~ (b) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136, ~~or as using~~ procedures specified in the permit for any pollutant for which an analytical method is not established by 40 CFR Part 136, or by another method required for an industry-specific waste stream under 40 CFR 503.8 or 40 CFR subchapter N, the results of such monitoring must be included in the calculation and reporting of the data submitted in the DMR.

~~(iii)~~ (c) Calculations for all limitations, which require averaging of measurements, must utilize an arithmetic mean unless otherwise specified by the department in the permit.

~~(e)~~ (22) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.

~~(f)(i)~~ (23) The permittee shall report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours

from the time the permittee becomes aware of the circumstances. A written submission must also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) (24) The following must be included as information which must be reported within 24 hours under this rule:

(A) and (B) remain the same, but are renumbered (a) and (b).

~~(C)~~ (c) violation of a maximum daily discharge limitation for any of the pollutants listed by the department in the permit to be reported within 24 hours ~~(see ARM 17.30.1344 and as required by 40 CFR 122.44(g) and 40 CFR 122.41).~~

(iii) (25) The department may waive the written report on a case-by-case basis for reports under ~~(ii) (24), above~~ if the oral report has been received within 24 hours.

~~(g)~~ (26) The permittee shall report all instances of noncompliance not reported under ~~(a) (18)(a), (d) (21), (e) (22), and (f) (23)~~, at the time monitoring reports are submitted. The reports must contain the information listed in ~~(f) (23)~~.

(h) remains the same, but is renumbered (27).

~~(13)(a)~~ (28) The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of ~~(b) and (e) (29)(a) and (30)~~.

(29) Bypasses are subject to the following notification requirements:

~~(b) (a)~~ (a) If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the department, if possible at least ten days before the date of the bypass. ~~The permittee shall submit notice of an unanticipated bypass as required in (12)(f) (24-hour notice).~~

(b) The permittee shall submit notice of an unanticipated bypass as required in (23), except as provided in (28).

~~(c)~~ (30) ~~Except as provided in (29), B~~bypass is prohibited, and the department may take enforcement action against a permittee for bypass, unless:

(i) and (ii) remain the same, but are renumbered (a) and (b).

~~(iii)~~ (c) the permittee submitted notices as required under ~~(e) (30)~~.

~~(d)~~ (31) The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three conditions listed above in ~~(c)(i) (30)(a)~~.

~~(14)(a)~~ (32) An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of ~~(b) (33)~~ are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

~~(b)~~ (33) A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) and (ii) remain the same, but are renumbered (a) and (b).

~~(iii) (c)~~ the permittee submitted notice of the upset as required in ~~(12)(f)(ii)(B)~~ ~~(24)(b)~~ ~~(24-hour notice)~~; and

~~(iv) (d)~~ the permittee complied with any remedial measures required under ~~(4) (7)~~.

(c) remains the same, but is renumbered (34).

~~(15) (35)~~ The board ~~hereby adopts and incorporates herein by reference (see ARM 17.30.1303 for complete information about all materials incorporated by reference)~~ adopts and incorporates by reference the following federal regulation as part of the Montana pollutant discharge elimination system. Copies of these federal regulations may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901:

(a) 40 CFR Part 136 (July 1, 2013), which is a series of federal agency rules setting sets forth guidelines establishing test procedures for the analysis of pollutants; and

(b) 40 CFR 122.41 (conditions applicable to all discharge permits);

(b) (c) 40 CFR 122.44(g) (July 1, 2013), which is a federal agency rule sets forth notification requirements requiring 24-hour notice of any violation of maximum daily discharge limits for toxic pollutants or hazardous substances;

(d) 40 CFR 503.8 (July 1, 2013), which sets forth sampling and analytical methods for sewage sludge that are approved for use in NPDES permits; and

(e) 40 CFR Subchapter N (July 31, 2013), which sets forth technology-based effluent limitations and specific analytical methods applicable to these limitations.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend the conditions applicable to all permits in ARM 17.30.1342 in order to make the rule consistent with the equivalent federal requirements set forth in 40 CFR 122.41 and the Montana Water Quality Act. ARM 17.30.1342 defines and establishes certain conditions which apply to all MPDES permits and must be incorporated into the permits either expressly or by reference. The proposed amendments update the standard permit language to incorporate changes in the Montana Water Quality Act for assessment of civil and administrative penalties for noncompliance with permit conditions. The proposed amendments make minor changes to wording and punctuation to conform to standard practices for rule formatting. The board's specific reasons for deletions and amendments to ARM 17.30.1342 follow. The board has also renumbered the rule to simplify the rule and make it more readable.

The board is proposing to amend the language in new (1) to correct the reference for additional conditions applicable to certain categories of permits from ARM 17.30.1344 to 17.30.1343. ARM 17.30.1343 is the board's rule that is equivalent to 40 CFR 122.42 in federal rule, which contains the additional conditions that are applicable to certain categories of permits. This amendment is necessary to maintain consistency with the federal rule at 40 CFR 122.41 and to correct formatting.

The board is proposing to amend current (a) to add language requiring compliance with the limitations and timeframes for toxic pollutants and for sewage

sludge use and disposal in the Act and rules adopted thereunder, to provide that failure to comply with these standards and limitations is a violation of the permit even if the permit has not been modified to include these requirements, and to renumber (a) to (1)(a)(i). The federal CWA requires the administrator of the EPA to identify and promulgate effluent standards for toxic pollutants and to periodically revise and update the list of toxic pollutants and applicable standards for each listed toxic pollutant. Section 405(d) of the federal CWA requires the administrator of the EPA to develop and promulgate regulations governing the use and disposal of sewage sludge and identify and regulate toxic pollutants which may be present in such material. The state incorporates these requirements as standard permit conditions by incorporating 40 CFR 122.41 by reference. The permittee must comply with both of these federal provisions even if the permit has not been modified to incorporate these requirements. This amendment is necessary to maintain consistency with the federal requirements and standard conditions at 40 CFR 122.41(a)(1) and to correct formatting. Current (a) is proposed to be renumbered (3).

The board is proposing to amend current (b), regarding a permittee's duty to comply with the Montana Water Quality Act (the Act) and all permit conditions, by clarifying what civil, criminal, and administrative penalties may result from noncompliance with the permit or the applicable requirements under the Act or administrative rules and by renumbering. These changes are necessary to provide notice of penalties for noncompliance with permit conditions, the Act, and rules and to correct erroneous language. The board is also proposing to add language addressing administrative penalties that may be assessed under 75-5-611, MCA, for permit violations or violations of the Act. Administrative penalties may be assessed in the amount of up to \$10,000 per day for each violation, but not exceed \$100,000 for a series of related violations. These amendments are necessary to maintain consistency with the Act and 40 CFR 122.41(a) and 123.27(a). Current (b) is proposed to be renumbered (4).

The board is proposing to amend current (3), regarding compliance responsibilities for permittees, to make a minor word change and to renumber (3) to (6).

The board is proposing to amend current (9), which adopts and incorporates federal requirements regarding inspection and entry of permitted facilities by the department, to authorize a contractor, who presents appropriate credentials and is acting as a representative of the department, to access a permittee's premises and inspect and perform sampling to determine permit compliance. This amendment is necessary to maintain consistency with the federal rule at 40 CFR 122.41(i). Current (9) is proposed to be renumbered (12).

The board is proposing to amend current (10)(a), which incorporates federal requirements regarding monitoring and records, and to renumber (10)(a) to (13). The board is proposing to amend current (10)(b) to include language requiring monitoring records related to sludge use and disposal to be kept for five years and to renumber (10)(b) to (14). This amendment is necessary to maintain consistency with 40 CFR 122.41(j). The board is proposing a minor word change to current (10)(c) and is proposing to renumber (i) through (vi) as (a) through (f). The board is also proposing to amend current (10)(d), which specifies approved testing procedures to include methods specified in 40 CFR 503.8 and subchapter N, which

are federal regulations governing sewage sludge monitoring requirements and technology-based effluent limitation guidelines, respectively. This amendment is necessary to maintain consistency with 40 CFR 122.41(j). Current (10)(d) is proposed to be renumbered (15). The board is also proposing to add a new (16) to establish penalties that are consistent with 75-5-633, MCA, for falsifying, tampering with, or knowingly altering monitoring equipment or test methods causing inaccurate monitoring results. This amendment is necessary to maintain consistency with 40 CFR 122.41(j)(5).

The board is proposing to amend current (11), regarding signatory requirements, to make minor editorial changes, and renumber (11) to (17).

The board is proposing to amend current (12)(a), regarding the permittee's reporting and notification requirements, to correct minor changes to wording and punctuation, and to renumber (12)(a) to (18). The board is proposing to clarify when the permittee is required to notify the department of alterations or additions to permitted facilities and to correct formatting. Current (12)(a)(i) is proposed to be renumbered (18)(a) and the reference to ARM 17.30.1340(2), regarding new sources, is corrected to make the reference applicable to the entire rule. The board is also proposing to modify current (12)(c) and (12)(d) to make minor editorial changes and to renumber (12)(c) to (20) and (12)(d) to (21). The board is also proposing to amend current (12)(d)(ii) to include analytical results obtained using test methods that are specified in 40 CFR 136, the permit, 40 CFR 503.8, or 40 CFR subchapter N in permit calculations that are reported to the department in the DMR. Current (12)(d)(ii) is proposed to be renumbered (21)(b). Federal regulations at 40 CFR 136, 40 CFR 503.8, and 40 CFR subchapter N address effluent limitations that are adopted by the board at ARM 17.30.1207 and are required to be included in all MPDES permits issued by the department. In some cases, the effluent limitations given in these subchapters require specific analytical methods that are not included in 40 CFR 136, but are applicable to a specific industrial category. The board is proposing to make minor editorial changes to current (12)(d)(iii), (12)(e), (12)(f)(i), and (12)(f)(ii) and renumber them to (21)(c), (22), (23), and (24), respectively. The board is also proposing to modify current (12)(f)(ii)(C) to eliminate language directing permittees to ARM 17.30.1344, because the discharge limitations requiring 24-hour reporting are not contained in ARM 17.30.1344, and to renumber (12)(f)(ii)(C) to (24)(c). This provision requires permittees to report exceedances or violations, within 24 hours, of maximum daily discharge limitations for pollutants, which are listed by the department in an MPDES permit. 40 CFR 122.44(g) places the burden on the department to list those pollutants in an MPDES permit for which this 24-hour reporting requirement must be required. ARM 17.30.1344 adopts by reference 40 CFR 122.44(g). For clarification, the board is proposing text which points the permittee directly to 40 CFR 122.44(g). The board is also proposing to amend current (12)(f)(iii) and (12)(g) to correct internal references and to renumber (12)(f)(iii) to (25) and (12)(g) to (26).

The board is proposing to make minor amendments to current (13)(a), regarding bypass reporting requirements, to make editorial changes, correct formatting, correct internal references, and to renumber (13)(a) to (28). Bypass is the intentional diversion of waste streams from any portion of a treatment facility, as defined in ARM 17.30.1303 and 40 CFR 122.41(m). These proposed changes are

necessary to maintain consistency with 40 CFR 122.41(m). The board is proposing a new (29) to describe the department's bypass notification requirements. Current (13)(b), renumbered (29)(a), is proposed to be amended to provide notification requirements for anticipated bypass. New (29)(b) is being proposed to provide notification requirements for unanticipated bypass. These amendments are being proposed to make the rule consistent with the federal rule. The board is also proposing to amend current (13)(c)(iii) and (13)(d) to correct internal cross references and to renumber (13)(c)(iii) to (30)(c) and (13)(d) to (31).

The board is proposing to make minor amendments to current (14)(a) regarding upset requirements to make editorial changes, correct formatting, and to renumber (14)(a) to (32). An upset occurs when there is unintentional and temporary noncompliance with technology-based effluent limitations due to factors beyond the reasonable control of the permittee and is defined in ARM 17.30.1303 and 40 CFR 122.41(n). These changes are necessary to maintain consistency with 40 CFR 122.41(n) and to correct formatting.

In (33)(c), the board is proposing to reference the general 24-hour notice provision for permit noncompliance.

The board is proposing to incorporate and update all applicable federal rules necessary to support the provisions in ARM 17.20.1342 in proposed amendments to current (15), which is proposed to be renumbered (35). These amendments will also correct formatting and provide consistency with other MPDES rules. The proposed amendments to current (15)(a), proposed to be renumbered (35)(a), incorporate the most recent federal guidelines establishing testing procedures for the analysis of pollutants as given in 40 CFR 136 and the proposed amendments to current (15)(b), proposed to be renumbered (35)(b), clarify the notification requirements for permittees under this rule. The board is further proposing to add a new (35)(c) incorporating 40 CFR 503.8, which addresses additional analytical methods for sewage sludge and new (35)(d), which incorporates analytical methods that are assigned to specific technology-based limitations in 40 CFR subchapter N. The board has adopted federal technology-based effluent limitations as permit requirements in ARM 17.30.1207.

4. The rules proposed for repeal are as follows:

17.30.1110 APPLICATION PROCEDURES: GENERAL (AUTH: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA), located at pages 17-2871 and 17-2872, Administrative Rules of Montana. The board is proposing to repeal ARM 17.30.1110, which sets forth application procedures for storm water discharges other than storm water discharges associated with construction activity. This rule is no longer necessary because application procedures for all individual MPDES permits, including storm water, are found in ARM 17.30.1322. The procedures for issuing and administering MPDES general permits, including storm water general permits, are found in ARM 17.30.1341, as amended. These procedures require filing a notice of intent for coverage under a general permit and are common to all general permits issued under the MPDES rules. ARM 17.30.1322 and 17.30.1341 are equivalent to federal regulations set forth at 40 CFR 122.21, 122.26(c), for individual permits, and 122.28, for general permits. Repeal of ARM 17.30.1110 will eliminate

duplication and potential conflicts between this rule and other rules adopted by the board in ARM Title 17, chapter 30, subchapters 11 through 13 and provide a uniform system for the administration of general permits.

17.30.1115 NOTICE OF INTENT PROCEDURES: CONSTRUCTION ACTIVITY (AUTH: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA), located at pages 17-2883 and 17-2884, Administrative Rules of Montana. The board is proposing to repeal ARM 17.30.1115, which sets forth application procedures for construction activity. This rule is no longer necessary because application procedures for all MPDES individual permits, including storm water, are found in ARM 17.30.1322. The procedures for issuing and administering MPDES general permits, including procedures for filing a notice of intent for coverage under a general permit, are found in ARM 17.30.1341, as amended. ARM 17.30.1322 and 17.30.1341 are equivalent to federal regulations set forth at 40 CFR 122.21, 122.26(c), for individual permits, and 122.28, for general permits. Repeal of ARM 17.30.1115 will eliminate duplication and potential conflicts between this rule and other rules adopted by the board in ARM Title 17, chapter 30, subchapters 11 through 13 and provide a uniform system for the administration of general permits.

17.30.1117 TRANSFER OF PERMIT COVERAGE (AUTH: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA), located at page 17-2884.4, Administrative Rules of Montana. The board is proposing to repeal ARM 17.30.1117, which sets forth procedures for transferring permit coverage for storm water discharges regulated under subchapter 11. This rule is not necessary because storm water permits are MPDES permits and may be transferred in accordance with the applicable provisions of ARM Title 17, chapter 30, subchapter 13, specifically ARM 17.30.1360. Repeal of ARM 17.30.1117 will eliminate duplication and potential conflicts between this rule and other rules adopted by the board in ARM Title 17, chapter 30, subchapters 11 through 13 and provide a uniform system for the administration of general permits.

5. 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., September 4, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. 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.

7. 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.

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

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment and repeal 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, July 28, 2014.