**GENERAL PERMIT**
**FOR**
**STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY**

**PERMIT NUMBER MTR100000**

**MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY**

**AUTHORIZATION TO DISCHARGE UNDER**
**THE MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM (MPDES)**

In compliance with Section 75-5-101 *et seq.,* Montana Code Annotated (MCA); Administrative Rules of Montana (ARM) 17.30.1101; 17.30.1301 *et seq.; and ARM* 17.30.601 *et seq.,* owners and operators (permittees) with authorization under this *General Permit for Storm Water Discharges Associated with Construction Activity* are permitted to discharge storm water resulting from construction activities as described in Section 1.1 of this Permit and subject to effluent limitations, monitoring requirements, and other conditions set forth herein.

This Permit shall become effective January 1, 2018.

This Permit and the authorization to discharge shall expire at midnight, December 31, 2022.

FOR THE MONTANA DEPARTMENT
OF ENVIRONMENTAL QUALITY

Jon Kenning, Chief
Water Protection Bureau

Issuance Date: July 18, 2017

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# 1. Coverage Under This Permit

## 1.1. Eligibility

### 1.1.1. Construction Activities Covered

This Permit applies to all areas of the State of Montana, except for lands within the external boundaries of Indian Reservations. This permit applies to "storm water discharge associated with construction activity," as defined in Part 5 of this permit.

A "storm water discharge associated with construction activity" regulated under this permit occurs when both of the following two criteria are met:

- There are areas of ground disturbance or other potential pollutant sources due to the construction activity where a storm water discharge to state surface waters can occur; and
- The construction activity disturbs through clearing, excavating, grading, or placement/removal of earth material a total area equal to or greater than one acre. The "total area" must include all areas which are part of a "larger common plan of development or sale", as defined in Part 5 of this permit.

*Determination of the acreage of disturbance does not typically include disturbance for routine maintenance activities on existing roads where the line and grade or hydrologic capacity of the road is not being altered, nor does it include the paving of existing roads.*

In determining the occurrence or potential occurrence of a "storm water discharge associated with construction activity" based on the acreage of ground disturbance and discharge potential to state surface waters, the permittee must consider the following additional factors:

- All potential drainage/discharge conditions and flow patterns, and their variation during the different phases of the construction activity;
- All potential rainfall or snowmelt events and their unpredictability over time (such as experiencing a relatively higher rainfall or snowmelt amount in a relatively shorter time period);
- Support activities for the construction project which may be on or off the conventional construction project "site" (as defined in Part 5 of this permit);
- Storm water discharges must typically be regulated beyond the conventional construction earthwork and building phases, lasting from the initiation of construction-related ground disturbance to "final stabilization" (as defined in Part 5 of this permit) of that disturbance, which can sometimes take significant extra time to achieve; and
- Storm water which discharges into a drain inlet and/or storm sewer system from the site is regulated as a discharge to state surface waters if the inlet or system ultimately discharges into a state surface water.

Support activities can include, but are not limited to, areas used for access-related work, earth material borrow areas, equipment staging areas, materials storage areas, temporary concrete or asphalt batch plants, and any areas used for fill placement. For storm water discharges from support activities to be covered under this permit for a particular construction activity permit authorization, such support activities must:

- Not be part of a larger commercial operation serving multiple unrelated construction activities, and not continue operation beyond the completion of the permittees construction activity; and
- Have appropriate controls and measures identified for the particular support activity, including required documentation, in the Storm Water Pollution Prevention Plan (SWPPP) required in Part 3 of this permit.

### 1.1.2. Allowable Storm Water Discharges

Unless otherwise made ineligible through the provisions in Part 1.1.4. below, the following discharges are eligible for coverage under this permit:

- Storm water discharges associated with construction activity as defined in Part 5 of this permit; and
- Storm water discharges to impaired waterbodies that are consistent with approved TMDLs and assigned WLAs, and the additional requirements within this permit.

### 1.1.3. Allowable Non-Storm Water Discharges

The following are non-storm water discharges allowed under this permit:

- Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;
- Irrigation drainage;
- Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling;
- Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed);
- Routine external building wash down that does not use detergents;
- Uncontaminated ground water or spring water;
- Water used to control dust;
- Discharges from emergency fire-fighting activities;
- Foundation or footing drains where flows are not contaminated with process materials; and
- Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

### 1.1.4. Limitations on Coverage

The following discharges are not eligible for coverage under this permit:

- Storm water discharges that are mixed with non-storm water, other than those non-storm water discharges listed in Part 1.1.3.;
- Prohibited discharges as listed in Part 2.1.6.;
- Discharges of construction dewatering effluent to state surface waters requiring authorization under the MPDES "General Permit for Construction Dewatering";
- Storm water discharges to impaired waterbodies that are inconsistent with approved TMDLs and assigned WLAs, and the additional requirements with this permit;
- Storm water discharges to waterbodies that are inconsistent with additional Department requirements, on a case-by-case basis; or
- Discharges which the Department determines have a reasonable potential to cause, or contribute to, an exceedance of any applicable water quality standard, and/or the Department has determined coverage under a MPDES Individual Permit is required.

Coverage does not relieve the permittee from any other statute, regulation, permits, or other regulatory requirements for activities occurring within the project area.

The Department may deny coverage for storm water discharges citing that the permittee appears unable to comply with the one or more of the following requirements:

- Effluent standards, effluent limitations, standards of performance for new sources of pollutants, toxic effluent standards and prohibitions, and pretreatment standards;
- Water quality standards established pursuant to 75-5-301, MCA;

- Prohibition of discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
- Prohibition of any discharges to which the regional administrator has objected in writing;
- Prohibition of any discharge which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Act;
- Any additional requirements that the Department determines are necessary to carry out the provisions of 75-5-101, et seq., MCA; and
- A point source is a new source or a new discharge and the discharge from its construction or operation will cause or contribute to a violation of water quality standards (ARM 17.30.1311(7)).

In addition, the Department may deny coverage for the following reasons:

- The storm water discharge is different in degree or nature from discharges reasonably expected from sources or activities within the category described in this MPDES General Permit (including pollutants from process wastewater streams).
- The MPDES permit authorization for the same operation has previously been denied or revoked.
- The discharge sought to be authorized under the 2017 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.
- The point source is, or 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.

## 1.2. Authorization under this Permit

An "owner or operator" of a "storm water discharge associated with construction activity" is required to obtain authorization under an MPDES permit. "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source. All construction activities that disturb and are part of a larger common plan of development or sale are subject to permit coverage.

In this permit, the "owner or operator" is also identified as the "permittee".

A Notice of Intent (NOI) process is used for an owner or operator to obtain authorization to discharge under this permit. Through the submittal of a NOI, the owner or operator acknowledges eligibility for coverage under this permit and agrees to comply with the effluent limits and conditions of this permit. Authorization is effective upon the date of receipt of the complete NOI Package by the Department. A copy of the completed NOI Package must be maintained for the permittee's records. The NOI Package, as outlined below, shall be completed and submitted to:

Montana Department of Environmental Quality
Water Protection Bureau
P.O. Box 200901
Helena, MT 59620-0901

### 1.2.1. New Authorizations (Not Previously Authorized)

Owners or operators can obtain first-time coverage under this permit by submitting a complete Notice of Intent (NOI-SWC) Package to the Department.

The NOI-SWC Package must consist of:

- A completed NOI-SWC form using the standard NOI form provided by the Department;
- A separate SWPPP, including all associated maps, diagrams, details, and plans, which has been completed in accordance with the requirements identified in Part 3 of this permit;
- A copy of the consultation letter from the Montana Sage Grouse Habitat Conservation Program (if applicable); and
- The appropriate "application fee" for the NOI-SWC.

### 1.2.2. Continuing Authorizations Under the 2013 General Permit

Permittees requiring continued authorization beyond the December 31, 2017, expiration date, must submit a complete NOI-SWC package to the Department for coverage under the reissued 2018-2022 General Permit.

The NOI-SWC Package must consist of:

- A completed renewal NOI-SWC form using the standard NOI-SWC form provided by the Department;
- A separate SWPPP, including all associated maps, diagrams, details, and plans, which has been completed in accordance with the requirements identified in Part 3 of this permit;
- A copy of the consultation letter from the Montana Sage Grouse Habitat Conservation Program (if applicable); and
- The appropriate "application fee" for the NOI-SWC.

### 1.2.3. Public Sign or Other Notice Requirement (Effective January 1, 2021)

This requirement is effective January 1, 2021, in order to provide additional time for the regulated community to comply. The permittee must post a sign or other form of notice to publically display confirmation of coverage under this General Permit. The sign or other notice must be positioned in a safe, accessible location in close proximity to the regulated construction activities and visible from the nearest road. At a minimum the sign or other notice must include:

- Large, readable font;
- The MPDES authorization number or a copy of the confirmation letter;
- The statement "Request project information from Montana DEQ Water Protection Bureau at (406) 444-3080"; and
- The statement "File a report at: http://deq.mt.gov/DEQAdmin/ENF/Spill".

### 1.2.4. Modification to NOI-SWCs

Modification requests to current authorizations (including decreased or increased disturbance area) submitted within six months of the date of the coverage under this Permit are processed with the corresponding fee. If the request is submitted six months after the date of coverage under this Permit, the modification will be processed with the corresponding new "application fee" for the NOI-SWC.

A permittee may not request to add additional construction-related disturbance area(s) unless the new additional construction-related disturbance is directly contiguous to and directly associated with the original site, except for support activities.

The NOI-SWC Package must consist of:

- A completed NOI-SWC form using the standard NOI-SWC form provided by the Department with Modification checked in Section A;
- A separate SWPPP, including all associated maps, diagrams, details, plans, and records, updated in accordance with the requirements identified in Part 3 of this permit;
- A copy of the consultation letter from the Montana Sage Grouse Habitat Conservation Program (see below for applicability); and
- The appropriate "application fee".

**Sage Grouse Consultation Requirements for Modifications to NOIs-** If the project is within designated sage grouse habitat, any modification due to a change in disturbed acreage requires verification from the Montana Sage Grouse Habitat Conservation Program that may require a consultation letter and/or updates to a consultation letter. If the modification request is outside of sage grouse habitat, no consultation is required. See NOI-SWC form and attached instructions.

### 1.2.5. Resubmittal and Administrative Processing

The Department may request a resubmittal of a NOI-SWC, SWPPP, any required records, and any associated fees. Administrative processing fees may be assessed for Department reviews.

## 1.3. Transfer of Coverage under this Permit

The Department has a Permit Transfer Notification form (PTN-SWC). Permittees must use the PTN-SWC to transfer ownership or change the name of the entity that holds an authorization under this permit with the corresponding fee. The PTN-SWC must be submitted at least 30 days before the effective date of the proposed transfer and constitutes written notice to the Department under the Montana Water Quality Act that the new "owner or operator" assumes responsibility and liability for all the terms and conditions, including permit fees. This PTN-SWC form may not be used to transfer coverage to a new or different construction site, activity or location. Until the Department determines the submitted PTN-SWC form and the transfer to the new "owner or operator" is complete, the "owner or operator" of record remains responsible for compliance with the terms of the authorization under this Permit, including fees and/or violations.

## 1.4. Termination of Coverage under This Permit

Permittees may terminate coverage under this Permit after achieving of "final stabilization" for a construction site as defined in Part 5. of this Permit. In addition to achieving final stabilization, the permittee must also:

- Remove temporary storm water conveyances/channels and other temporary storm water control measures and/or BMPs
- Remove construction equipment and vehicles, and
- Cease all potential pollutant-generating activities due to the construction activity.

The permittee must submit the standard Department Notice of Termination (NOT-SWC) form to terminate coverage under this Permit. The NOT-SWC form must be signed by an authorized signatory and submitted to the Department.

Coverage under the permit remains in effect until the Department processes a NOT-SWC form. The permittee is responsible for payment of annual fees for each calendar year covered under the permit. Failure to submit a NOT-SWC will result in accrual of annual permit fees. The permittee is responsible for complying with the terms of this permit until notified by the Department that the authorization is terminated.

If an individual MPDES permit is issued to an owner or operator for discharges which would otherwise be subject to this permit, coverage under this Permit is terminated on the effective date of the individual MPDES permit.

## 1.5. Storm Water Rainfall Erosivity Waiver Form

Owners or operators of construction activities with less than five total acres of ground disturbance may use a "Storm Water Rainfall Erosivity Waiver Form" instead of obtaining coverage under this General Permit.

Submittal of a waiver certification is an optional alternative to obtaining permit coverage for discharges of storm water associated with small construction activity. If you submit a waiver request and the associated fee, your project is not waived until approval by the Department and the Department issues an approval letter.

Any discharge of storm water associated with small construction activity not covered by either this General Permit or a waiver may be considered an unpermitted discharge under the Montana Water Quality Act. The Department reserves the right to take enforcement for any unpermitted discharges that occur between the time construction commenced and either General Permit authorization is granted or a complete and accurate waiver certification is submitted and approved. The Department may notify any operator covered by a waiver that they must obtain General Permit coverage. Any member of the public may petition the Department to take action under this provision by submitting written notice along with supporting justification.

# 2. Effluent Limitations, Monitoring, and Reporting Requirements

## 2.1. Technology-Based Effluent Limitations

Technology based effluent limits must be achieved through the good engineering selection and design, implementation, installation, and maintenance of Best Management Practices (BMPs) for all authorized storm water discharges associated with construction activities. To meet this requirement, the permittee must comply with all conditions in Part 2.1. of this Permit, and any other state or local requirements, regardless of stringency. All BMPs must be documented in the SWPPP, site map(s), and/or inspection records. If alternative controls are utilized, documentation must be included to confirm impracticability and that the chosen measure achieves comparable criteria.

At a minimum, the permittee must achieve the following in all BMPs:

### 2.1.1. Erosion and Sediment Controls

a. Control Storm Water Volume and Velocity to minimize soil erosion, to include:
   i. Select and design BMPs that address the amount, frequency, intensity, and total duration of precipitation; quantity and quality of storm water runoff including peak flow rates and total storm water volume; soil characteristics for the construction project area(s) including the range of the soil particle sizes expected to be present on the site; and timeframes the construction project will be completed;
   ii. Implement and install all BMPs in accordance with good engineering practices and design specifications;
   iii. Complete implementation and installation of BMPs before or at the start of each major construction activity;
   iv. Minimize erosion within the construction project area;
   v. Divert storm water runoff from disturbed areas to sediment removal BMPs;
   vi. Minimize sediment discharges from the construction project area; and
   vii. Maintain BMPs in effective operating condition.

b. Control Storm Water Discharges, to include:
   i. Minimize erosion at outlets and conveyance channels; and therefore, protecting downstream properties and waterways by controlling volume and velocity within the construction project area;
   ii. Protect all storm drain inlets (to include offsite inlets which receive and carry storm water flow from your site to a state surface water, provided you have the authority to access the storm drain inlet);
   iii. Manage and minimize vehicle / equipment entrances and exits to the construction project area;
   iv. Stabilize ditches, swales, channels, and outlets;
   v. Construct storm water retention and detention facilities during initial site grading activities;
   vi. Provide surface outlets for retention and detention facilities for active construction, and discharge the highest quality water from the facility; and
   vii. Protect infiltration facilities from sedimentation during active construction.

c. Minimize Soil Disturbance, to include:
   i. Limit areas of disturbance and soil exposure; and
   ii. Provide a natural buffer within the construction project area.

d. Minimize the Disturbance of Steep Slopes of 15% or greater, to include:
   i. Design and construct cut-and-fill slopes to minimize erosion;
   ii. Divert off site storm water or ground water away from slopes and disturbed areas; and
   iii. Prevent storm water run on from impacting sediment removal BMPs.

e. Maintain Natural Buffers around State Surface Waters, to include:
   i. Maintain natural buffers around state waters; and
   ii. Direct storm water runoff to vegetated areas.

f. Minimize Soil Compaction and Preservation of Topsoil, to include:
   i. Mark and maintain clearing limits before disturbing soils and during construction activities; and
   ii. Preserve topsoil.

### 2.1.2. Soil Stabilization

a. Temporary Soil Stabilization, to include:
   i. Stabilize disturbed areas immediately for any portion of the construction project that will remain inactive for 14 or more calendar days with erosion control BMPs.
b. Final Stabilization, to include:
   ii. Stabilize disturbed areas within any portion of the project that have completed clearing, grading, excavation, or other earth disturbing activities with erosion control BMPs.

### 2.1.3. Dewatering

a. Control ground water, surface water, and/or accumulated storm water dewatering activities to prevent discharges to state waters; and
b. Obtain authorization under the Construction Dewatering General Permit or an individual permit prior to discharge of dewatering effluent to state surface waters.

### 2.1.4. Pollution Prevention Measures

a. Implement pollution prevention measures that effectively manage and dispose of all pollutants in a way that does not cause contamination of storm water, to include:
   i. Provide cover, containment, and protection for all chemicals, liquids, petroleum products, and construction materials, products, and wastes;
   ii. Use spill prevention and control measures for vehicle maintenance and fueling;
   iii. Maintain appropriate spill kits; clean up spills and leaks immediately; and report appropriate quantities in accordance with Part 4. of the permit;
   iv. Prevent discharge of equipment wash water and clean-out wastes, and designate these activities away from and state waters and their conveyances;
   v. Apply fertilizers and herbicides per manufacturers' requirements; and
   vi. Prevent discharges of concrete products.

### 2.1.5. Surface Outlets

When discharging from basins and impoundments, outlet structures must be utilized that withdraw water from the surface, unless infeasible, to discharge the highest quality water from the facility.

### 2.1.6. Prohibited Discharges

The following discharges are prohibited:

i. Wastewater from washout of concrete;
ii. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
iii. Fuels, oils, or other potential pollutants used in vehicle and equipment operation and maintenance;
iv. Soaps or solvents used in vehicle and equipment washing or external building wash down;
v. Storm water discharges of disturbed, contaminated soils; and
vi. Toxic or hazardous substances from a spill or other release including the disturbance and/or removal of contaminated soils.

## 2.2. Water Quality-Based Effluent Limitations

### 2.2.1. Water Quality Standards

Storm water discharges regulated under this permit must be controlled as necessary to meet applicable numeric and narrative water quality standards. A storm water discharge associated with construction activity may not cause or contribute to an exceedance of applicable water quality standards.

If at any time the permittee becomes aware, or the Department determines, that a storm water discharge causes or contributes to an exceedance of applicable water quality standards, the permittee must take corrective action as required in Part 2.4 of this permit. Additionally, the Department may require the permittee to obtain coverage under an individual permit, if information indicates the discharges are not controlled as necessary to meet applicable water quality standards.

### 2.2.2. Storm Water Discharges to Impaired Waterbodies

The permittee must identify if storm water discharges from their construction activity will discharge to impaired waterbodies. Information on impaired waterbodies may be obtained from the Department or from the Montana DEQ Clean Water Act Information Center website. The permittee must consider all impairments and the presence of the corresponding pollutants of concern in their proposed discharges. Storm water-related pollutants contributing to impairments generally include sediment, suspended solids and turbidity, and any secondary sources of pollutants based on construction materials and support activities. Discharges of the pollutants of concern to impaired waterbodies are eligible for coverage under this General Permit if consistent with approved TMDLs and assigned WLAs, and the requirements outlined below.

a. Discharges to an Impaired Waterbodies with No Approved TMDL

   For regulated storm water discharges associated with construction activity under this permit, the SWPPP must include a section that describes BMPs that target and reduce any discharges of the identified pollutants of concern to the corresponding impaired waterbodies. Under this subsection of the General Permit, the permittee need only to include the identified pollutants of concern in its SWPPP if the waterbodies are listed as impaired for such pollutants.

b. Discharges to an Impaired Waterbodies with an Approved TMDL

   For regulated storm water discharges associated with construction activity, the SWPPP must include a section that describes BMPs that target and reduce any discharges of the identified pollutants of concern to the corresponding impaired waterbodies. Under this subsection of the General Permit, the permittee need only include the identified pollutants of concern in its SWPPP if the waterbodies are listed as impaired for such pollutants. The section submitted by the permittee must ensure that all discharges are consistent with the assumptions of any applicable TMDL wasteload allocation. All EPA approved TMDL wasteload allocations applicable to MPDES-regulated storm water construction activities are incorporated by reference into this permit.

Permittees will be informed if any additional controls are necessary for discharges to protect beneficial uses or to be consistent that the assumptions of any available TMDL wasteload allocation. Such additional controls must be identified within the permittees SWPPP. In certain cases the Department may find coverage under an MPDES individual permit necessary.

## 2.3. Inspections

### 2.3.1. Person(s) Responsible for Conducting and Documenting Inspections

Inspections must be performed by a SWPPP Administrator as defined in Part 3.2. of this permit.

### 2.3.2. Frequency of Inspections

Inspections must be performed in accordance with one of the two schedules listed in Parts 2.3.3. or 2.3.4. unless the construction site or areas of the construction site meet the conditions of the inspection schedule defined in Part 2.3.5. Inspections must be conducted during the construction project's normal business hours. The inspection schedule must be documented in the SWPPP. Any changes to the inspection schedule must be documented in the SWPPP or corresponding inspection report.

### 2.3.3. Weekly Routine Inspections

A SWPPP Administrator must, at a minimum, conduct a routine inspection at least once every 7 calendar days. Any changes to the inspection schedule, even during periods of noncompliance, must be documented in the SWPPP or corresponding inspection report.

### 2.3.4. Biweekly Routine and Post-Storm Event Inspections

A SWPPP Administrator must, at a minimum, conduct a routine inspection at least once every 14 calendar days, and a post-storm event inspection within 24-hours of the end of a rainfall event of 0.25 inches or greater, and/or within 24-hours of runoff from snowmelt (ie any measurable snowmelt resulting in a discharge). To determine if a rainfall storm event of 0.25 inches or greater, has occurred on site, either properly maintain a rain gage on site or obtain the storm event information from a weather service representative of your location. For any day of rainfall 0.25 inches or greater, record the method of rainfall determination and the total rainfall measured that day. If an inspection is conducted for a post-storm event, this inspection can be used as a biweekly routine inspection, but the biweekly routine inspections must commence again no later than 14 calendar days after the last post-storm event inspection. Any changes to the inspection schedule, even during periods of noncompliance, must be documented in the SWPPP or corresponding inspection report.

### 2.3.5. Reductions in Inspection Frequency

The inspection schedules in Parts 2.3.3. and 2.3.4. may be temporarily reduced to a routine inspection once every 30 calendar days if one of the following conditions is met:

a. All construction activities at the site are temporarily inactive or shutdown and all areas of disturbance have achieved "temporary stabilization" as defined in Part 5 of this permit;
b. Earthwork and construction activities are completed at the site, and erosion and sediment controls are implemented or installed to establish final stabilization;
c. Reduction applicable to any portion of the project is temporarily inactive or shutdown and these portions have achieved "temporary stabilization" as defined in Part 5 of this permit; and
d. Reduction applicable to any portion of the project that is completed and erosion and sediment controls are implemented or installed to establish final stabilization.

Any reduction in the inspection schedule must be documented in the SWPPP or corresponding inspection report. Specific requirements for conditions "c "and "d" above: these portions of the construction project must be identified on the site map(s). Specific requirements for conditions "a" thru "d" above: all BMPs must be in place as identified in the SWPPP and/or inspection report, and site map(s).

### 2.3.6. Severe Winter Conditions Delay

If an inspection is not possible due to (1) remote site access and (2) severe winter conditions, a delayed inspection may occur. Documentation of the cause of the delayed inspection must be included in the corresponding inspection report and SWPPP, accordingly. A substitute inspection will be performed to compensate for the delayed inspection and follow requirements in accordance with Part 2.3.7. Inspections must resume as soon as the site is accessible. Delays are self-determined on a case-by-case basis with appropriate documentation, and determination is subject to review during a Department compliance evaluation inspection.

### 2.3.7. Inspection Requirements

Inspections conducted under Parts 2.3.3., 2.3.4., and 2.3.5. of this permit must comply with the inspection requirements in Part 2.3.7.

The following areas must be inspected at a minimum:

a. All areas disturbed by the construction activity;
b. All pollutant sources generated by the construction activity;
c. Material and waste storage areas exposed to rainfall or snowmelt;
d. Support activities exposed to rainfall or snowmelt;
e. Entrance and exit locations to the construction activity;
f. Site perimeter;
g. All areas where storm water flows onto and within the construction project area; and
h. Discharge locations and if impaired waterbodies were impacted.

At a minimum, the inspection report must include:

- The MPDES Permit Authorization Number;
- The inspection date and time;
- Name(s) of the SWPPP Administrator(s) completing the inspection;
- Weather conditions at the time of the inspection;
- The type of inspection based on Parts 2.3.3., 2.3.4., 2.3.5., and 2.3.6.;
- Changes in the inspection schedule;
- Major construction activities at the time of the inspection;
- Pollutant sources present at the time of the inspection;
- BMPs implemented or installed at the time of the inspection;
- BMPs Maintenance and Corrective Actions including:
    - BMPs requiring maintenance;
    - Corrective actions per Part 2.4.
- Description of corrective actions taken for the items identified above, including the dates for the corrective action(s) were completed;
- Discharges of sediment or other pollutants;
- Instances of noncompliance; and
- Certification and signature.

Inspection reports must be signed and certified by a SWPPP Administrator based on the requirements in Part 4.15. of this permit. Inspection records must be maintained as required by Part 2.5. of this permit. Maintenance, repair, replacement, or installation of new BMPs determined necessary during site inspections to address ineffective or inadequate BMPs must be conducted in accordance with Part 2.3.8. of this permit.

### 2.3.8. BMP Maintenance, Replacement, and Failures

All BMPs must be maintained in effective operating condition. If inspections identify BMPs that are not in effective operating condition, maintenance must be documented and performed by the close of the next business day. If this timeframe is infeasible, document rationale and provide a schedule of events with a maintenance timeframe making BMPs operational within seven (7) calendar days.

If new or replacement BMPs are required to be implemented or installed or if additional BMPs are necessary, these additional measures must be implemented or installed by no later than seven (7) calendar days from the time of discovery. If this timeframe is infeasible, document rationale and provide a schedule of events with a timeframe making BMPs operational as soon as feasible after the 7-day timeframe.

All changes in the design, implementation, or installation of erosion and sediment controls or other BMPs must be documented in the inspection report and site map(s). In addition, these changes can be updated to the SWPPP for the permittee to maintain consistency with their internal records.

## 2.4. Corrective Actions

Corrective actions are actions a SWPPP Administrator takes to:

- Repair, modify, or replace any BMP used at the site;
- Install new or additional BMPs;
- Immediately clean up, dispose of, and, under Part 4, report spills, releases, and other deposits; and
- Remedy a permit violation or noncompliance.

If any of the following conditions occur, a SWPPP Administrator must review and revise the selection, design, installation, implementation, and maintenance of BMPs to ensure the condition is eliminated and will not be repeated in the future:

- An unauthorized release or discharge (e.g., spill, leak, or discharge of non-storm water not authorized by this or another MPDES permit) occurs at the site;
- A SWPPP Administrator or the Department determines that the BMPs are not adequate enough for the discharge as it causes or contributes to an exceedance of applicable water quality standards;
- A SWPPP Administrator or the Department determines that modifications to the BMPs are necessary to meet the requirements in Part 2. of this permit;
- A SWPPP Administrator or the Department determines that the BMPs are not properly selected, designed, installed, operated, and/or maintained; or
- A failure of erosion or sediment controls resulting in sediment, solids, or other wastes being discharged from the site. Upon identification of sediment, solids, or other wastes lost or discharged from the site, the material must be cleaned up and placed back on site, or otherwise disposed of in an acceptable manner.

A SWPPP Administrator must document the completed corrective actions in the corresponding inspection report, and complete any updates to the site map(s). In addition, these changes can be updated in the SWPPP for the permittee to maintain consistency with their internal records.

## 2.5. Recordkeeping

At the identified site, the primary SWPPP Administrator must retain:

- a copy of this permit;
- a copy of the completed and signed NOI form including modification submittals;
- a copy of the Department's confirmation letter;
- a copy of the signed SWPPP, including revisions and updates, and attachments;
- BMP installation, design, and maintenance specifications/standards for all BMPs installed and detailed in the SWPPP and/or inspection records;
- Site map(s) reflecting up-to-date site conditions
- SWPPP Administrator and Preparer documentation under Part 3.2. of this permit;
- all inspection records required under Part 2.3., 2.4., 3.11., and 3.12. of this permit;
- all reports of noncompliance under Part 4 of this permit; and
- the Sage Grouse consultation letter, as applicable.

These documents are to be made available at the site immediately upon request from a Department representative, EPA official, or local official. These records are to be maintained by the permittee for a period of three years.

## 2.6. Reporting

### 2.6.1. Notification of Primary SWPPP Administrator Changes

The permittee must notify the Department in writing of any change of the SWPPP Administrator person/position, mailing address, and/or telephone number within 15 calendar days of change. Notification can be submitted through Attachment A or written authorization.

### 2.6.2. Noncompliance Reporting

Any instance of noncompliance must be reported to the Department as required by Part 4.23. of the permit.

# 3. Storm Water Pollution Prevention Plan (SWPPP)

## 3.1. SWPPP – General Requirements

3.1.1. The SWPPP is a document that must be developed and implemented in accordance with good engineering selection and design, hydrologic principles, and pollution control practices to minimize and control potential pollutants in storm water associated with construction activity.

3.1.2. The SWPPP must meet the following minimum objectives:

- Provide a site description of the nature of the construction activity that includes identification and details of the major construction activities and project area characteristics;
- Identify and describe all potential pollutant sources which may affect the quality of storm water discharges associated with the construction activity;
- Identify and describe the BMPs to be used to reduce potential pollutants in storm water discharges associated with the construction activity and to ensure compliance with the effluent limitations in this permit;
- Identify and describe the measures which will be used to achieve final stabilization; and
- Identify and clearly describe the inspection and maintenance procedures implemented at the site to maintain all erosion and sediment control and other BMPs identified in the SWPPP, in good and effective operating condition.

3.1.3. At a minimum, the SWPPP must include the information specified in Part 3. and as specified in other parts of this permit.

3.1.4. The SWPPP must be implemented as stated in the Primary SWPPP Administrator's up-to-date field copy. SWPPP implementation must initiate at the start of ground disturbance associated with the construction activity, and continue until final stabilization of all construction activity-related ground disturbance is achieved and permit coverage has been terminated. The SWPPP must be maintained to reflect up-to-date site conditions through documented revisions and updates. Inspection reports, logs, and the site map may supplement the SWPPP to reflect the most up-to-date site conditions. Refer to Part 3.12.2. for Revision and Update Options.

3.1.5. If a SWPPP was prepared under a previous version of this General Permit, it must be reviewed and updated in accordance with Part 1.2.2.

## 3.2. SWPPP Preparer and Administrator

Any SWPPP Preparer and Administrator are required to maintain a valid certification meeting the minimum requirements below.

### 3.2.1. SWPPP Preparer (Effective January 1, 2019)

The permittee must specify a SWPPP Preparer in the NOI form and the SWPPP. A SWPPP Preparer is an individual or position title who is responsible for planning and development of the SWPPP prior to submission of the NOI-SWC. The SWPPP Preparer must develop and document all aspects of the SWPPP, initiating with the start of construction activities, and lasting until final stabilization is achieved and the permit authorization is terminated. The Department has identified the minimum requirements for this role (below), so that the quality of storm water discharges is controlled and the effluent limitations in Part 2. of this permit are achieved.

The SWPPP Preparer minimum requirements and valid certification must be completed before the submittal of the NOI-SWC Package to the Department. Validation of certification will be determined at the time a NOI-SWC package is submitted and/or during a regulatory inspection. Valid certification demonstrating the minimum requirements for the SWPPP Preparer must be maintained with the SWPPP, and must include the following:

- Name(s), title(s), phone number, and emails of SWPPP Preparers; and
- Date and name of provider of course(s).

SWPPP Preparer minimum requirements as stated in Part 3.2.3. are effective January 1, 2019, in order to provide additional time for the regulated community to comply with the minimum requirements. The Department encourages SWPPP Preparers to obtain valid certification as soon as possible during this first year period of the permit in order to better ensure compliance with the other conditions in this permit. This one year extension of SWPPP Preparer minimum requirements does not apply to the compliance expectations for all other requirements in the permit, which remain fully enforceable for the entire effective permit cycle.

### 3.2.2. SWPPP Administrator

The permittee must specify a SWPPP Administrator and any other designated SWPPP Administrators in the NOI-SWC form and the SWPPP. Additional SWPPP Administrators can be identified in Attachment A. A SWPPP Administrator(s) is an individual or position title who is responsible for developing, implementing, maintaining, revising, and updating the SWPPP. The SWPPP Administrator(s) must address all aspects of the SWPPP, initiating with the start of construction activities, and lasting until final stabilization is achieved and the permit authorization is terminated.

The SWPPP Administrator(s) must have knowledge of the principles and practices of erosion and sediment controls and pollution prevention practices and possess the skills necessary to assess site conditions and determine the effectiveness of selected BMPs. The Department has identified the requirements for this role (below), so that the quality of storm water discharges is controlled and the effluent limitations in Part 2. of this permit are complied with.

The SWPPP Administrator(s) must meet the duly authorized representative requirements as defined in Part 4.18. of this permit to sign inspection reports and other reports.

The SWPPP Administrator(s) person(s)/position(s) provided on the NOI form is used by the Department as a permittee contact.

This SWPPP Administrator(s) minimum requirements and valid certification must be completed before the start of earth-disturbing activities or potential pollutant-generating activities, whichever occurs first. For new employees hired after this time, the minimum requirements and valid certification must be completed before assuming SWPPP Administrator responsibilities. Validation of certification will be determined during an inspection. Valid certification demonstrating the minimum requirements for the SWPPP Administrator(s) must be maintained with the SWPPP, and must include the following:

- Name(s), title(s), phone number, and emails of SWPPP Administrator(s); and
- Date and name of provider of course(s).

### 3.2.3. SWPPP Preparer and Administrator – Minimum Requirements

The SWPPP Preparer and Administrator(s) must be knowledgeable and skilled within the following concepts to serve their role and maintain a valid certification demonstrating these concepts:

- MPDES permitting requirements to include, but not limited to, applicability, application procedures, SWPPP elements, standard conditions, and termination conditions;
- Local permitting requirements;
- Sage Grouse requirements based on location of the project;
- Knowledge of the principles and practices of erosion and sediment controls and pollution prevention practices, including the minimum criteria for BMPs defined in Part 2.1. of this permit;

- Construction site assessment and planning skills to include knowledge and identification of major construction activities and the phases of construction activities and all support activities, and the potential pollutants generated based on the scope of the project;
- Development, selection, and implementation skills for all storm water controls and BMPs on the site, including final stabilization measures, required by this permit based on appropriate design, installation, function, and location; and how they are to be maintained and/or repaired according to developed and/or manufacturers plans and specifications;
- Development, selection, and implementation skills for pollution prevention controls and BMPs required by this permit;
- Development and implementation skills for procedures and associated documentation for all inspections, maintenance, and required recordkeeping to include when and how to conduct inspections, record applicable findings, take corrective actions, and, when appropriate, report violations and/or noncompliance; and
- Ability to develop and update the site map(s) required by this permit.

## 3.3. Site Description

The SWPPP must contain a narrative description of the following:

3.3.1. The nature of the construction activity and what is being constructed;

3.3.2. A description of all support activities and associated storm water discharges dedicated to the construction activity including but not limited to: material borrow areas, material fill areas, concrete or asphalt batch plants, equipment staging areas, access roads/corridors, material storage areas, and material crushing/recycling/processing areas;

3.3.3. The total area of the site (in acres), and the area of the site (in acres) expected to undergo construction-related disturbance (including all construction-related support activities);

3.3.4. A description of the character and erodibility of soil(s) and other earth material to be disturbed at the site, including cut/fill material to be used;

3.3.5. For a storm water discharge associated with construction activity with construction-related disturbance of five acres or more of total land area:

- an estimate of the runoff coefficient of the site, both before and after construction, including a description of what this is based on; and
- an estimate of the increase in impervious area after the construction activity is completed;

3.3.6. The names of receiving state surface waters and a description of the size (drainage area), type, and location of each point source discharge or outfall with connectivity. Identify if the receiving state surface water is listed as impaired. If there is no distinguishable point source discharge or outfall to the receiving state surface waters, a description of storm water runoff flow and drainage patterns into the receiving state surface waters must be provided. This must specify if discharges are to unnamed drainages and provide the name of the first named drainage that will receive that discharge downgradient of the site. If the discharge is to a municipal separate storm sewer, the location of the MS4 outlet where the storm sewer discharges into receiving state surface waters; and

3.3.7. Provide a brief description of the existing natural cover and vegetation at the site and an estimate of the percent density of vegetative ground cover.

## 3.4. Identification of Potential Pollutant Sources

All potential pollutant sources, including soils, materials, and activities, within the scope of the entire construction project must be evaluated for the potential to contribute pollutants to storm water discharges. The SWPPP must identify those sources determined to have the potential to contribute pollutants to storm water discharges, and these sources must be controlled through BMP selection and implementation, as required in Part 3.5. below.

The permittee must identify all potential pollutant sources within lists provided for soils, materials, and activities within the SWPPP. In addition, the permittee must identify and list the following:

- Other potential pollutant sources from soils, activities, and materials not already identified the SWPPP;
- Other non-storm water discharges if present; and
- Any additional potential pollutant sources.

## 3.5. Selection of Best Management Practices (BMPs)

The SWPPP must document the selection of BMPs based on the potential pollutant sources identified in Part 3.4. above that have been installed and implemented at the site to achieve the effluent limits in Parts 2.1. and 2.2. of this permit. BMP design, installation, implementation, and maintenance specifications for the BMPs identified in the SWPPP must be maintained on-site. These sources must be kept up to date and accessible upon request. Any departures from the specifications must reflect good engineering practices and must be documented in the SWPPP or corresponding inspection reports.

The permittee must identify all selected BMPs within the SWPPP including:

- Erosion Control BMPs;
- Sediment Control BMPs;
- Run On/Runoff Control BMPs;
- Administrative Controls; and
- Post Construction Controls.

In addition, the permittee must select and list the following:

- Other additional BMPs not already identified in the SWPPP and likely to be used at the construction project;
- Local Sediment and Erosion Controls including a description of requirements;
- BMPs that target and reduce discharges of the identified pollutants of impairment to impaired waterbodies as required under Part 2.2. of this permit; and
- Sage Grouse controls (The consultation letter attached to the SWPPP will meet the requirements for this section in Part 2.5.).

## 3.6. Dewatering

Discharges of ground water, surface water, and/or accumulated storm water due to dewatering practices which will not discharge to state surface waters must be managed by appropriate BMPs, and these must be identified in the SWPPP. These dewatering practices and BMPs must be identified on the site map required under Part 3.10. of this permit. Discharges of ground water, surface water, and/or accumulated storm water due to dewatering practices which will discharge to state surface waters are not authorized under this permit and must obtain authorization under the MPDES "General Permit for Construction Dewatering"(CDGP), Permit Number MTG070000, as applicable, or an individual permit. The CDGP applies to discharges to include in-stream dewatering, surface area dewatering, and ground water dewatering (See Construction Dewatering definition in Part 5). These dewatering practices and BMPs must be identified in the SWPPP, and identified on the site map required under Part 3.10. of this permit.

## 3.7. Major Construction Activity and BMP Phasing

The SWPPP must identify the major construction activities, provide a list of all the construction related tasks to complete each major construction activity, and identify an estimated timeframe of initiation and completion of each major construction activity. A distinct major construction activity is defined as any distinct construction related disturbance or distinct pollutant generating activity that occurs within the schedule of activities associated with the construction project. The construction related tasks of each major construction activity are the series of steps necessary to the complete the major construction activity.

The SWPPP must clearly document the selected BMPs throughout the succession of major construction activities until the site reaches final stabilization. The SWPPP may include a table for the permittee to document their project's major construction activities and BMP Phasing. Inspection reports will supplement the SWPPP to reflect the most up-to-date site conditions.

## 3.8. Final Stabilization

The SWPPP must clearly describe all procedures and BMPs used to ensure that "final stabilization," as defined in Part 5. of this permit and ARM 17.30.1102(5), is achieved.

For all areas with construction-related ground disturbance, final stabilization must be achieved uniformly over the entire disturbed area, without relatively bare areas based on the pre-disturbance conditions. If using seed or planted vegetation to achieve final stabilization, the plants must be perennial. Before submitting the NOT form to terminate coverage under this permit and in addition to achieving final stabilization, the following must have also occurred:

- removal of temporary storm water conveyances/channels and other temporary storm water control measures and/or BMPs
- removal of construction equipment and vehicles, and
- cessation of any potential pollutant-generating activities due to the construction activity.

## 3.9. Post-Construction Storm Water Management

The SWPPP must clearly describe any BMPs which are to be used to control storm water and potential pollutants in storm water discharges that will occur after construction operations have been completed at the site, including any applicable local requirements. If a temporary BMP transitions into a post-construction BMP, the SWPPP must clearly describe this transition and any associated maintenance. In addition, for post-construction storm water management at constructed/developed sites, the Department supports the use of "Low Impact Development" (LID) and "Green Infrastructure" BMPs, where such practices are practicable, that infiltrate, evapotranspire, or capture for reuse the storm water runoff generated from the majority of expected storm events.

## 3.10. Site Map

The SWPPP must include one or a series of legible site maps/plans of sufficient scale and size which clearly display site conditions. Multiple site maps/plans are encouraged for clarity as necessary.

At a minimum, the SWPPP site maps/plans must include the following:

3.10.1. Site boundaries to include the perimeter of common plans of development;

3.10.2. Locations and types of all dedicated construction activity support areas (including off-site) such as access-related work, earth material borrow areas, equipment staging areas, materials storage areas, temporary concrete or asphalt batch plants, and any areas used for fill placement;

3.10.3. Locations where ground-disturbing activities will occur, noting any BMP phasing of major construction activities;

3.10.4. Preconstruction topography of the site including showing state surface waters which will receive storm water runoff from the site. Identify if the receiving state surface water is listed as impaired;

3.10.5. Drainage pattern(s) and flow directions (use arrows) of storm water and authorized non-storm water flow onto, over, and from the site property before and after major grading activities, including lines showing boundaries between different drainage areas;

3.10.6. Storm water, and allowable non-storm water discharge locations and types, including the locations of any storm drain inlets and where storm water or allowable non-storm water will be discharged to state surface waters;

3.10.7. Municipal separate storm sewer systems to include the identification of applicable outlets, where the construction activity's storm water discharges are into them;

3.10.8. Locations and sources of run-on to the site from adjacent property that may contain potential pollutants (including sediment);

3.10.9. Locations of areas of cut and fill;

3.10.10. Locations of areas which are to remain undisturbed including vegetative buffer areas;

3.10.11. Locations of existing natural cover and vegetation or other pre-existing ground stabilization measures before construction (such as forest, pasture, lawn, pavement, structures);

3.10.12. Approximate slopes before and after major grading activities. Note areas of steep slopes both before and after grading;

3.10.13. Locations where sediment, soil, or other construction and building materials will be stockpiled;

3.10.14. Locations of fueling, vehicle and equipment maintenance, and/or vehicle cleaning and washing areas;

3.10.15. Locations of concrete washout and other waste management areas;

3.10.16. Locations of ground water or other construction dewatering activities and discharges (see Part 3.7.9. of this permit);

3.10.17. Designated points on the site where vehicles will exit onto paved roads;

3.10.18. Locations of other potential pollutant-generating activities not specified elsewhere;

3.10.19. Locations of all structural and non-structural BMPs for potential pollutants other than sediment;

3.10.20. Locations and specific types of all temporary or permanent erosion and sediment control BMPs;

3.10.21. Locations and specific types of all storm water control BMPs, including impoundments or conveyances such as retention and detention ponds, ditches, pipes, and swales;

3.10.22. Locations of structures and other impervious surfaces upon completion of construction;

3.10.23. Public Sign (Effective January 1, 2021);

3.10.24. Map scale;

3.10.25. North arrow; and

3.10.26. Map legend.

## 3.11. Inspection and BMP Maintenance Procedures

The permittee must identify the selected inspection schedule (Part 2.3.2.) within the SWPPP. The SWPPP must identify and clearly describe the inspection and maintenance procedures implemented at the site to maintain all erosion and sediment controls and other BMPs identified in the SWPPP, in good and effective operating condition. These documented procedures must comply with the inspection requirements in Part 2.3. of this permit and correspond with BMP maintenance specifications (also refer to Parts 2.3.8., 2.4., 3.5., and 3.9. of the permit for related BMP maintenance requirements).

## 3.12. SWPPP Revisions and Updates

The permittee must maintain the SWPPP and site map. Also, see Parts 2.3. and 2.4. of this permit.

### 3.12.1. Conditions that trigger revisions and updates are outlined below:

a. When there is a change in design, construction, operation, or maintenance of the site, which would require the implementation of new, additional, or revised BMPs; or
b. If the SWPPP proves to be ineffective in achieving the general objectives of controlling potential pollutants in storm water discharges associated with construction activity; or
c. The Department determines that the BMPs are not properly selected, designed, installed, operated, and/or maintained; or
d. When BMPs are no longer necessary and are removed.

### 3.12.2. Revision and Update Options

The permittee must select one of three options below to document how revisions and updates to the SWPPP will be maintained to reflect the most up-to date site conditions. Inspection reports may be used to supplement the SWPPP to reflect revisions and updates. Subsequently, the site map must reflect any revisions or updates to the SWPPP or from corresponding inspection reports. Revisions and updates must be made before changes in the site conditions except for BMP changes addressing installation/implementation and these specific revisions and updates will be made as soon as practicable, but in no case more than 72 hours after the changes occur at the site.

a. Revisions and updates directly to the SWPPP and corresponding sections (i.e. additional SWPPP pages attached to include the time, date, and SWPPP Administrator authorizing the change), and the site map; or
b. Revisions and updates reflected through inspection records, and the site map; or
c. Revisions and updates reflected through a log, and the site map. Log entries must include the time and date of the change(s) in the field; an identification of the BMP(s) removed or added; the location(s) of those BMP(s); and the name of the SWPPP Administrator authorizing the change.

# 4. Standard Conditions

## 4.1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Montana Water Quality Act and is grounds for enforcement action; for termination under the General Permit; for revocation and reissuance of a confirmation letter; for a modification requirement; or for denial of coverage under the General Permit (new or renewed). The permittee shall give the Department advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.

## 4.2. Penalties for Violations of Permit Conditions

The Montana Water Quality Act at MCA 75-5-631 provides that in an action initiated by the Department to collect civil penalties against a person who is found to have violated a permit condition of this Act is subject to a civil penalty not to exceed $25,000. Each day of violation constitutes a separate violation.

The Montana Water Quality Act at MCA 75-5-632 provides that any person who willingly or negligently violates a prohibition or permit condition of the Act is guilty of an offense, and upon conviction, is subject to a fine not to exceed $25,000 per day of violation or imprisonment for not more than one year, or both, for the first conviction. Following an initial conviction, any subsequent convictions subject a person to a fine of up to $50,000 per day of violation or by imprisonment for not more than two years, or both.

The Montana Water Quality Act at MCA 75-5-611 provides for administrative penalties not to exceed $10,000 for each day of violation and up to a maximum not to exceed $100,000 for any related series of violations. Except as provided in permit conditions "Bypass of Treatment Facilities" and "Upset Conditions", nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

## 4.3. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The reapplication must be submitted at least 30 days before the expiration date of this permit.

## 4.4. Need to Halt or Reduce Activity not a Defense

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

## 4.5 Duty to Mitigate

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

## 4.6. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

## 4.7. Permit Actions

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

## 4.8. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege.

## 4.9. Duty to Provide Information

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

## 4.10. Inspection and Entry

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

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

## 4.11. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. As required by the Clean Water Act, applications, permits and effluent data shall not be considered confidential.

## 4.12. Reporting Requirements- Monitoring and Monitoring Reports

The Department may require a permittee to monitor in addition to any conditions in this permit, on a case-by-case basis. If monitoring is required, the Department will specify monitoring requirements to include, and not limited to, storm water sampling, analytical testing, and an evaluation of monitoring results, recording, and reporting. Monitoring results must be reported on a discharge monitoring report (DMR) or as required by the Department. Monitoring results must be reported at the intervals specified.

If the permittee monitors any pollutant more frequently than required, using approved test procedures, the results of this monitoring must be included in the calculation and reporting of data submitted in the DMR. Calculations for all limitations which require averaging of measurements must utilize an arithmetic mean unless otherwise specified by the Department.

## 4.13. Monitoring and Records- Representative Sampling

Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

## 4.14. Monitoring and Records- Retention of Records

The permittee shall retain records of all monitoring information including all calibrations 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.

## 4.15. Monitoring and Records- Records Content

Records of monitoring information must include:

- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

## 4.16. Monitoring and Records- Test Procedures

Monitoring must be conducted according to test procedures approved under Title 40 of the Code of Federal regulations (40 CFR) Part 136, unless other test procedures have been specified in this permit, confirmation letter, or by the Department.

## 4.17. Monitoring and Records-Penalties for Falsification of Reports and Tampering

The Montana Water Quality Act at MCA 75-5-633 provides that any person who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method, or makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than $25,000 per violation, or by imprisonment for not more than six months per violation, or by both.

## 4.18. Signatory Requirements

Authorized representatives: All applications, reports or information submitted to the Department or the EPA shall be signed and certified in accordance with ARM 17.30.1323.

All permit notices of intent shall be signed as follows:

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

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

- The authorization is made in writing by a person described above and submitted to the Department; and
- The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position.

Changes to authorization: If an authorization described above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the above requirements must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

Certification: Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of

my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

## 4.19. Reporting Requirements - Planned Changes

The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility, activity, or operation.

Notice is required only when:

- The alteration or addition to the permitted facility, activity, or operation may meet one of the criteria for determining whether a facility is a new source; or
- The alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit.

## 4.20. Reporting Requirements- Anticipated Noncompliance

The permittee shall give advance notice to the Department of any planned changes in the permitted facility/activity/operation which may result in noncompliance with permit requirements. The permittee shall notify as soon as possible by phone and provide with the following information, in writing, within five (5) days of becoming aware of such condition:

- A description of the discharge and cause of noncompliance; and
- The period of noncompliance including exact dates and times, or if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the non-complying discharge.

## 4.21. Reporting Requirements- Transfers

Permit coverage is not transferable to any person except after notice is given to the Department and a transfer fee is paid. The Permit Transfer Notification (PTN-SWC) form provided by the Department must be completed and must be received by the Department at least 30 days prior to the anticipated date of transfer. The form must be signed by both the existing owner/operator and the new owner/operator following the signatory requirements of Part 4.18 of the General Permit.

## 4.22. Reporting Requirements- Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim, and final requirements contained in any compliance schedule of this permit or required by the Department shall be submitted no later than 14 days following each schedule date.

## 4.23. Reporting Requirements- Twenty-four Hour Reporting

The permittee shall report any serious incident of noncompliance affecting the environment. Any information must be provided orally within 24 hours from the time the permittee first becomes aware of the following circumstances:

- Any noncompliance which may seriously endanger health or the environment;
- Any unanticipated bypass which exceeds any effluent limitation in the permit;
- Any upset which exceeds any effluent limitation in the permit; or
- As applicable, violation of a maximum daily discharge limit of any pollutant listed by the Department in the General Permit or confirmation letter.

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

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

Oral Notification: The report shall be made orally to the Water Protection Bureau at (406) 444-3080 or the Office of Disaster and Emergency Services at (406) 324-4777.

Waiver of written notification requirement: The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Protection Bureau, by phone, (406) 444-3080. Written reports shall be submitted to the following address:

Montana Department of Environmental Quality
Water Protection Bureau
PO Box 200901
Helena, Montana 59620-0901

## 4.24. Reporting Requirements- Other Noncompliance

Instances of noncompliance not required to be reported within 24 hours shall be reported as soon as possible. The reports shall contain the information listed above for written submissions under Part 4.23.

## 4.25. Reporting Requirements- Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application package, or submitted incorrect information in a permit application package or any report to the Department, it shall promptly submit such facts or information.

## 4.26. Bypass

Intentional diversions of untreated waste streams from any portion of a treatment facility are prohibited unless

- the bypass does not cause effluent to exceed effluent limitations and is necessary for essential maintenance to ensure efficient operation; or
- the bypass is unavoidable to prevent loss of life, personal injury, or severe property damage; or
- there are no feasible alternatives;
- and the proper notification is submitted.

Bypass is prohibited and the Department may take enforcement action against a permittee for a bypass. If the permittee knows in advance of the need for anticipated bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass. The Department may approve an anticipated bypass, after considering its adverse effects. The permittee shall submit notice of an unanticipated bypass as required under Part 4.23.

## 4.27. Upset Conditions

An upset may be used as an affirmative defense in actions brought to the permittee for noncompliance with a technology-based effluent limitation. The permittee (who has the burden of proof) must have operational logs or other evidence showing:

- when the upset occurred and its causes;
- that the facility was being operated properly;
- proper notification was made; and
- remedial measures were taken as required by the duty to mitigate standard condition.

## 4.28. Fees

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

- Impose an additional assessment computed at the rate established under ARM 17.30.201: and,
- Suspend the processing of the application for a permit or authorization or, if the nonpayment involves an annual permit fee, suspend the permit, certificate or authorization for which the fee is required. The Department may lift suspension at any time up to one year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments and interest imposed under this sub-section. Suspensions are limited to one year, after which the permit will be terminated.

## 4.29. Removed Substances

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

## 4.30. Oil and Hazardous Substance Liability

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

## 4.31. Severability

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

## 4.32. Reopener Provisions

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

- Water Quality Standards: The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different permit conditions than contained in this permit.

- Water Quality Standards are Exceeded: If it is found that water quality standards or trigger values in the receiving stream are exceeded either for parameters included in the permit or others, the Department may modify the permit conditions or water management plan.

- TMDL or Wasteload Allocation: TMDL requirements or a wasteload allocation is developed and approved by the Department and/or EPA for incorporation in this permit.

- Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit.

## 4.33. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established for toxic pollutants which are present in the discharge, within any specified timeframe within rule or thereof, and even if the General Permit or confirmation letter has not yet been modified to incorporate such standard or prohibition for the toxic pollutant.

# 5. General Definitions and Abbreviations

The following definitions and abbreviations apply to terms used in this permit.

"Act" means the Montana Water Quality Act, Title 75, chapter 5, MCA.

"Best Management Practices" ("BMPs") means schedule of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

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

"CFR" means the Code of Federal Regulations.

"Clean Water Act" means the federal legislation at 33 USC 1251, et seq.

"Construction Dewatering" means the action of pumping or actively removing ground water, surface water, and/or accumulated storm water from a construction site or other related activities. MPDES "General Permit for Construction Dewatering" applies to the discharge of construction dewatering effluent to state surface water, with increased sediment and turbidity as the primary pollutants of concern, to include:

- *In-stream dewatering*: cofferdams, drill hole or pylon development;
- *Surface area dewatering*: water pumped from disturbed surface areas (foundations, trenches, excavation pits, vaults, sumps, or other similar points of accumulation associated with a construction site or related activities where sediment-laden ground water, surface water, and/or storm water inflow must be removed); and
- *Ground water dewatering*: water discharged from well development, well pump tests, or pumping of ground water from a construction site or other related activities.

"Department" means the Montana Department of Environmental Quality. Established by 2-15- 3501, MCA.

"Disturbance" related to construction activity means areas that are subject to clearing, excavating, grading, stockpiling earth materials, and placement/removal of earth material performed during construction projects.

"Ephemeral stream" means a stream or part of a stream that flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and whose channel bottom is always above the local water table.

"EPA" or "USEPA" means the United States Environmental Protection Agency.

"Facility or activity" means any MPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the MPDES program.

"Final stabilization" means the time at which all soil-disturbing activities at the 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.

"General Permit" means an MPDES permit issued under ARM 17.30.1341 authorizing a category of discharges under the Act within a geographical area.

"Larger common plan of development or sale" means a contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan. These separate and distinct construction activities which form a larger common plan of development or sale may have areas of disturbance which are not physically connected.

"Montana pollutant discharge elimination system (MPDES)" means the system developed by the Board and Department for issuing permits for the discharge of pollutants from point sources into state surface waters. The MPDES is specifically designed to be compatible with the federal NPDES program established and administered by the EPA.

"Owner or operator" is defined at 75-5-103, MCA.
"Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural wastes discharged into water. The terms "sewage," "industrial waste," and "other wastes" as defined in 75-5-103, MCA, are interpreted as having the same meaning as pollutant.

"Process Wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

"Receiving state surface waters" is the river, stream, lake, etc., which receives the discharge from the site.

"Regional Administrator" is the administrator of the EPA Region with jurisdiction over federal water pollution control activities in the State of Montana.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Severe property damage" means substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass.
Severe property damage does not mean economic loss caused by delays in production.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"State waters" is defined at 75-5-103, MCA.

"Storm water" means storm water runoff from precipitation, snowmelt runoff, and surface runoff and drainage.

"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.

- 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).
- 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.
- 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 ARM 17.30.1102(29)(a), (b), (d) and (e).

"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.

"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. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.

"Temporary Stabilization" means a condition where exposed soils or disturbed areas are provided a temporary vegetative and/or non-vegetative protective cover to prevent erosion and sediment loss. Temporary stabilization may include temporary seeding, geotextiles, mulches, and other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place to re-disturb this area.

"Total maximum daily load" or "TMDL" is defined at 75-5-103, MCA.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

"Waste pile" means any non-containerized accumulation of solid, non-flowing waste that is used for treatment or storage.