

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

**GENERAL PERMIT
For
Produced Water**

Permit No.: MTG310000

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

In compliance with Montana Water Quality Act, Title 75, Chapter 5, Montana Code Annotated (MCA), and the federal Water Pollution Control Act (the "Clean Water Act"), 33 U.S.C. 1251 *et. seq.*, applicants issued an authorization letter for this Produced Water General Permit, are permitted to discharge wastewater to state waters in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this General Permit and a written authorization letter from the Department must be kept on-site at all times. The General Permit is not valid without a current authorization letter from the Department.

This permit shall become effective **TBD**

This permit and the authorization to discharge shall expire at midnight on **5 years after the effective date.**

FOR THE MONTANA DEPARTMENT
OF ENVIRONMENTAL QUALITY

DRAFT

Jon Kenning, Chief
Water Protection Bureau
Water Quality Division

Issuance Date: DRAFT

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I. Eligibility and Application Process

A. Area of Coverage

This Produced Water General Permit (PWGP) applies to all areas of the State of Montana, except for Indian Lands, National Parks, and the state waters in Rosebud Creek, Tongue, Powder, and Little Powder River watersheds.

B. Sources Eligible for Coverage

The Produced Water General Permit (PWGP) authorizes the disposal of produced water into ephemeral drainages and impoundments constructed in ephemeral drainages for beneficial use only.

1. Produced Water from Oil and Gas Operations

This PWGP applies to oil and gas production facilities, as defined in 40 CFR Part 435 Subpart E that propose to discharge produced water into state ephemeral waters for use in agriculture or wildlife propagation. Oil and Gas production operations in Standard Industrial Classification 1311 and North American Industrial Classification System 2111 may discharge produced water into state waters mentioned above.

"Produced water" is the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and may include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

2. Discharge to Ephemeral Receiving Waters

This General Permit only authorizes produced water discharge that can be contained in ephemeral drainages and/or impoundments constructed in ephemeral drainages. Discharge of produced water must be less than the storage volume of an ephemeral drainage or impoundment, and must not lead to produced water runoff into intermittent or perennial streams.

3. Discharge for Wildlife Propagation

The produced water must be of good enough quality to be used for wildlife or livestock watering. The produced water must also be put to actual use during periods of discharge.

C. Sources Prohibited from Coverage under this General Permit

1. Applicants unable to comply with effluent limits or other terms and conditions of the permit, water quality standards, or any additional requirements that DEQ determines are necessary.

2. If an MPDES permit or authorization for the same operation has been previously denied or revoked.

3. Discharge different in degree or nature from the sources or activities described in the General Permit:

a. Produced Water from Coal Bed Natural Gas Operations

The national Effluent Limitation Guidelines (ELGs) specified in 40 CFR Part 435, Subpart E were promulgated for traditional oil and gas production, but not for coal bed natural gas production. Therefore, coal bed natural gas discharges are excluded from coverage under the Produced Water General Permit and must apply for individual MPDES permit coverage.

b. Discharge to Intermittent or Perennial Streams

Facilities proposing to discharge produced water into intermittent or perennial waters are not eligible for coverage under this PWGP and must apply for an individual MPDES permit.

c. Discharge to Rosebud Creek, Tongue, Powder, and Little Powder River Watersheds

Facilities proposing to discharge produced water into the Rosebud Creek, Tongue, Powder, and Little Powder River watersheds are not eligible for coverage under this PWGP and must apply for coverage under a MPDES individual permit.

d. Discharge that Exceeds the Water Quality Requirements for Livestock and Wildlife

Facilities are not eligible for PWGP coverage if the produced water discharge exceeds the water quality criteria for livestock and wildlife.

4. Discharges included within an application or is subject to review under the Major Facility Siting Act.
5. Point sources in an area of unique ecological or recreational significance, as determined by Montana stream classifications, impacts on fishery resources, local conditions at proposed discharge sites, designations of wilderness areas, or designations of wild and scenic rivers.

D. Requirements for Authorization – Notice of Intent Package

Facilities seeking coverage under this PWGP will need to apply to DEQ by submitting a complete Notice of Intent (NOI) Package. Once a complete NOI package is received, DEQ will review the application and decide whether to deny or issue an authorization letter for coverage under the General permit, which is only valid when accompanied by the PWGP. Each authorization under the General Permit will be to a specific owner/operator of a gas or natural gas production facility. The operation will be allowed only in the area specified in the authorization letter, and discharge is only allowed via identified outfalls to specified receiving waters.

A complete NOI package requires applicants to address the following:

1. *Notice of Intent Form for Produced Water General Permit (NOI-31 form)*: The updated NOI-31 form is located on DEQ’s website at <http://deq.mt.gov/Water/permits/Discharges>.
2. *Livestock and Wildlife Drinking Water Criteria and Water Quality Analysis*: Applicants must submit a water quality analysis of the produced water proposed to be discharged for all parameters specified in Section II.D of this permit. Applicants will be ineligible for permit coverage if water quality does not meet Livestock and Wildlife Drinking Water Criteria.
 - The analysis must be done in accordance with EPA test procedures (40 CFR Part 136) and each parameter must meet the required reporting value (RRV) from the most recent Circular DEQ-7.
 - If a parameter is reported as not detected, the RRV or lower must be achieved.
 - The collection date on the analysis must not be more than 1 year old
 - If the applicant is proposing a new well that has not discharged, DEQ will accept an anticipated water quality analysis from a nearby well or similar source with the NOI-31 form. Once discharge commences, permittees are required to submit a water quality analysis for new wells within 3 months of initial discharge.
 - Applicants must certify that discharged produced water will be put to beneficial use.
3. *If Constructing an Impoundment - Produced Water Storage Capacity Self Evaluation*: Applicants must certify that the discharged produced water is less than the storage volume of an impoundment and does not lead to produced water runoff into intermittent or perennial streams. The updated evaluation requirements are part of the NOI-31 form located on DEQ’s website at <http://deq.mt.gov/Water/permits/Discharges>.
4. *Sage Grouse Habitat Executive Order No. 12-2015*: If the operation is in sage grouse core, general, or connectivity habitat, the applicant must include a consultation letter from the Sage Grouse Habitat Conservation Program, <https://sagegrouse.mt.gov/>.
5. *Analyses for New Sources*: If the proposed discharge is to a new source or new authorization, applicants must obtain analyses from:
 - Montana National Heritage Program
 - Montana State Historic Preservation Office
6. *Required Fee*: Fees are required under ARM 17.30.201 Schedule I.B, and determined by NOI-31 status:
 - New Application Fee: \$1,200
 - Renewal Application Fee: \$900

E. Obtaining New Authorization Under the 2020-General Permit

At least 30 days prior to operation, applicants must submit a complete NOI Package to DEQ. Applicants are not allowed to discharge without an authorization letter from DEQ.

F. Continuing Permit Coverage under the 2015-General Permit

Continued coverage applies to active permittees currently covered under the 2015-issued General Permit unless they are excluded according to the conditions in **Section I.B** of this permit. Eligible applicants with **current** general permit authorization (2015-issued General Permit) must submit a complete renewal request (NOI package) for continued coverage. The NOI package must be submitted **within 60 days of the effective date of the 2020-General Permit**.

G. Terminating Permit Authorization

Permit coverage remains in effect until the expiration date of this PWGP or DEQ receives notice from the permittee that the point source of discharge has been eliminated. The options for terminating permit coverage are listed below:

1. Permittees must complete and submit a Notice of Termination (NOT) form to DEQ.
 - The NOT form is available at <http://deq.mt.gov/water/resources/Forms>
 - Annual fees accrue until DEQ receives a Notice of Termination.
2. Current permittees may request to be excluded from coverage under this General Permit by applying for and obtaining an individual MPDES permit.
 - If an individual MPDES permit is issued, coverage under this General Permit will be terminated on the effective date of the final individual MPDES permit.

H. Transferring Permit Coverage

DEQ may transfer authorization to a new owner or operator under the General Permit. A permit transfer constitutes written notice to DEQ under the Montana Water Quality Act that the new owner or operator assumes responsibility and liability for all the terms and conditions in the permit, including fees.

1. The current owner and new owner must submit a completed Permit Transfer Notification (PTN) form to DEQ at least 30 days before the effective date of the proposed transfer. The PTN form is available at <http://deq.mt.gov/water/resources/Forms>
2. The PTN form may not be used to transfer permit coverage to a new or different site location or to modify the terms and conditions of the permit.

I. Denied Authorizations

If a permittee is denied authorization to operate under the General Permit, DEQ will proceed to process the request for authorization through the individual MPDES permit requirements, unless the applicant withdraws the NOI or modifies the proposed discharge to meet the requirements of the General Permit. If the applicant withdraws the application, they must reapply with a full NOI package and applicable fees if they intend to seek future coverage under the General Permit.

II. Effluent Limits, Monitoring Requirements, and Special Conditions

A. Effluent Limits

Beginning on the effective date of the permit and lasting through the duration of the permit, the permittee is authorized to discharge from the outfall(s) specifically described in the authorization letter at the effluent limits in Table 1.

Parameter	Units	Average Monthly Limit	Maximum Daily Limit
Oil and Grease	mg/L	-	10
Total Dissolved Solids (TDS)	mg/L	5,000	-

⁽¹⁾ See Definition section at the end of the permit for explanation of terms.

There shall be no discharge of waste pollutants into state waters other than ephemeral drainages from any source (other than produced water) associated with production, field exploration, drilling, well completion, or well treatment (including but not limited to drilling muds, drilling cuttings, and produced sands).

There shall be no discharge of floating solids or visible foam in other than trace amounts.

There shall be no discharge which causes visible oil sheen in the receiving water.

There shall be no discharge that settles to form objectionable sludge deposits or emulsions beneath the surface of the water or upon adjoining shorelines.

B. Self-Monitoring Requirements

All analytical procedures must comply with the specifications of 40 CFR Part 136 and the analysis must meet any Required Reporting Values (RRVs) listed in Circular DEQ-7 unless otherwise specified.

Samples shall be collected, preserved and analyzed in accordance with approved procedures listed in 40 CFR Part 136. Monitoring of the effluent must be representative of the volume and nature of the discharge. Effluent quality will be monitored at the discharge location (outfall) after all treatment has occurred prior to produced water entering the receiving ephemeral drainage and/or impoundment. Monitoring is required quarterly, and samples must be collected at least 2 months apart.

Monitoring will start with the effective date of the permit and last for the duration of the permit cycle. Permittees must submit monitoring results electronically through NetDMR. Monitoring is only required during periods of discharge. If no discharge occurs, permittees shall indicate “no discharge” on NetDMR for the effluent. Monitoring requirements are presented in Table 2.

Parameter	Units	Frequency	Sample Type ⁽¹⁾	RRV ⁽²⁾
Effluent Flow	gal/min	Quarterly	Instantaneous	1
Oil and Grease	mg/L	Quarterly	Grab	1
Total Dissolved Solids (TDS)	mg/L	Quarterly	Grab	5
Sulfate	mg/L	Quarterly	Grab	0.1
Electrical Conductivity (EC)	µS/cm ⁽³⁾	Quarterly	Instantaneous	10

⁽¹⁾ See Definition section at the end of the permit for explanation of terms.
⁽²⁾ See Circular DEQ-7 for minimum RRVs.
⁽³⁾ microSiemens/cm

C. Other Monitoring Requirements

DEQ may adjust the monitoring frequency for parameters on a case-by-case basis. Changes will be specified in the authorization letter.

D. Special Conditions

The applicant must meet the following prerequisites to be authorized to discharge under the Produced Water General Permit:

1. Produced Water Storage Capacity Self-Evaluation

If discharging to an impoundment, the applicant must complete a storage capacity self-evaluation and submit the results on Form PW-1 with the Notice of Intent Package. As discussed in Section I, this PWGP only authorizes produced water discharges that can be contained within ephemeral drainages or impoundments. The PW-1 Form is designed to allow a permittee to evaluate the storage capacity for their produced water discharge. Permittees must use the PW-1 Form to demonstrate adequate storage capacity for the discharge produced water before obtaining authorization under the PWGP.

2. Livestock and Wildlife Drinking Water Requirements

All applicants must conduct a water quality analysis (using 40 CFR methods and the Circular DEQ-7 Required Reporting Values) for the parameters listed in Table 3 below. If a parameter is reported as not detected, the RRV or lower must be achieved. If the permittee cannot demonstrate with a single sample that the wildlife and livestock drinking water criteria are achieved, the permittee may collect additional samples, and demonstrate to DEQ that the average value will not exceed water quality criteria.

For the NOI Package to be deemed complete, the applicant must complete the Water Quality Analysis Section of the NOI-31 and submit a lab analysis report demonstrating the quality of the produced water.

If the applicant is proposing a new well that has not discharged, DEQ will accept an anticipated water quality analysis from a nearby well or similar source with the NOI-31 form. Permittees will be required to submit a water quality analysis for new wells within 3 months of discharging produced water.

Parameter ⁽¹⁾	Units	RRV ⁽²⁾	Criteria
Total Dissolved Solids (TDS)	mg/L	5	5000
Oil and Grease	mg/L	1	10
Ph	s.u.	0.1	6.0 – 9.0
Arsenic, Total Recoverable	µg/L	1	500
Cadmium, Total Recoverable	µg/L	0.03	80
Chromium, Total Recoverable	µg/L	10	1000
Cobalt, Total Recoverable	µg/L	50	1000
Copper, Total Recoverable	µg/L	2	500
Fluoride	µg/L	200	2000
Lead, Total Recoverable	µg/L	0.3	100
Nitrate as N	mg/L	0.02	100
Nitrite as N	mg/L	0.01	10
Selenium, Total Recoverable	µg/L	1	50
Sulfate	mg/L	100	2500
Zinc, Total Recoverable	mg/L	0.008	25

⁽¹⁾ Sample type for all parameters is grab. See Definition section at the end of the permit for explanation of terms.
⁽²⁾ Required Reporting Value. See Circular DEQ-7 for minimum RRVs. If a parameter is reported as not detected, than RRVs or lower must be achieved.

III. STANDARD CONDITIONS

The permittee shall meet the following standard conditions of MPDES permits.

A. 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 must give the Department advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.

B. Penalties for Violations of Permit Conditions

The Montana Water Quality Act at 75-5-631, MCA 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 75-5-632, MCA 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 civil or criminal penalties 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 also 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.

C. 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 60 days before the expiration date of this permit.

D. Need to Halt or Reduce Activity Not a Defense

It is not 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.

E. Duty to Mitigate

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

F. 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) that 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 that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

G. 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.

H. Property Rights

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

I. 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.

J. 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:

1. 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;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. 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
4. Sample, or monitor at reasonable times for the purpose of assuring permit compliance, any substances or parameters at any location.

K. 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.

L. Monitoring and Monitoring Reports – Reporting Requirements

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 electronically through NetDMR. 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.

M. Monitoring and Records

1. Representative Sampling

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

2. 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.

3. Records Content

Records of monitoring information must include:

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

4. Test Procedures – Monitoring and Records

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.

N. Penalties for Falsification and Tampering

The Montana Water Quality Act at 75-5-633, MCA 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.

O. Signatory Requirement

Authorized Representatives: All applications, reports or information submitted to the Department shall be signed and certified as required by ARM 17.30.1323.

1. All permit notices of intent shall be signed as follows:
 - a. For a corporation: by a principal executive officer or ranking elected official;
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
 - c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.
2. 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:
 - a. The authorization is made in writing by a person described above and submitted to the Department; and
 - b. 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.
3. **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.
4. **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."

P. Reporting Requirements

1. 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:

- a. 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 under ARM 17.30.1340(2); or
- b. 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, nor notification requirements under ARM 17.30.1343(1)(a).

2. 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. A description of the discharge and cause of noncompliance; and
- b. 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.

3. Transfers

This permit is not transferable to any person except after notice to the Department and a transfer fee is paid. The Permit Transfer Notification (PTN) 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 signatory requirements of **Part III.N** of the General Permit.

4. Monitoring Reports

Monitoring results shall be reported at the intervals specified elsewhere in this permit and is subject to the following additional requirements:

- a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) form;
- b. If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 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 subchapter N, the results of such monitoring must be included in the calculation and reporting of the data submitted in the DMR; and,
- c. Calculations for all limits that require averaging of measurements must use an arithmetic mean unless otherwise specified by the Department in the permit.

5. 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 shall be submitted no later than 14 days following each schedule date.

6. 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 becomes aware of the circumstances:

- a. Any noncompliance which may seriously endanger health or environment;
- b. Any unanticipated bypass which exceeds any effluent limitation in the permit;
- c. Any upset which exceeds any effluent limitation in the permit; or
- d. As applicable, violation of a maximum daily discharge limit of any pollutant listed by the Department in the General Permit or confirmation letter [see 40 CFR 122.44(g)].

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

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times;
- c. The estimated time noncompliance is expected to continue if it has not been corrected; and,
- d. 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 at (406) 444-5546 or the Office of Disaster 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) 444-5546. Written reports shall be submitted to the following address:

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

7. 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 “Twenty-four Hour Reporting” (**Part III.O.6**).

8. Other Information

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

Q. Bypass

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

1. the bypass does not cause effluent to exceed effluent limitations and is necessary for essential maintenance to ensure efficient operation; or
2. the bypass is unavoidable to prevent loss of life, personal injury, or severe property damage; or
3. there are no feasible alternatives;
4. 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 **III.O.5**.

R. 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:

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

S. 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 section. Suspensions are limited to one year, after which the permit will be terminated.

T. 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 pollutants from entering any waters of the state or creating a health hazard.

U. 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.

V. 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.

W. 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:

1. 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.
2. 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.
3. 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.
4. 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.

X. 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.

IV. 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.

“**Arithmetic mean**” or “**arithmetic average**” for any set of related values means the summation of the individual values divided by the number of individual values.

“**Average monthly limit**” means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

“**Bypass**” means the intentional diversion of waste streams from any portion of a treatment facility.

“**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.

“**Daily discharge**” means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

“**Department**” means the Montana Department of Environmental Quality (MDEQ). Established by 2-15-3501, MCA.

“**Director**” means the Director of the Montana Department of Environmental Quality.

“**Discharge**” when used without qualification means discharge of a pollutant.

“**Discharge of a pollutant(s)**” means any additional of any pollutant or combination of pollutants to state water from any point source. This definition includes additions of pollutants into waters of the state from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by the state, municipality, or other person which do not lead to a treatment works. This term does not include an addition of pollutants by any indirect discharger, as defined in ARM 17.30.1304.

“**Discharge Monitoring Report**” (DMR) means the Department’s uniform form for the reporting of self-monitoring results by permittees.

“**EPA**” or “**USEPA**” means the United States Environmental Protection Agency.

“**Ephemeral stream**” means a stream or part of a stream which 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.

“**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.

“**Federal Clean Water Act**” means the federal legislation at 33 USC 1251, et seq.

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

“**Grab sample**” means a sample that is taken from a waste stream on a one-time basis without consideration of flow rate of the effluent or without consideration for time.

“**Hazardous substance**” means any substance designated under 40 CFR Part 116 pursuant to section 311 of the federal Clean Water Act.

“**Instantaneous measurement**”, for monitoring requirements, means a single reading, observation, or measurement.

“Maximum Daily Limit” means the highest allowable discharge of a pollutant during a calendar day. Expressed as units of mass, the daily discharge is cumulative mass discharged over the course of the day. Expressed as a concentration, it is the arithmetic average of all measurements taken that day.

“Minimum Level” (ML) of quantitation means the lowest level at which the entire analytical system gives a recognizable signal and acceptable calibration point for the analyte. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all method specific sample weights, volumes and processing step have been followed.

“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 MPDES program established and administered by the EPA.

“On-site” means upon the piece of land or property on which the production area is located, including immediately adjacent land used in connection with the facility or activity. (e.g. this includes instances where a business office is located on an immediately adjacent piece of property. This does not include offices, homes, or other facilities on property that does not share an adjoining boundary with the production area.)

“Outfall” means the place where a point source discharges effluent into the receiving water. For each outfall, there typically is at least one monitoring location. Although the monitoring location might or might not be at the actual point of discharge, samples taken at the monitoring location should be representative of the discharge. For the purposes of this permit, outfalls are locations where sluice water from the suction dredging operation discharges.

“Owner/operator” means a person who owns, leases, operates, controls, or supervises a point source.

“Permit” means an authorization or license issued by EPA or an "approved state" to implement the requirements of this rule and 40 CFR Parts 123 and 124. "Permit" includes an NPDES general permit (ARM 17.30.1341). Permit does not include any permit that has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit".

“Point Source” means any discernible, confined, or 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.

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

“Required Reporting Values” means the minimum level of quantification or detection that must be achieved in reporting all monitoring results required by this permit.

“Severe property damage” means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that 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” means a body of water, irrigation system, or drainage system, either surface or underground. The term does not apply to: ponds or lagoons used solely for treating, transporting, or impounding pollutants; or, irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

“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.

“TIE” means a toxicity identification evaluation.

“TMDL” means the total maximum daily load limitation of a parameter, representing the estimated assimilative capacity for a water body before other designated uses are adversely affected. Mathematically, it is the sum of wasteload allocations for point sources, load allocations for non-point and natural background sources, and a margin of safety.

“Toxic pollutant” means any pollutant listed as toxic pursuant to section 1317(a)(1) of the federal Clean Water Act and set forth in CFR Part 129.

“TRE” means a toxicity reduction evaluation.

“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.

“Wasteload allocation” means the portion of a receiving water’s loading capacity that is allocated to one of its existing or future point sources.

“Whole Effluent Toxicity” (WET) is the total toxic effect of an effluent measured directly with a toxicity test.