

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

**GENERAL PERMIT
FOR
SAND AND GRAVEL OPERATIONS**

PERMIT NUMBER MTG490000

**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) *ARM 17.30.601 et seq.; 17.30.1201 et seq.; and 17.30.1301 et seq.*, owners and operators (permittees) of sand and gravel mining and processing operations with authorization under this *General Permit for Sand and Gravel Operations* are permitted to discharge mine dewatering water and process generated wastewater to state waters and subject to effluent limitations, monitoring requirements, and other conditions set forth herein.

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

This Permit shall become effective **to be determined**.

This Permit and the authorization to discharge shall expire at midnight, **five years after the effective date**.

FOR THE MONTANA DEPARTMENT
OF ENVIRONMENTAL QUALITY

DRAFT

Jon Kenning, Chief
Water Protection Bureau

Issuance Date: _____

Contents

1. Coverage Under This Permit 3

 1.1 Eligibility..... 3

 1.2 Authorization under this Permit 5

2. Effluent Limitations, Monitoring, and Reporting Requirements 7

 2.1 Effluent Limits 7

 2.2 Monitoring..... 8

 2.3 Daily Visual Observation Log..... 9

3. Total Maximum Discharge Loads (TMDLs)..... 10

4. Recordkeeping 10

5. Standard Conditions 11

6. Definitions 18

1. Coverage Under This Permit

1.1 Eligibility

1.1.1 Sand and Gravel Operations Coverage Area

The Montana Pollutant Discharge Elimination System (MPDES) General Permit for Sand and Gravel Operations (MTG490000) applies to all areas of the State of Montana, except for lands within the external boundaries of Indian Reservations.

1.1.2 Allowable Discharges

This General Permit for Sand and Gravel Operations (2019-General Permit) applies to facilities or operations that are engaged in the business of mineral mining and processing as defined in 40 CFR 436 Subparts B and C and propose to discharge mine dewatering water or process generated wastewater to state surface waters.

- Subpart B applies to facilities or operations that mine or quarry and process crushed and broken stone and riprap which includes all types of rock and stone. The processing of calcite, in conjunction with the processing of crushed and broken limestone or dolomite, is included in Subpart B.
- Subpart C applies to facilities or operations that mine and process sand and gravel for construction or fill uses, except on-board processing of dredged sands and gravel subject to regulation under 33 CFR 230.
- Mine dewatering discharges are discharges to state surface waters of any water that is impounded or that collects in the mine and is pumped, drained, or removed from the mine through the efforts of the mine operator. Mine dewatering water also includes wet pit overflows caused solely by direct rainfall and ground water seepage.
- Process wastewater is generated through the process of washing aggregate. Process wastewater is any wastewater used in the slurry transport of mined material, air emissions control or processing exclusive of mining. Process wastewater also includes any other water that becomes commingled with such wastewater in a pit, pond, lagoon, mine or other facility used for treatment of wastewater.

Sand and Gravel Operations (as defined in Subparts B and C) are eligible for coverage to discharge mine dewatering water or process generated wastewater to impaired waterbodies that are consistent with approved Total Maximum Daily Loads and assigned wasteload allocations, and the additional requirements within this permit or the facility's authorization letter.

1.1.3 Limitations on Coverage

The following discharges are not eligible for coverage under the 2019-General Permit:

- Discharges from other mining operations not defined in Subparts B and C, to include and not limited to, hard rock and talc;
- Discharges of construction dewatering effluent to state surface waters requiring authorization under the MPDES "General Permit for Construction Dewatering";
- Discharges of storm water to state surface waters requiring authorization under the MPDES "Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activities";

- Discharges of storm water to state surface waters requiring authorization under the MPDES “General Permit for Storm Water Discharges Associated with Construction Activity”;
- Discharges to impaired waterbodies that are inconsistent with approved TMDLs and assigned WLAs, and the additional requirements with this permit;
- Discharges to waterbodies that are inconsistent with additional DEQ requirements, on a case-by-case basis;
- Discharges to A-Closed or A-1 classification waters; and
- Discharges which DEQ determines have a reasonable potential to cause, or contribute to, an exceedance of any applicable water quality standard, and/or DEQ has determined coverage under a MPDES Individual Permit is required. If DEQ determines ineligibility, DEQ shall proceed, unless the application withdrawn, to process the application through the Individual MPDES Permit requirements. DEQ will contact the applicant regarding ineligibility and request more information and fees, as needed, for Individual MPDES Permit requirements.

The following discharges are prohibited under the 2019-General Permit:

- Wastewater from the washout of concrete;
- Fuels, oils, or other potential pollutants used in vehicle and equipment operation and maintenance; and
- Toxic or hazardous substances from a spill or other release including the disturbance and/or removal of contaminated soils.

Coverage does not relieve the permittee from any other statute, regulation, permits, or other regulatory requirements for activities occurring within the project area to include, and not limited to, any requirements, rules, and permitting pursuant to the Opencut Mining Act (MCA Title 82, chapter 4, part 4).

DEQ may deny coverage for discharges if 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;
- 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 DEQ determines are necessary; and
- A point source that 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.

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

- The 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 2019-General Permit is also included within an application or is subject to review under the Major Facility Siting Act,
- 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, impacts on fishery resources, local conditions at proposed discharge sites, and designations of wilderness areas or of wild and scenic rivers.
- Discharges of sanitary wastewater or discharges commingled with chemicals or contaminants.
- Dredging or filling of wetlands or other surface waters of the state.
- The discharge is at or near a hazardous waste or other type of remediation site. If the sand and gravel operation or facility is proposed to be located near a known contamination area, or the permittee has reason to believe that the site or site's groundwater might be contaminated, they must demonstrate that there are no pollutants from the waste site in the sand and gravel effluent.

1.2 Authorization under this Permit

An owner or operator proposing to discharge mine dewatering water and/or process wastewater from sand and gravel mining and processing operations to state waters is required to obtain authorization under an MPDES permit including both operating and non-operating. An "owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

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

A Notice of Intent (NOI) application 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. DEQ will review the NOI Package for completeness. The applicant must have the authorization letter from DEQ prior to initiating discharge to any state surface waters. Coverage of discharge under the 2019-General Permit is effective on the date of an authorization letter from DEQ. The permittee must maintain a copy of the completed NOI Package. 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 and operators can obtain first-time coverage under the 2019-General Permit by submitting a complete Notice of Intent (NOI-49) Package to DEQ.

A complete NOI-49 Package must consist of:

- A completed NOI-49 form, including all required attachments, using the standard NOI form provided by DEQ;
- A copy of the consultation letter from the Montana Sage Grouse Habitat Conservation Program (if applicable); and
- The appropriate application fee.

1.2.2 Continuing Authorizations under the 2019-General Permit

Permittees covered under the 2017-issued General Permit that require continued authorization beyond the October 31, 2019, expiration date must submit a complete NOI-49 package to DEQ for coverage under the 2019-General Permit. DEQ must receive the complete NOI-49 Package within 30 days after the effective date of the 2019-General Permit.

A complete NOI-49 Package must consist of:

- A completed NOI-49 form, including all required attachments, using the standard NOI form provided by DEQ;
- A copy of the consultation letter from the Montana Sage Grouse Habitat Conservation Program (if applicable); and
- The appropriate application fee.

1.2.3 Modifications to Authorizations under the 2019-General Permit

Permittees requiring modifications to authorizations under the 2019-General Permit must submit a complete NOI-49 package to DEQ. Modification requests to current authorizations submitted within six months of the date of the coverage are processed with the corresponding fee. If the request is submitted six months after the date of coverage, the modification will be processed with the corresponding new application fee for the NOI-49.

The complete NOI-49 Package must consist of:

- A completed NOI-49 form, including all required attachments, using the standard NOI form provided by DEQ with Modification checked in Section A;
- A copy of the consultation letter from the Montana Sage Grouse Habitat Conservation Program (if applicable); 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-49 form and attached instructions.

1.2.4 Resubmittal

DEQ may request a resubmittal of a NOI-49, any required records, and any associated fees. Administrative processing fees may be assessed for DEQ reviews.

1.2.5 Transfer of Coverage under the 2019-General Permit

DEQ has a Permit Transfer Notification form (PTN). Permittees must use the PTN to transfer ownership or change the name of the entity that holds an authorization under this permit with the corresponding fee. The PTN must be submitted at least 30 days before the effective date of the proposed transfer and 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, including permit fees. This PTN form may not be used to transfer coverage to a new or different operation, facility, site, activity, or location. Until DEQ determines the submitted PTN 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.

1.2.6 Termination of Coverage under the 2019-General Permit

The permittee must submit the standard DEQ Notice of Termination (NOT) form to terminate coverage. The permittee is responsible for complying with the terms of this permit until notified by DEQ that the authorization is terminated. Coverage under the General Permit remains in effect until the expiration date or until DEQ processes a NOT form certifying that the discharge has been eliminated. The NOT form must be signed by an authorized signatory and submitted to the DEQ.

The permittee is responsible for payment of annual fees for each calendar year covered under the 2019-General Permit. Failure to submit a NOT will result in accrual of annual permit fees.

1.2.7 Individual MPDES Permit

The owner or operator of a facility 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 to the owner or operator of the facility, coverage under the 2019-General Permit is terminated on the effective date of the final individual MPDES permit.

2. Effluent Limitations, Monitoring, and Reporting Requirements

2.1 Effluent Limits

Beginning on the effective date of authorization and lasting through the duration of the permit coverage under the 2019-General Permit, permittees must comply with the following effluent limits requirements for mine dewatering water and process generated wastewater for discharges authorized from the outfall(s) specifically identified in the authorization letter.

Table 1: Final Effluent Limits			
Parameter	Units	Average Monthly	Daily Maximum
Total Suspended Solids (TSS)	mg/L	25	45
Oil and Grease ⁽¹⁾	Visual	No Visual Sheen	
Oil and Grease ⁽²⁾⁽³⁾	mg/L	--	10
pH	s.u.	In the Range of 6.0 – 9.0 ⁽⁴⁾⁽⁵⁾	
Footnotes:			
1. A visual observation of the discharge for each permitted outfall must be made daily (Yes or No), when discharging, and recorded in a log (Permit Part 2.3) to be kept on site.			
2. In the event an oil sheen or floating oil is observed, a grab sample must be collected, analyzed, and reported on the DMR.			
3. Monthly grab samples are required during months with discharge.			
4. Instantaneous minimum and instantaneous maximum			
5. Natural pH above 7.0 must be maintained above 7.0.			

2.2 Monitoring

Samples and measurements must be representative of the volume and nature of the monitored discharge from sand and gravel operations. Monitoring must be conducted for the following parameters and at the specified frequency, at a minimum. Samples must be collected at the point of discharge or the last point of control after treatment and prior to discharge to receiving waters.

Sampling and analysis must be conducted in accordance with 40 CFR 136. Results must be reported on a Net Discharge Monitoring Report (NetDMR) by the 28th of the following month. Monitoring is only required during periods of discharge. If no discharge occurs (regardless of operating and non-operating status), the permittee shall indicate “no discharge” on the monthly Discharge Monitoring Reports (DMRs).

Table 2: Monitoring Requirements						
Parameter	Units	Monitoring Location	Minimum Sample Frequency	Sample Type ⁽¹⁾	Reporting Requirement	Reporting Limit
Total Suspended Solids (TSS)	mg/L	Effluent	1/Week	Grab	Monthly Average	10
Oil and Grease ⁽²⁾	Y or N	Effluent	Daily	Visual	Yes or No	NA
Oil and Grease ⁽³⁾	mg/L	Effluent	1/Month	Grab	Monthly Maximum	1
pH ⁽⁴⁾	s.u.	Effluent	1/Week	Instantaneous	Monthly Maximum Monthly Minimum	0.1
Footnotes:						
1. See definition section at end of permit for explanation of terms.						
2. A visual observation of the discharge for each permitted outfall must be made daily, when discharging, and recorded in a log (Permit Part 2.3). If a visual examination of the discharge indicates the presence of hydrocarbons by sheen, odor, or other sign the permittee is required to immediately collect a grab sample for oil and grease using an approved 40 CFR Part 136 method.						
3. Regardless of visual observation, at least one sample for oil and grease shall be taken per month.						
4. Upon request and DEQ review and approval, the pH requirement may not be applicable to overflow if the facility or operation is designed, constructed, and maintained to contain or treat the volume of wastewater that would result from a 10-year, 24-hour precipitation event.						

2.3 Daily Visual Observation Log

Beginning on the effective date of authorization and lasting through the duration of the permit coverage under the 2019-General Permit, permittees are required to maintain a daily log (conduct monitoring, recordkeeping, and reporting) in addition Part 2.2 Monitoring for mine dewatering water and process generated wastewater for discharges authorized from the outfall(s) specifically identified in the authorization letter.

2.3.1. Visual Observations

When discharging, the permittee must perform visual observations of the discharge and the receiving water at all permitted outfall(s) daily for:

- the presence of hydrocarbons by sheen or film, odor, or other sign; and
- noticeable changes to the physical characteristics of the receiving water potentially attributed to the volume and/or velocity of the discharge to include, and not limited to:
 - streambank scouring, undercutting, caving, or any type of erosive characteristics;
 - appearance of the receiving water (turbidity and/or increased sediment transport, etc.); or
 - quantity of the receiving water (increase in flow atypical of seasonal variations; or the discharge flow combined with the stream flow appears to exceed 75% of the stream bank height, etc.).

2.3.2. Visual Observations Records

The permittee must maintain a daily record for each day of visual observations performed as required by Part 2.3.1. Required information includes:

- Name of the permittee;
- Name of the facility or operation;
- The MPDES Permit Authorization Number;
- Outfall Number (individual records must be maintained for each outfall);
- The visual observation time and date;
- Name of the individual performing the visual observation;
- The presence of hydrocarbons confirmation (Yes or No);
- A description of visual observation if hydrocarbons are present;
- Confirmation that required Oil and Grease grab sample collected if hydrocarbons are present;
- Document corrective actions taken immediately to mitigate the discharge of Oil and Grease to include cessation of operations and noncompliance reporting in accordance the 2019-General Permit
- The presence of noticeable changes to the condition of the streambank confirmation (Yes or No);
- A description of noticeable changes to the condition of the streambank if present; and
- Confirmation of noncompliance reporting in accordance with the 2019-General Permit if noticeable changes to the condition of the streambank are present (Yes or No).

3. Total Maximum Discharge Loads (TMDLs)

According to federal regulation, where a TMDL has been approved, NPDES permits must contain effluent limits and conditions consistent with the requirements and assumptions of the wasteload allocations (WLAs) in the TMDL (see 40 CFR § 122.44(d)(1)(vii)(B)). At the time of application, the permittee must identify if their sand and gravel operation will discharge to impaired waterbodies. Information on impaired waterbodies may be obtained from DEQ 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. DEQ clarified that 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, or the discharges do not cause or contribute to a violation of the corresponding water quality criteria. The permittee must ensure that all discharges are consistent with the assumptions of any applicable TMDL wasteload allocation. DEQ will include approved TMDLs and assigned WLAs into the permittee's authorization. All EPA approved TMDL wasteload allocations applicable to MPDES-regulated sand and gravel operations are incorporated by reference into this permit.

Permittees will be informed if any additional requirements are necessary for discharges to protect beneficial uses or to be consistent that the assumptions of any available TMDL wasteload allocation. Such additional requirements shall be included within the permittee's authorization letter. In certain cases DEQ may find coverage under an MPDES individual permit necessary.

4. Recordkeeping

The permittee must maintain the following records onsite:

- a copy of the 2019-General Permit;
- a copy of the completed and signed NOI-49 form including modification submittals;
- a copy of DEQ's authorization letter;
- copies of Discharge Monitoring Reports;
- Monitoring Records as required by 2019-General Permit
- the daily visual log;
- copies of all reports required by this permit
- all reports of noncompliance under the 2019-General Permit; and
- the Sage Grouse consultation letter, as applicable.

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

5. Standard Conditions

5.1. 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 DEQ advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.

5.2. Penalties for Violations of Permit Conditions

The Montana Water Quality Act at MCA 75-5-631 provides that in an action initiated by DEQ 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.

5.3. 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.

5.4. 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.

5.5. 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.

5.6. 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.

5.7. 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.

5.8. Property Rights

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

5.9. Duty to Provide Information

The permittee shall furnish to DEQ, within a reasonable time, any information which DEQ 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 DEQ, upon request, copies of records required to be kept by this permit.

5.10. Inspection and Entry

The permittee shall allow the head of DEQ, 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.

5.11. 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

DEQ. As required by the Clean Water Act, applications, permits and effluent data shall not be considered confidential.

5.12. Reporting Requirements- Monitoring and Monitoring Reports

DEQ may require a permittee to monitor in addition to any conditions in this permit, on a case-by-case basis. If monitoring is required, DEQ will specify monitoring requirements to include, and not limited to, 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 DEQ. 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 DEQ.

5.13. Monitoring and Records- Representative Sampling

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

5.14. 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 DEQ at any time.

5.15. 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.

5.16. 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 DEQ.

5.17. 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.

5.18. Signatory Requirements

Authorized representatives: All applications, reports or information submitted to DEQ 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 DEQ 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 DEQ; 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 DEQ 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.”

5.19. Reporting Requirements - Planned Changes

The permittee shall give notice to DEQ 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.

5.20. Reporting Requirements- Anticipated Noncompliance

The permittee shall give advance notice to DEQ 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.

5.21. Reporting Requirements- Transfers

Permit coverage is not transferable to any person except after notice is given to DEQ and a transfer fee is paid. The Permit Transfer Notification (PTN) form provided by DEQ must be completed and must be received by DEQ 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 5.18 of the General Permit.

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

5.23. 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 DEQ 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) 444-5546 or the Office of Disaster and Emergency Services at (406) 324-4777.

Waiver of written notification requirement: DEQ 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

5.24. 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 5.23.

5.25. 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 DEQ, it shall promptly submit such facts or information.

5.26. 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 DEQ 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. DEQ may approve an anticipated bypass, after considering its adverse effects. The permittee shall submit notice of an unanticipated bypass as required under Part 5.23.

5.27. 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.

5.28. 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, DEQ 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. DEQ 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.

5.29. 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.

5.30. 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.

5.31. 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.

5.32. 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, DEQ may modify the permit conditions or water management plan.
- **TMDL or Wasteload Allocation:** TMDL requirements or a wasteload allocation is developed and approved by DEQ 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.

5.33. 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.

6. Definitions

“Department” means the Montana Department of Environmental Quality (DEQ).

A “grab sample”, for monitoring requirements, is defined as a single "dip and take" sample collected at a representative point in the discharge stream.

An “instantaneous” measurement, for monitoring requirements, is defined as a single reading, observation, or measurement.

The term “mine” means an area of land, surface or underground, actively mined for the production of crushed and broken stone from natural deposits or for the production of sand and gravel from natural deposits.

The term "mine dewatering" means any water that is impounded or that collects in the mine and is pumped, drained or otherwise removed from the mine through the efforts of the mine operator. However, if a mine is also used for treatment of process generated wastewater, discharges of commingled water from the facilities shall be deemed discharged of process generated waste water.

A "mixing zone" means a limited area of a surface water body or aquifer where initial dilution of a discharge takes place and where water quality changes may occur. Also recognized as an area where certain water quality standards may be exceeded.

"Non-degradation" means the prevention of a significant change in water quality that lowers the quality of high-quality water for one or more parameters. Also, the prohibition of any increase in discharge that exceeds the limits established under or determined from a permit or approval issued by DEQ prior to April 29, 1993.

The term "process generated waste water" means any wastewater used in the slurry transport of mined material, air emissions control, or processing exclusive of mining. The term shall also include any other water which becomes commingled with such waste water in a pit, pond, lagoon, mine, or other facility used for treatment of such wastewater.

The term "10-year 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable reoccurrence interval of once in 10 years. This information is available in "Weather Bureau Technical Paper No. 40," May 1961 and "NOAA Atlas 2," 1973 for the 11 Western States and may be obtained from the National Climatic Center of the Environmental Data Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

The term "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.

"Turbidity" means a measure of the clarity of a particular water sample. It expresses the tendency of the sample to scatter or absorb light owing to the presence of sediment, suspended particulate matter, such as silt, or other finely divided organic or inorganic matter. Turbidity is measured in nephelometric turbidity units (NTU's).

The "receiving stream" means the river, stream, or creek, which receives the wastewater discharge from the construction activity.

A "visual observation" means an examination of the discharge for the presence of hydrocarbons, sheen, odor or other sign.