MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

GENERAL PERMIT
for
CONSTRUCTION DEWATERING

Permit No.: MTG070000

AUTHORIZATION TO DISCHARGE UNDER THE
MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM

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 coverage under this Construction Dewatering General Permit are permitted to discharge in accordance with permit compliance requirements and other conditions set forth herein.

A copy of this General Permit and the letter of authorization from the Department of Environmental Quality (DEQ) must be available at all times. The General Permit is not valid without a current letter of authorization for the dewatering activity.

This permit shall become effective **{to be determined}.**

This permit and the authorization to discharge shall expire at midnight, **{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: **TBD**

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I. ELIGIBILITY AND APPLICATION PROCESSES

A. Sources Eligible for Coverage

The Construction Dewatering General Permit (CDGP) applies to discharge of construction dewatering or well development effluent to state surface water in all areas in the State of Montana, except within the boundaries of Indian Lands.

Regulated activities under the CDGP include:

- *In-stream dewatering*: cofferdams, drill hole or pylon development;
- *Surface area dewatering*: water pumped from disturbed surface areas (trenches, sumps, excavation pits, or other excavations associated with construction where sediment-laden ground water or surface water/storm water inflow must be removed); and
- *Ground water dewatering*: Dewatering from wells located within an active area of disturbance is subject to the CDGP. Common methods of ground water dewatering from a construction area include sumps, wells, and well points. In addition, potentially turbid water discharged from well development or well pump tests of any kind are also subject.

B. Sources Excluded from Coverage

1. The Montana Department of Environmental Quality (DEQ) may deny a CDGP request for discharge for the following:

   a) The specific source applying for authorization appears unable to comply with the following requirements:
      - effluent limitations or other terms and conditions of the permit;
      - water quality standards established pursuant to 75-5-301, MCA; or
      - discharges that the regional administrator has objected to in writing.

   b) The discharge is different in degree or nature from discharges reasonably expected from sources or activities within the category described in the CDGP.

   c) A Montana Pollutant Discharge Elimination System (MPDES) permit or authorization for the same operation has previously been denied or revoked.

   d) The discharge is also included within an application or is subject to review under the Major Facility Siting Act, 75-20-101, et seq., MCA.

   e) The discharge will be located in an area of unique ecological or recreational significance. Such determination must be based upon considerations of Montana stream classifications adopted under 75-5-301, MCA, impacts on fishery resources, local conditions at proposed discharge sites, and designations of wilderness areas under 16 USC 1132 or of wild and scenic rivers under 16 USC 1274.

2. DEQ may deny a CDGP request for discharge from dewatering activities at or near a hazardous waste or other type of contaminated site. If the dewatering activity 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 dewatering effluent in accordance with this permits' Special Conditions Part II.C.4.

C. Continuing Authorizations under the 2020-issued CDGP

All existing facilities with effective coverage under the 2015-issued CDGP are eligible for coverage under the 2020-issued CDGP unless they are excluded according to the criteria outlined in Part I.B of this permit. Permittees must submit a complete application package for renewed coverage to continue discharge after the expiration date of the 2015-issued CDGP. A complete renewal application consists of:

1. Construction Dewatering Notice of Intent (NOI) Form (NOI-07);
2. Fee for each outfall;
3. Maintain the Dewatering Control Plan (*submittal of the plan is not required*); and
4. A copy of the consultation letter from the Montana Sage Grouse Habitat Conservation Program (if applicable).

The applicant must receive the authorization letter before continuing to discharge to any state surface waters after the effective date of the renewed General Permit.

D. New Authorization under the 2020-issued CDGP

New dischargers seeking to obtain coverage to discharge under the 2020-issued CDGP must submit a complete application package at least 30 days prior to commencing operation, including:

1. Construction Dewatering NOI Form (NOI-07);
2. Fee for each outfall;
3. Preparation of the Dewatering Control Plan (*submittal of the plan is not required*); and
4. A copy of the consultation letter from the Montana Sage Grouse Habitat Conservation Program (if applicable).

The applicant must have the authorization letter from DEQ prior to initiating dewatering discharge to any state surface waters.

E. Modifications to Authorizations under the 2020-issued CDGP

Permittees requiring a modification to an authorization under the 2020-issued CDGP (including adding or changing outfall locations) must submit a complete NOI-07 package to DEQ. The NOI-07 package must consist of:

1. Construction Dewatering NOI Form (NOI-07);
2. Fee for each modified outfall;
3. Updating of the Dewatering Control Plan (*submittal of the plan is not required*); and
4. A copy of the modified consultation letter from the Montana Sage Grouse Habitat Conservation Program (if applicable).

If the regulated industrial activity is within designated sage grouse habitat, any modification due to a change in location 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.

F. Terminate Permit Coverage

Once covered, permittees are authorized to operate for the duration of the 2020-issued CDGP (until the General Permit has expired) or until DEQ receives a request to terminate coverage. To terminate coverage, the permittee must submit a written request to DEQ (either a letter or a complete Notice of Termination (NOT) Form) indicating the construction dewatering discharge activity has ceased and they no longer require permit coverage. The written request must be signed and certified by the responsible signatory.

After the first calendar year, annual fees will be invoiced in arrears for an authorization open during any part of the previous calendar year. To avoid the accrual of annual fees, the permittee should request to terminate coverage once dewatering has been completed but no later than the end of the calendar year.

In addition to the ability to request a termination, the owner or operator of a facility covered under this General Permit 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 this General Permit is terminated on the effective date of the final individual MPDES permit.

G. Transfer Permit Coverage

The owner or operator of a facility covered under this CDGP may request to transfer their authorization coverage to a new owner or operator. To transfer coverage, the permittee must submit a complete Permit Transfer Notification (PTN) Form to DEQ at least 30 days prior to the effective date of the proposed transfer. The PTN 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 permit fees. 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.

II. PERMIT COMPLIANCE

A. Effluent Limitations

Beginning on the effective date and lasting through the duration of this General Permit, each permittee requesting coverage under the CDGP will need to meet the applicable turbidity, oil & grease, and chemical use limits described below. Numeric limits apply after treatment and prior to discharge to receiving waters.

1. **Turbidity.** Permittees requesting coverage under this CDGP are required to choose the most applicable of three turbidity categories for each outfall. The three categories are:

Category A - Minimal impact, including discharges to:

A.1. Ephemeral waterbodies and storm sewer systems;

A.2. Dry intermittent waterbody; or

A.3. Rivers defined as large rivers as listed in **Table 1**.

Category B - Discharge turbidity limited to prevent impact (most restrictive protection for any receiving waters including perennial and flowing intermittent rivers; lakes; reservoirs; wetlands).

Category C - Real-time turbidity demonstration (most flexible for longer projects or projects that may occur during periods with more turbid receiving water).

Table 1 presents the three categories and associated turbidity limits.

Table 1: Turbidity Effluent Limit Categories

Receiving Water and Effluent Limit/Monitoring Requirements for *Duration of Authorized Discharge* [1]		Effluent Turbidity Limit (NTU)		Associated Monitoring
		Maximum Daily	Monthly Average	
A	**Minimal Impact:** **1.** Ephemeral and storm sewer systems **2.** Dry Intermittent: There is no receiving water upstream of the outfall at the time of discharge [2], or **3.** Large Rivers: Big Horn, Clark Fork, Flathead, Kootenai, Madison, Missouri, South Fork Flathead, or Yellowstone	100	100	See Table 2
B	**Discharge Turbidity Limited to Prevent Impact:** turbidity effluent limit for discharge to rivers, lakes, wetlands	20	10	See Table 3
C	**Real-Time Turbidity Demonstration**: discharge turbidity is no greater than the receiving water turbidity	[2,3]	100 [2,3]	See Table 4

Footnotes:

(1) Any discharge to waterbodies classified as A-1 or A-closed (other than to dry drainages) must comply with Category C "Real-Time Demonstration."

(2) If there is an unexpected change in the ambient conditions (i.e. the receiving waters are dry when expected flow or flow when expected dry), the limits will automatically change as described in Part II.A.2 of this permit.

(3) The discharge turbidity limit for Category C will change based on the relative turbidity of the receiving water (i.e., the effluent must always be at or below the upstream turbidity.) The average monthly effluent quality must meet whichever is more stringent: the average monthly background turbidity (no change) or 100 NTU.

2. **Temporary Category Change Due to Changing Ambient Conditions**

   When the ambient conditions of one of two chosen scenarios unexpectedly changes, the limits and monitoring for that permitted outfall will automatically change as follows:

   - **Category A.2** *Dry Intermittent Waterbody*: if this subcategory is chosen and the stream flow conditions change during periods of discharge so that the effluent is discharged into running surface water, the permittee must indicate the condition in the comment field of the NetDMRs, document the change in the Daily Log including date and time, and comply with Category B turbidity limits and associated monitoring.
   - **Category C** *Real-Time Turbidity Demonstration*: If this category is chosen and there is no ambient stream flow, the permittee must indicate the condition in the comment field of the NetDMRs, document the change in the Daily Log including date and time, and comply with Category A.2 turbidity limits and monitoring.

3. **Oil & Grease.** No visible oil film (or be present in concentrations at or in excess of 10 milligrams per liter). If a visual examination of the discharge indicates the presence of hydrocarbons, by sheen, odor, or other sign, the permittee is required to take corrective action as specified under the Special Conditions Part II Section C.3 of this permit, including analyzing a grab sample of the discharge under 40 CFR 136 and ceasing discharge until the situation is resolved.

4. No chemicals, other than anionic polymer coagulants and/or flocculants used in accordance with manufacturer's specifications, may be added to, or discharged with, the construction dewatering effluent. The use of anionic coagulants or flocculants must be included in the facility's Notice of Intent (NOI).

B. Self-Monitoring Requirements

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 entering the receiving water. Monitoring is only required during periods of discharge to state surface waters.

Monitoring results shall be noted on the daily log beginning the effective date of the authorization. In addition, the monitoring results are required to be reported to DEQ on Discharge Monitoring Reports (NetDMRs) by the 28th of the following month. If no discharge occurs, the permittee shall indicate "no discharge" on the monthly NetDMRs.

Samples shall be collected, preserved, and analyzed in accordance with approved procedures listed in 40 CFR Part 136 and any non-detects must meet the Required Reporting Values (RRVs) listed in Circular DEQ-7 unless otherwise specified. **Grab samples of the discharge must be either sent to a laboratory for analysis or there must be access to a turbidity meter.**

The specific monitoring requirements for each outfall will depend on the category that was selected from **Table 1**, and will be indicated on the authorization letter sent to the permittee. Monitoring requirements for each of the three categories are presented in **Tables 2 to 4**, as follows:

Table 2 Category A "Minimal impact"

Table 3 Category B "Discharge turbidity limited to prevent impact"

Table 4 Category C "Real-time turbidity demonstration"

Table 2: Category A "Minimal Impact" - Monitoring Requirements (1)

Parameter	Sample Location	Unit	Sample Frequency	Sample Type	Reporting Requirement
Receiving Water Flow	Upstream	Y/N (2)	1/Day	Visual	--
Turbidity	Effluent	Y/N	1/Day (3)	Visual	--
		NTU	2/Month (4)	Grab	Daily Max and Monthly Avg
Oil and grease	Effluent	Y/N (5)	1/Day	Visual	--
		mg/L	(5)	Grab	Daily Max

Footnotes:

(1) Monitoring is required during any periods with dewatering discharge that reaches state surface water.

(2) Upstream flow monitoring only required for **Category A.2** *(dry intermittent)*. If the permittee is authorized to discharge under Category A.2, but the waterbody has flow during a discharge period, then the permittee must record a "Yes" for the visual observation and must comply with Category B requirements.

(3) Turbidity "Yes" indicates a visual observation of elevated turbidity that is suspected to be above the numeric NTU limit. This situation requires the permittee to take and analyze a grab sample of the discharge and if elevated to take corrective action as specified under the Special Conditions Part II Section C.3 of this permit.

(4) Turbidity grab samples of the discharge must be taken for analysis the first four (4) hours of discharge, then at least twice a month (at least one week apart) thereafter, as well as when the visual observation indicates elevated turbidity. Samples must be taken at times representative of the site's construction activity and the nature of the discharge.

(5) If a visual examination of the discharge indicates the presence of hydrocarbons, by sheen, odor, or other sign, the permittee is required to take corrective action as specified under the Special Conditions Part II Section C.3 of this permit, including analyzing a grab sample of the discharge under 40 CFR 136 and ceasing discharge until the situation is resolved.

Table 3: Category B "Discharge Turbidity Limited to Prevent Impact" Monitoring Requirements (1)

Parameter	Sample Location	Unit	Sample Frequency	Sample Type	Reporting Requirement
Turbidity	Effluent	Y/N	1/Day (2)	Visual	--
		NTU	3/Week (3)	Grab	Daily Max and Monthly Avg.
Oil and grease	Effluent	Y/N (4)	1/Day	Visual	--
		mg/L	(4)	Grab	Daily Max

Footnotes:

(1) Monitoring is required *during any periods with dewatering activity or discharge*.

(2) Turbidity "Yes" indicates a visual observation of elevated turbidity that is suspected to be above the numeric NTU limit. This situation requires the permittee to take and analyze a grab sample of the discharge and take corrective action as specified under the Special Conditions Part II Section C.3 of this permit.

(3) Turbidity grab samples of the discharge must be taken for analysis the first four (4) hours of discharge, then at least three times per week (at least one day apart) thereafter, as well as when the visual observation indicates elevated turbidity. Samples must be taken at times representative of the site's construction activity and the nature of the discharge.

(4) If a visual examination of the discharge indicates the presence of hydrocarbons, by sheen, odor, or other sign, the permittee is required to take corrective action as specified under the Special Conditions Part II Section C.3 of this permit, including analyzing a grab sample of the discharge under 40 CFR 136.

Table 4: Category C "Real-Time Turbidity Demonstration" - Monitoring Requirements [1]					
Parameter	Sample Location	Unit	Sample Frequency	Sample Type	Reporting Requirement
Receiving Water Flow	Upstream	Y/N [2]	1/Day	Visual	--
Turbidity	Effluent	Y/N	1/Day [3]	Visual	--
	Effluent	NTU	2/Month [4]	Grab	Daily Max and Monthly Avg
	Upstream			Grab	
	Difference [4]			Calculated [5]	
Oil and grease	Effluent	Y/N [6]	1/Day	Visual	--
		mg/L	[6]	Grab	Daily Max

Footnotes:
(1) Monitoring is required during any periods with dewatering discharge that reaches state surface water.
(2) If the permittee is authorized to discharge under Category C, but the waterbody has no flow during a discharge period, then the permittee must record a "No" for the visual receiving water flow observation and must comply with Category A.2 requirements.
(3) Turbidity "Yes" indicates a visual observation of elevated turbidity that is suspected to be above the numeric NTU limit. This situation requires the permittee to take and analyze a grab sample of the discharge and take corrective action as specified under the Special Conditions Part II Section C of this permit.
(4) Paired turbidity grab samples of the ambient (upstream) condition and the discharge must be taken for analysis the first four (4) hours of discharge, then at least twice a month (at least one week apart) thereafter, as well as when the visual observation indicates elevated effluent turbidity. Samples must be taken at times representative of the site's construction activity and the nature of the discharge.
(5) The turbidity difference is calculated by subtracting the upstream turbidity minus the effluent turbidity, and must be at or above 0 NTU.
(6) If a visual examination of the discharge indicates the presence of hydrocarbons, by sheen, odor, or other sign, the permittee is required to take corrective action as specified under the Special Conditions Part II Section C.3 of this permit, including analyzing a grab sample of the discharge under 40 CFR 136.

C. Special Conditions

1. **Daily log**. Facilities are required to maintain an observation log during periods of dewatering activities (or dewatering discharge) in accordance with the schedule listed in the monitoring requirements table for the activity. When there is no discharge or activity "NA" or "no discharge" must be indicated. The observation log can be paper or electronic.

   The log must contain: date and time of observations, identification of the person recording the observation, monitoring results (visual or grab sample), inspection observations as identified in the site's Dewatering Control Plan (see below), any problems observed, and any corrective action performed. The permittee must maintain records, including the daily log, for a period of at least three years and make these records available to DEQ upon request.

2. **Dewatering Control Plan (Dewatering Plan).** The permittee is required to develop and implement a written site-specific Dewatering Plan as part of a complete NOI-07 package. The plan must be maintained and available for inspection on-site in either paper or electronic format, and must include:

a) Evaluation, installation, and maintenance of Best Management Practices (BMPs), including but not limited to:
   i. Run-on prevention and/or ground water exclusion methods;
   ii. Erosion control to prevent surface water/stormwater contamination of site (i.e. soil roughening, riprap, mulching, geotextiles, etc.). Excavated material must be transported and stockpiled in such a manner as to prevent its erosion returning to the receiving stream;
   iii. Treatment at dewatering pump intake (i.e., filtering sump, wrapping submersible pump in filter fabric);
   iv. Sediment control for dewatering discharge (i.e. constructed settling pond, dewatering bags, fiber rolls, vegetated buffers, etc.); and
   v. Proper use of anionic flocculants and coagulants, if needed (including maintaining MSDSs and following manufacturers' recommendations).

b) Measures taken to prevent first flush/initial purge discharges from entering state surface waters.

c) Measures taken to prevent spilled or leaking fuels and lubricants from entering the watercourse.

d) Measures taken to minimize erosion from the discharge through flow dissipation devices such as rip rap, baffles, or other methods, as necessary. The discharge shall not cause or result in erosion to the area of the discharge or the surrounding stream banks.

e) Discharge monitoring procedures for the site to ensure that monitoring is effective, and must cover all times of discharge (including weekends and holidays if applicable). The Dewatering Plan must include an identification of the person(s) responsible, monitoring frequency, any necessary equipment and its maintenance, including calibration materials, and record-keeping in the daily log.

f) BMP inspection procedures to prevent breakdowns or failures of the control equipment. The permittee must include the inspection frequency, person(s) responsible, and extent of the inspections (including erosion prevention, dewatering operations, dewatering treatment, and discharge quality), and record-keeping in the daily log. The permittee must also include names/numbers for off-hours notification of responsible personnel in the event of an emergency.

g) Corrective action protocol.

3. **Corrective Action.** Upon any visual observations of BMP failure, inadequate BMPs, elevated turbidity, or an oil sheen, the following steps must be conducted:

   - Take a grab sample for analysis anytime there is an observation of elevated turbidity, oil and grease, and/or other potential contaminants.
   - Cease discharge of dewatering effluent until the issue is resolved.
   - Conduct a site-wide inspection to observe operating conditions and BMP maintenance.

- Address any BMP failures by determining whether there was a failure in design, installation, or maintenance and perform the appropriate measures to fix the failure, including determining whether BMPs should be modified or if additional measures must be taken.
- Document the issues and resolutions in the observation log and update the Dewatering Plan.
- Include a report with the next DMR submittal.

4. **Potential Contamination.** All applicants must determine whether the proposed dewatering activity may be in or near a known area of contamination. Any dewatering within such an area is assumed to transfer contaminants into the receiving water, and is not allowed under this CDGP unless the applicant provides:

   (a) written documentation that the relevant regulatory program (typically within DEQ's Waste Management & Remediation Division) has been consulted. Any jurisdictional remediation program recommendations must be implemented; ***and***

   (b) laboratory analysis for the potential contaminants from a pre-discharge groundwater sample. If this is not possible at the time of application, the applicant may work with DEQ to provide the best concentration estimate available through available hydrologic assessments and then, if authorized, conduct sampling within the first four hours of dewatering discharge with *expedited* laboratory results. The pre-discharge sample may be taken after treatment (i.e. carbon adsorption or other treatment), but details on the treatment system used (including pilot system and full-scale) must be included with the NOI.

   DEQ will process the CDGP authorization request if the pre-discharge laboratory results for any relevant parameters (either Reporting Level or Method Detection Level) show either:

   - non-detect at concentrations meeting the Required Reporting Values (RRV) as provided in Circular DEQ-7, or
   - detection at levels at or below the RRV.

   The permittee shall include a copy of the lab results with the NOI package submittal. If the laboratory MDL is not capable of detecting down to the RRV, a detailed explanation of why the results cannot achieve the required detection level must be included with the analysis. DEQ may require additional information including, but not limited to, additional testing during dewatering.

   DEQ may require additional or increased *expedited* monitoring which will be detailed within the authorization letter. If additional tests performed during discharge of dewatering effluent result in concentrations above the RRV, the dewatering discharge to surface water must cease until a solution is found. The permittee must notify DEQ's Water Protection Bureau verbally within 24 hours of the elevated concentration, and follow-up in writing within five days. The permittee cannot resume discharging dewatering effluent until DEQ issues a written authorization.

If contaminants are found in any pre-discharge samples at concentrations above the RRV, or in any required dewatering monitoring if a solution cannot be found to reduce below the RRV, the discharge is not eligible for coverage under the CDGP.

5. **Linear Projects.** Permittees proposing to dewater as part of a linear project may group outfalls (discharges) to similar waterbody types within each category (A.1, A.2, A.3, B, or C). The permittee must include a list of all outfalls for each requested category grouping, and include the latitude/longitude of each outfall and it's receiving water body name.

   After authorization, the permittee shall maintain the outfall list, by category. For any change in outfall locations, the permittee shall re-submit the updated list prior to commencing any discharge to surface waters from a new or changed outfall. DEQ may require the permittee submit a modification request; at a minimum the permittee must submit a modification package if they are requesting authorization under a new category.

   Fees (authorization request, annual, and renewal fees) will be based on the number of Categories within the project.

   Monthly NetDMR reporting will combine the monitoring for all dewatering discharges within a given category (the average turbidity will be the average of all outfalls in that Category, for example).

   The required Dewatering Control Plan can be generic if there is sufficient detail to determine the activities planned for any given location.

6. **Record-keeping.** The permittee must maintain the following records onsite (hard-copy or electronic):
   - 2020-issued CDGP;
   - A copy of the completed and signed NOI-07 form including modification submittals;
   - A copy of DEQ's authorization letter;
   - Discharge Monitoring Reports;
   - Monitoring Records;
   - Daily visual log;
   - Copies of all reports and reports of noncompliance; 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.

III. STANDARD CONDITIONS

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

A. Duty to Comply

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

The permittee shall comply with effluent standards or prohibitions established under the Act and rules adopted thereunder including limitations for toxic pollutants in ARM 17.30.1206; section 307(a) of the federal Clean Water Act; and, with standards for sewage sludge use or disposal established under section 405(d) of the Clean Water Act, within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

The Act provides that any person who violates a permit condition or limitation is subject to a civil penalty not to exceed $25,000 per day for each violation. Any person who willfully or negligently violates 75-5-605, MCA including a permit condition or limitation is subject to criminal penalties not to exceed $25,000 per day of violation, imprisonment for not more than one year, or both. In the case of a second or subsequent conviction for a willful or negligent violation, a person is subject to a fine of not more than $50,000 per day of violation, imprisonment of not more than two years, or both.

The Act provides that any person who violates a permit condition or limitation may be assessed administrative penalties by DEQ not to exceed $10,000 per violation per day with the maximum penalty assessed not to exceed $100,000 for any related series of violations.

B. 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 first apply for coverage 30 days prior to permit expiration and obtain a new permit or authorization under the applicable general permit.

C. 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.

D. 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.

E. 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.

F. 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.

G. Property Rights

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

H. Duty to Provide Information

The permittee shall furnish to DEQ, within a reasonable time, any information that 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.

I. Inspection and Entry

The permittee shall allow the head of DEQ, or an authorized representative, including an authorized contractor acting as a representative of DEQ, 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
4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

J. 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 calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of

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

3. Records Contents

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 must be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR 503.8 or Subchapter N.

K. Falsification and Tampering

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

L. Signatory Requirement

All applications, reports or information submitted to DEQ shall be signed and certified as required by ARM 17.30.1323.

M. Reporting Requirements

1. Planned Changes

The permittee shall give notice to DEQ as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a) The alteration or addition to the permitted facility 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 that are subject neither to effluent limitations in the permit, nor to notification requirements under ARM 17.30.1343(1)(a).

2. Anticipated Noncompliance

The permittee shall give advance notice to DEQ of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

3. Transfers

   This permit is not transferable to any person except after notice to DEQ. DEQ may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary or mandatory as required by ARM 17.30.1360 and the Act.

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);

   b) If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136, 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 limitations that require averaging of measurements must use an arithmetic mean unless otherwise specified by DEQ 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.

N. Twenty-Four Hour Reporting

The permittee shall report any noncompliance that might endanger health or the environment. Any information must be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall 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.

The following are included as information that must be reported within 24 hours under this provision:

a) Any unanticipated bypass that exceeds any effluent limitation in the permit;

b) Any upset that exceeds any effluent limitation in the permit; and,

c) Violation of a maximum daily discharge limitation for any of the pollutants listed by DEQ in this permit to be reported within 24 hours [see 40 CFR 122.44(g)].

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

O. Other Noncompliance–Reporting

The permittee shall report all instances of noncompliance not reported under Section N of this permit, at the time monitoring reports are submitted. The reports shall contain the information listed above for written submissions under "Reporting Requirements - Twenty-Four Hour Reporting."

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

Q. Bypass

1. Bypass Not Exceeding Limitations

   The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. Bypasses are not subject to the provisions under "Notice" and "Prohibition of Bypass" below.

2. Notice

   a) Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass.

   b) Unanticipated Bypass. The permittee shall submit notice of an unanticipated bypass as required under "Reporting Requirements - Twenty-Four Hour Reporting" above.

3. Prohibition of Bypass

   Bypass is prohibited and DEQ may take enforcement action against a permittee for a bypass, unless:

   a) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

   b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering

judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

c) The permittee submitted notices as required under "Notice" above.

DEQ may approve an anticipated bypass, after considering its adverse effects, if DEQ determines that it will meet these three conditions.

R. Upset

1. Effect of an upset

An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements outlined below under "Conditions Necessary for Demonstration of an Upset" below are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. Conditions Necessary for a Demonstration of Upset.

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

a) An upset occurred, and that the permittee can identify the cause(s) of the upset;

b) The permitted facility was at the time being properly operated;

c) The permittee submitted notice of the upset as required under "Reporting Requirements—Twenty-four Hour Reporting" above and

d) The permittee complied with any remedial measures required under "Duty to Mitigate" above.

3. Burden of proof

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

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

IV. DEFINITIONS AND ABBREVIATIONS

"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 limitation" 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.

"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. The daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Montana Department of Environmental Quality (DEQ). 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.

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

"Ephemeral Stream" means a stream or a 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.

"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.

"Intermittent Stream" means a stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface run-off and groundwater discharge.

“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. It is the arithmetic average of all measurements taken that day.

“Mixing zone” means an area established in a permit issued by DEQ where water quality standards may be exceeded, subject to conditions that are imposed by DEQ and that are consistent with rules adopted by the board

“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.

“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.

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

“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.

“TSS” means the pollutant parameter total suspended solids.

“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.