

ENVIRONMENTAL QUALITY

CHAPTER 30

WATER QUALITY

Subchapter 2

Water Quality Permit and Authorization Fees

Rule 17.30.201 Permit Application, Degradation Authorization, and Annual Permit Fees

Subchapter 2

Water Quality Permit and Authorization Fees

17.30.201 PERMIT APPLICATION, DEGRADATION AUTHORIZATION, AND ANNUAL PERMIT FEES (1) The purpose of this rule is to provide fee schedules for use in determining fees to be paid to the department under 75-5-516, MCA. The types of fees provided under this rule are:

- (a) application fees for individual permits (Schedule I.A);
- (b) application fees for non-storm water general permits (Schedule 1.B);
- (c) application fees for storm water general permits (Schedule 1.C);
- (d) application fees for other activities (Schedule 1.D);
- (e) degradation authorization fees (Schedule II);
- (f) annual fees for individual permits (Schedule III.A);
- (g) annual fees for non-storm water permits (Schedule III.B); and
- (h) annual fees for storm water general permits (Schedule III.C).

(2) For purposes of this rule, the definitions contained in ARM Title 17, chapter 30, subchapter 10 and subchapter 13 are incorporated by reference. The following definitions also apply in this rule:

- (a) "domestic waste" means wastewater from bathrooms, kitchens, and laundry;
- (b) "flow rate" means the maximum flow during a 24-hour period, expressed in gallons per day (gpd);
- (c) "industrial waste," as defined in 75-5-103, MCA, means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present;
- (d) "major permit" means a Montana pollutant discharge elimination system permit for a facility that is designated by the department as a major facility pursuant to ARM Title 17, chapter 30, subchapter 13;
- (e) "minor permit" means a Montana pollutant discharge elimination system permit for a facility that is not designated by the department as major pursuant to ARM Title 17, chapter 30, subchapter 13;
- (f) "multi-county," for pesticide permit fee purposes, means the general permit authorizing pesticide application within multiple contiguous counties, not to exceed 20, as identified by the applicant;
- (g) "municipal separate storm sewer system" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, that discharges to surface waters and is owned or operated by the state of Montana, a governmental subdivision of the state, a district, association, or other public body created by or pursuant to Montana law, including special districts such as sewer districts, flood control districts, drainage districts and similar entities, and designated and approved management agencies under section 208 of the federal Clean Water Act, which has jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, and is:

- (i) designed or used for collecting or conveying storm water;
- (ii) not a combined sewer; and
- (iii) not part of a publicly owned treatment works (POTW) as defined in ARM Title 17, chapter 30, subchapter 13;
- (h) "new permit" means a permit for a facility or activity that does not have an effective permit;
- (i) "non-traditional MS4" means a system similar to separate storm sewer systems in municipalities, such as systems at military bases, large educational, hospital, or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings;
- (j) "other wastes," as provided in 75-5-103, MCA, means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters;
- (k) "outfall" means a disposal system through which effluent or waste leaves the facility or site;
- (l) "pesticide" means:
 - (i) a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest;
 - (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and
 - (iii) any nitrogen stabilizer, except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of section 201(w) of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(w), that has been determined by the United States Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of 21 U.S.C. 321(x) bearing or containing a new animal drug. The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321. For purposes of the preceding sentence, the term "critical device" includes any device that is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body, and the term "semi-critical device" includes any device that contacts intact mucous membranes but that does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.
- (m) "renewal permit" means a permit for an existing facility that has an effective discharge permit;
- (n) "single county," for pesticide permit fee purposes, means the general permit authorizing pesticide application within one county; and
- (o) "threshold," for pesticide permit fee purposes, means the area of surface water that is impacted annually by pesticide treatment, as designated in the Pesticide General Permit for specific pattern uses.

(3) A person who applies for a permit, certificate, license, notice of intent, plan review, waiver, determination of significance, or other authorization required by rule under 75-5-201, 75-5-301, or 75-5-401, MCA, or for a modification or renewal of any of these authorizations, shall pay to the department an application fee as determined under (6).

(4) A person whose activity requires an application to degrade state waters under 75-5-303, MCA, and ARM Title 17, chapter 30, subchapter 7 shall submit a degradation authorization fee with the application, as determined under (7).

(5) A person who holds a permit, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401, MCA, shall pay to the department an annual permit fee as determined under (8).

(6) The fee schedules for new or renewal applications for, or modifications of, a Montana pollutant discharge elimination system permit under ARM Title 17, chapter 30, subchapter 11 or 13, a Montana ground water pollution control system permit under ARM Title 17, chapter 30, subchapter 10, or any other authorization under 75-5-201, 75-5-301, or 75-5-401, MCA, or rules promulgated under these authorities, are set forth below as Schedules I.A, I.B, I.C, and I.D. Fees must be paid in full at the time of submission of the application. For new applications under Schedule I.A, the annual fee from Schedule III.A for the first year must also be paid at the time of application. For new applications under Schedule I.B and I.C, the annual fee is included in the new permit amount and covers the annual fee for the calendar year in which the permit coverage becomes effective.

(a) Under Schedules I.A and I.B, the department shall assess a fee for each outfall, except that MS4 permit fees under Schedule I.A are based on population as provided in (6)(h). An application fee for multiple outfalls is not required if there are multiple outfalls from the same source that have similar effluent characteristics, unless the discharges are to different receiving waters or stream segments, or result in multiple or variable (flow dependent) effluent limits or monitoring requirements.

(b) For purposes of (6) and (7), if a resubmitted application contains substantial changes or deficiencies requiring significant additional review, the department shall require an application resubmittal fee under Schedule I.D. The resubmittal fee must be paid before any further review is conducted. The department shall give written notice of the assessment within 30 days after receipt of the resubmittal and provide for appeal as specified in (11). If the department does not receive a response to a deficiency notice within one year, the applicant shall submit a new application and associated fees in order for application processing to continue.

(c) The department may assess an administrative processing fee under Schedule I.D when a permittee makes substantial alterations or additions, requiring significant additional review, to a sediment control plan, waste management plan, nutrient management plan, pesticide management plan, or storm water pollution prevention plan.

(d) Application fees are nonrefundable except, as required by 75-5-516(1)(d), MCA, if the permit or authorization is not issued the department shall return a portion of the application fee based on avoided enforcement costs. The department shall return 25% of the application fee if the application is withdrawn or if the department waives federal Clean Water Act section 401 certification within 30 days after submittal.

(e) Facilities with an expired permit must pay the new permit application fee for individual permit coverage as specified in Schedule I.A.

(f) Applications for new permits or permit renewals for sources that constitute a new or increased source, as defined in ARM 17.30.702(18), must pay a significance determination fee for each outfall in addition to the application fee.

(g) Discharges composed entirely of storm water from industrial activities or from mining and oil and gas activities, as defined in ARM 17.30.1105, may be incorporated into a permit application submitted under Schedule I.A. The application fee for each storm water outfall must be submitted to the department with the application.

(h) The application fee for an individual permit for a municipal separate storm sewer system (MS4) is determined by population based on the latest decennial census from the United States Census Bureau. Applications for MS4 permits with co-permittees will receive a 10% reduction in the application fee.

Schedule I.A Application Fee for Individual Permits

| Category | Renewal Fee | New Permit Fee |
|---|-------------|----------------|
| Publicly owned treatment works - major permit | \$ 4,800 | \$ 5,000 |
| Privately owned treatment works - major permit | 5,000 | 5,000 |
| Publicly owned treatment works - minor permit | 1,500 | 2,500 |
| Privately owned treatment works - minor permit | 3,000 | 4,200 |
| Ground water permit, domestic wastes flow rate - gallons per day | | |
| 0-10,000 gpd | 1,200 | 2,500 |
| 10,001 to 30,000 gpd | 1,500 | 2,500 |
| more than 30,000 gpd | 2,500 | 4,000 |
| Ground water permit, industrial, or other wastes | | |
| 0-1,000 gpd | 1,000 | 1,500 |
| 1,001 to 5,000 gpd | 1,500 | 2,500 |
| 5,001 to 10,000 gpd | 2,500 | 3,500 |
| more than 10,000 gpd | 4,800 | 5,000 |
| Concentrated animal feeding operation permit | 600 | 600 |

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| Storm water permit construction, industrial, and mining, oil, and gas activities | 2,000 | 3,200 |
| Traditional storm water municipal separate storm sewer system (MS4) permit | | |
| population greater than 50,000 | 9,000 | 11,000 |
| population 10,000 to 50,000 | 7,000 | 9,000 |
| population less than 10,000 | 6,000 | 8,000 |
| Non-traditional MS4 permit | 5,000 | 7,000 |
| Other MS4 permits | 4,000 | 5,000 |
| Significance determination | 4,000 | 5,000 |
| Storm water outfall - (integrated) | 1,000 | 1,500 |

Schedule I.B Application Fee for Non-Storm Water General Permits

| Category | Renewal Fee | New Permit Fee (includes initial annual fee) |
|---|-------------|---|
| Concentrated animal feeding operation | \$ 600 | \$ 1,200 |
| Construction dewatering | 400 | 900 |
| Fish farms | 600 | 1,200 |
| Produced water | 900 | 1,200 |
| Suction dredge | | |
| resident of Montana | 25 | 50 |
| nonresident of Montana | 100 | 200 |
| Sand and gravel | 900 | 1,200 |
| Domestic sewage treatment lagoon | 800 | 1,200 |
| Disinfected water | 800 | 1,200 |
| Petroleum cleanup | 800 | 1,200 |
| Pesticides | | |
| single county - less than threshold | 25 | 50 |
| multi-county - less than threshold | 50 | 100 |
| single county - greater than threshold | 250 | 500 |
| multi-county - greater than threshold | 600 | 1,200 |
| Ground water remediation or dewatering | 800 | 1,400 |
| Ground water potable water treatment facilities | 800 | 1,400 |
| Other general permit, not listed above | 600 | 1,200 |

(i) Application fees in Schedule I.C for authorizations under the general permit for storm water associated with construction activities are based on the total acreage of disturbed land. Renewal application fees will not be required during the general permit renewal cycle, unless the authorization has been in effect for more than four years.

(j) Application fees in Schedule I.C for authorizations under the general permits for storm water associated with industrial activities and mining, oil, and gas activities are based on the total size of the regulated facility or activity in acres.

(k) Application fees in Schedule I.C for authorizations under a general permit for a municipal separate storm sewer system (MS4) are determined by population based on the latest decennial census from the United States Census Bureau. Applications for MS4 permit coverage with co-permittees will receive a 10% reduction in the application fee.

(l) Modifications to authorizations under the general permit for storm water associated with construction activities will be processed under Schedule I.D as a minor modification if the modification is submitted within six months after the date of issuance of the authorization. Modifications, except for name changes, submitted six months or more after issuance of the authorization will be processed under Schedule I.C as a new permit application.

(m) Modifications, except for name changes, to authorizations under a general permit other than the general permit for storm water associated with construction activities must be processed under Schedule 1.B and I.C as a renewed application.

(n) A facility with a construction storm water no-exposure certification from the department must apply for and receive a new certification every five years in order to maintain a no-exposure status.

Schedule I.C Application Fee for Storm Water General Permits

| Category | Renewal Amount | New Permit Amount (includes initial annual fee) |
|---|----------------|--|
| Storm water associated with construction | | |
| 1 to 5 acres | \$ 900 | \$ 900 |
| more than 5 acres, up to 10 acres | 1,000 | 1,000 |
| more than 10 acres, up to 25 acres | 1,200 | 1,200 |
| more than 25 acres, up to 100 acres | 2,000 | 2,000 |
| more than 100 acres | 3,500 | 3,500 |
| Storm water associated with industrial activities | | |
| small - 5 acres or less | 1,200 | 1,500 |
| medium - more than 5 acres, up to 20 acres | 1,500 | 1,800 |
| large - more than 20 acres | 1,800 | 2,000 |

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| Storm water associated with mining, oil, and gas | | |
| small - 5 acres or less | 1,200 | 1,500 |
| medium - more than 5 acres, up to 20 acres | 1,500 | 1,800 |
| large - more than 20 acres | 1,800 | 2,000 |
| Traditional storm water municipal separate storm sewer system (MS4) | | |
| population greater than 50,000 | 7,000 | 10,000 |
| population 10,000 to 50,000 | 6,000 | 8,000 |
| population less than 10,000 | 5,000 | 6,000 |
| County MS4 permit | 4,000 | 5,000 |
| Non-traditional MS4 permit | 2,000 | 3,000 |
| Storm water no-exposure certification required once every five years | 300 | 500 |
| Storm water construction waiver | | 400 |

(o) The minimum application fee under Schedule I.D for federal Clean Water Act section 401 certification is \$400 or 1% of the gross value of the proposed project, whichever is greater, and the maximum fee may not exceed \$20,000. If a fee is submitted for a 401 certification and the department waives certification, without review, because the project will require a department permit or authorization identified in ARM 17.30.105(2)(b), the department will credit the fee towards the cost of the applicable permit or authorization.

Schedule I.D Application Fee for Other Activities

| Category | Amount |
|--|-------------------------------|
| Short-term water quality standard, turbidity "318 authorization" | \$ 250 |
| Short-term water quality standard, remedial activities and pesticide application "308 authorization" | 250 |
| Federal Clean Water Act section 401 certification | See ARM 17.30.201(6)(o) |
| Review plans and specifications to determine if permit is necessary, pursuant to 75-5-402(2), MCA | 2,000 |
| Major modification | Renewal fee from Schedule I.A |
| Minor modification, includes transfer of ownership | 500 |
| Resubmitted application fee | 500 |
| Administrative processing fee | 500 |

(7) The fee schedule for new or renewal authorizations to degrade state waters under ARM Title 17, chapter 30, subchapter 7 is set forth in Schedule II. Payment of the degradation authorization fee is due upon submittal of the applications. For the domestic sewage treatment and industrial activity categories, the department shall assess a fee for each outfall. If an application for authorization to degrade state waters is denied, the department shall return 15% of the fee submitted.

Schedule II Review of Authorizations to Degrade

| Category | Amount |
|---------------------------|---------|
| Domestic sewage treatment | \$5,000 |
| Industrial activity | 5,000 |

(8) The annual permit fees are set forth in Schedules III.A, III.B, and III.C. No annual fee is required for activities listed in Schedule I.D.

(a) Under Schedules III.A and III.B, the department shall assess a fee for each outfall, except that MS4 permit fees under Schedule III.A are based on population as determined by the latest decennial census from the United States Census Bureau. An annual fee for multiple outfalls is not required if there are multiple outfalls from the same source that have similar effluent characteristics, unless the discharges are to different receiving waters or stream segments, or the discharges result in multiple or variable (flow dependent) effluent limits or monitoring requirements. For ground water permits, the department shall assess a fee based on the annual average daily flow in gallons per day for each outfall.

Schedule III.A Annual Fee for Individual Permits

| Category | Minimum Fee | Fee Per Million Gallons of Effluent per Day (MGD) |
|--|-------------|---|
| Publicly owned treatment works - major permit | \$ 3,000 | \$ 3,000 |
| Privately owned treatment works - major permit | 3,000 | 3,000 |
| Publicly owned treatment works - minor permit | 1,500 | 3,000 |
| Privately owned treatment works - minor permit | 1,500 | 3,000 |
| discharge of non-contact cooling water only | 800 | 800 |

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|---|-------|-------|
| Ground water permit, domestic wastes annual average daily flow - gallons per day | | 3,000 |
| 0 to 10,000 gpd | 1,300 | |
| 10,001 to 30,000 gpd | 2,000 | |
| more than 30,000 gpd | 3,000 | |
| Ground water permit, industrial, or other wastes | | 3,000 |
| 0 to 1,000 gpd | 2,000 | |
| 1,001 to 5,000 gpd | 2,500 | |
| 5,001 to 10,000 gpd | 2,800 | |
| more than 10,000 gpd | 3,000 | |
| Concentrated animal feeding operation permit | 600 | |
| Storm water permit construction, industrial, and mining, oil, and gas activities | 2,000 | |
| Traditional storm water municipal separate storm sewer system (MS4) permit | | |
| population greater than 50,000 | 3,000 | |
| population 10,000 to 50,000 | 2,500 | |
| population less than 10,000 | 2,000 | |
| Non-traditional MS4 permit | 1,500 | |
| Other MS4 permits | 1,500 | |
| Storm water outfall - (integrated) | 1,000 | |

Schedule III.B Annual Fee for Non-Storm Water General Permits

| Category | Amount |
|---------------------------------------|--------|
| Concentrated animal feeding operation | \$600 |
| Construction dewatering | 450 |
| Fish farms | 450 |
| Produced water | 750 |
| Portable suction dredges | |
| resident of Montana | 25 |
| nonresident of Montana | 100 |
| Sand and gravel production | 750 |
| Domestic sewage treatment lagoon | 850 |
| Disinfected water | 750 |
| Petroleum cleanup | 750 |

Pesticides

| | |
|--|-----|
| single county - less than threshold | 25 |
| multi-county - less than threshold | 50 |
| single county - greater than threshold | 250 |
| multi-county - greater than threshold | 600 |
| Ground water remediation or dewatering | 800 |
| Potable water treatment facilities | 800 |
| Other general permit, not listed above | 800 |

(b) Annual fees in Schedule III.C for authorizations under the general permit for storm water associated with construction activities are based on the total acreage of disturbed land.

(c) Annual fees in Schedule III.C for authorizations under the general permits for storm water associated with industrial activities and for mining, oil, and gas activities are based on the total size of the regulated facility or activity in acres.

(d) Annual fees in Schedule III.C for authorizations under the general permit for municipal separate storm sewer systems (MS4s) are determined by population in an urbanized area as defined by the United States Census Bureau. The fees must be based on the latest available decennial census data.

Schedule III.C Annual Fee for Storm Water General Permits

| Category | Amount |
|---|--------|
| Storm water associated with construction | |
| 1 to 5 acres | \$ 650 |
| more than 5 acres, up to 10 acres | 750 |
| more than 10 acres, up to 25 acres | 1,150 |
| more than 25 acres, up to 100 acres | 1,800 |
| more than 100 acres | 2,800 |
| Storm water associated with industrial activities | |
| small - 5 acres or less | 1,000 |
| medium - more than 5 acres, up to 20 acres | 1,200 |
| large - more than 20 acres | 1,500 |
| Storm water associated with mining, oil, and gas | |
| small - 5 acres or less | 1,000 |
| medium - more than 5 acres, up to 20 acres | 1,200 |
| large - more than 20 acres | 1,500 |
| Traditional storm water municipal separate storm sewer system (MS4) | |
| population greater than 50,000 | 5,000 |
| population 10,000 to 50,000 | 4,000 |
| population less than 10,000 | 2,500 |
| County MS4 permit | 1,200 |
| Non-traditional MS4 permit | 1,200 |

(e) A facility that maintains compliance with permit requirements, including effluent limitations and reporting requirements, as determined by the previous year's discharge and compliance monitoring data, is entitled to a 25% reduction in its annual permit fee. A new permittee is not eligible for fee reduction in its first year of operation. A permittee that is under a formal enforcement order providing a compliance schedule for correction of permit violations is not eligible for a fee reduction until the violations are corrected. A permittee with a violation of any permit requirement during the previous year is not eligible for fee reduction.

(f) The annual permit fee is assessed for each calendar year or portion of the calendar year in which the permit is effective.

(9) If a person who is assessed a renewal or annual fee under this rule fails to pay the fee within 90 days after the due date for payment, the department may:

(a) impose an additional assessment consisting of 20% of the fee plus interest on the required fee beginning the first day after the payment is due. Interest must be computed at the rate of 12% per year, established under 15-1-216(4), MCA; or

(b) suspend the processing of the renewal application for a permit or authorization or, if the nonpayment involves an annual permit fee, suspend the permit, certificate, license, or other authorization for which the fee is required. The department may lift the 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 rule.

(10) The department shall give written notice to each person assessed a fee under this rule of the amount of the fee that is assessed and the basis for the department's calculation of the fee. The fee is due 30 days after the date of the written notice. The fee must be paid by a check, money order, or electronic transfer payable to the state of Montana, Department of Environmental Quality. The fee also may be paid on line at the e-bill payment service site.

(11) Persons assessed a fee under this rule may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination. The appeal to the board must include a written statement detailing the reasons why the permit holder or applicant considers the department's fee assessment to be erroneous or excessive.

(a) If part of the department's fee assessment is not in dispute in an appeal, the undisputed portion of the fee must be paid to the department upon written request of the department.

(b) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. (History: 75-5-516, MCA; IMP, 75-5-516, MCA; NEW, 1994 MAR p. 672, Eff. 2/25/94; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 382, Eff. 2/15/02; AMD, 2009 MAR p. 2462, Eff. 12/25/09; AMD, 2011 MAR p. 909, Eff. 5/27/11.)

