

**MONTANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY**

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.*,

**CHS, Inc.**

is authorized to discharge from its **Laurel Refinery**

located at **802 Highway 212 South, Laurel, MT,**

to receiving waters named, **Italian Drain and Yellowstone River**

in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein. Authorization for discharge is limited to those outfalls specifically listed in the permit.

This permit shall become effective: **November 1, 2015.**

This permit and the authorization to discharge shall expire at midnight, **October 31, 2020.**

Modified Pursuant to Board Order on: \_\_\_\_\_

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Cover Sheet--Issuance and Expiration Dates

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I. EFFLUENT LIMITATIONS, MONITORING REQUIREMENTS & OTHER CONDITIONS

A. Description of Discharge Points and Mixing Zone

The authorization to discharge provided under this permit is limited to those outfalls specially designated below as discharge locations. Discharges at any location not authorized under an MPDES permit is a violation of the Montana Water Quality Act and could subject the person(s) responsible for such discharge to penalties under the Act. Knowingly discharging from an unauthorized location or failing to report an unauthorized discharge within a reasonable time from first learning of an unauthorized discharge could subject such person to criminal penalties as provided under Section 75-5-632 of the Montana Water Quality Act.

<u>Outfall</u>	<u>Description</u>
001	<p><b>Location:</b> At the end of the pipe/ditch, discharging into the Italian Drain, located at 45°39'28" N latitude, 108°45'09" W longitude.</p> <p><b>Mixing Zone:</b> None.</p> <p><b>Treatment Works:</b> Refinery wastewater treatment plant.</p>
002	<p><b>Location (Future):</b> Lower port primary diffuser, discharging into the Yellowstone River, located at 45°39'22.32" N latitude, 108°45'10.86" W longitude.</p> <p><b>Mixing Zone:</b> None. There are no effluent limits that require a mixing zone.</p> <p><b>Treatment Works:</b> Refinery wastewater treatment plant.</p>
003	<p><b>Location (Future):</b> Upper port secondary diffuser, discharging into the Yellowstone River, located at 45°39'22.32" N latitude, 108°45'10.86" W longitude.</p> <p><b>Mixing Zone:</b> None. There are no effluent limits that require a mixing zone.</p> <p><b>Treatment Works:</b> Refinery wastewater treatment plant.</p>

**B. Effluent Limitations**

*Interim Effluent Limits – Outfall 001 Italian Ditch*

Beginning on the effective date of this permit and lasting through **October 31, 2019**, the quality of effluent discharged from Outfall 001 by the facility shall, at a minimum, meet the limitations as set forth below:

<b>Outfall 001 - Interim Numeric Discharge Limitations <sup>(1)</sup></b>			
<b>Parameter</b>	<b>Units</b>	<b>Maximum Daily</b>	<b>Average Monthly</b>
5-Day Biochemical Oxygen Demand (BOD <sub>5</sub> )	lb/day	620	331
Net Total Suspended Solids (net TSS)	lb/day	532	339
Chemical Oxygen Demand (COD)	lb/day	4,425	2,288
Oil and Grease	mg/L	10	--
	lb/day	242	128
Phenol	lb/day	4.5	2.2
Ammonia, Total as N	lb/day	418	191
Sulfide	lb/day	3.9	1.8
Chromium, Total Recoverable	lb/day	9.1	5.2
Hexavalent Chromium	lb/day	1.0	0.36
pH	s.u.	Between 6.0 and 9.0, all times	
Whole Effluent Toxicity, Acute, LC <sub>50</sub>	% effluent	No acute toxicity <sup>(2)</sup>	
Footnotes: (1) See Definitions section at end of permit for explanation of terms. (2) Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration.			

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

There shall be no discharge that causes visible oil sheen in the receiving stream.

There shall be no discharge of wastewater which reacts or settles to form an objectionable sludge deposit or emulsion beneath the surface of the receiving stream or upon adjoining shorelines.

There shall be no discharge from Outfall 001 at any time there is discharge from Outfall 002 or Outfall 003.

*Final Effluent Limits Outfall 001- Italian Ditch*

Beginning **November 1, 2019**, until the end of the permit, CHS Laurel Refinery will be required to meet the following effluent limits at Outfall 001:

<b>Outfall 001 - Final Numeric Discharge Limitations <sup>(1)</sup></b>			
<b>Parameter</b>	<b>Units</b>	<b>Effluent Limits</b>	
		<b>Maximum Daily</b>	<b>Average Monthly</b>
5-Day Biochemical Oxygen Demand (BOD <sub>5</sub> )	lb/day	620	331
Net Total Suspended Solids (net TSS)	lb/day	532	339
Chemical Oxygen Demand (COD)	lb/day	4,425	2,288
Oil and Grease	mg/L	10	--
	lb/day	242	128
Phenol	lb/day	4.5	2.2
Ammonia, Total as N	mg/L	3.8	1.2
	lb/day	418	191
Nitrate + Nitrite	mg/L	10	10
Fluoride	mg/L	4.0	4.0
Sulfide	lb/day	3.9	1.8
Arsenic, TR	µg/L	10	10
Chromium, TR	lb/day	9.1	5.2
Hexavalent Chromium	lb/day	1.0	0.36
Selenium, TR	µg/L	8.2	4.1
pH	s.u.	Between 6.0 and 9.0, all times	
Whole Effluent Toxicity, Acute, LC <sub>50</sub>	% effluent	No acute toxicity <sup>(2)</sup>	
Footnote: TR = Total Recoverable			
(1) See Definitions section at end of permit for explanation of terms.			
(2) Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration.			

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

There shall be no discharge that causes visible oil sheen in the receiving stream.

There shall be no discharge of wastewater which reacts or settles to form an objectionable sludge deposit or emulsion beneath the surface of the receiving stream or upon adjoining shorelines.

There shall be no discharge from Outfall 001 at any time there is discharge from Outfall 002 or Outfall 003.

*Outfalls 002 / 003 – Yellowstone River*

Effective upon commencement of discharge through the diffuser Outfalls 002 / 003 until the end of the permit, CHS Laurel Refinery will be required to meet the following effluent limits:

<b>Diffuser Outfalls 002 / 003 - Final Effluent Limits</b>			
<b>Parameter</b>	<b>Units</b>	<b>Effluent Limits</b>	
		<b>Maximum Daily</b>	<b>Average Monthly</b>
5-Day Biochemical Oxygen Demand (BOD <sub>5</sub> )	lb/day	620	331
Net Total Suspended Solids (net TSS)	lb/day	532	339
Chemical Oxygen Demand (COD)	lb/day	4,425	2,288
Oil and Grease	mg/L	10	--
	lb/day	242	128
Phenol	lb/day	4.5	2.2
Ammonia, Total as N	lb/day	418	191
Sulfide	lb/day	3.9	1.8
Arsenic, TR <sup>(1)</sup>	µg/L	20	13
Chromium, TR	lb/day	9.1	5.2
Hexavalent Chromium	lb/day	1.0	0.36
pH	s.u.	Between 6.0 and 9.0, all times	
Whole Effluent Toxicity, Acute, LC <sub>50</sub>	% effluent	No acute toxicity <sup>(2)</sup>	
Footnote: TR = Total Recoverable (1) Effective <b>November 1, 2022</b> . (2) Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration.			

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

There shall be no discharge that causes visible oil sheen in the receiving stream.

There shall be no discharge of wastewater which reacts or settles to form an objectionable sludge deposit or emulsion beneath the surface of the receiving stream or upon adjoining shorelines.

There shall be no discharge from the diffuser (Outfalls 002 or 003) at any time there is discharge from Outfall 001.

C. Monitoring Requirements

1. *Outfalls 001 and 002/003*

Self-monitoring of effluent shall be conducted, following final treatment, at the following locations, unless another location is requested by CHS and approved by DEQ in writing:

- Outfall 001 – at the flow meter & sampling location; and
- Outfalls 002/003 – diffuser discharge monitored at the outlet of the discharge pumps prior to the forced main.

Samples will reflect the nature of the discharge. Samples shall be collected, preserved and analyzed in accordance with approved procedures listed in 40 CFR 136. Data supplied by CHS must either have a detection or meet the Required Reporting Value (RRV), which is the detection level that must be achieved as listed in Circular DEQ-7. The RRV is DEQ’s best determination of a level of analysis that can be achieved by the majority of the commercial, university, or governmental laboratories using EPA-approved methods or methods approved by DEQ.

At a minimum, the following constituents shall be monitored at the frequencies and with the types of measurements indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge.

<b>Effluent Monitoring Requirements for Outfall 001 and Outfalls 002/003<sup>(1)</sup></b>					
Parameter	Units	Monitoring Frequency	Type		Reporting Requirement
Flow	MGD	Continuous	Instantaneous <sup>(2)</sup>		Daily Max & Mo Avg
BOD <sub>5</sub>	mg/L	2/Week <sup>(3)</sup>	Composite		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
TSS – Intake Water	mg/L	2/Week <sup>(3)</sup>	Composite		None
TSS – Effluent Gross	mg/L	2/Week <sup>(3)</sup>	Composite		None
TSS – Net <sup>(4)</sup>	lb/day	1/Month	Calculated		Daily Max & Mo Avg
COD	mg/L	2/Week <sup>(3)</sup>	Composite		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
Oil and Grease	mg/L	2/Week <sup>(3)</sup>	Grab		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
Phenol	µg/L	1/Week	Grab		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
Ammonia (as N)	mg/L	2/Week <sup>(3)</sup>	Composite		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
Sulfide, Total	µg/L	1/Week	Composite		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
Sulfide, Dissolved	µg/L	1/Week	Composite <sup>(5)</sup>		Daily Max & Mo Avg
Hydrogen Sulfide (H <sub>2</sub> S)	µg/L	1/Week	Calculated <sup>(5)</sup>		Daily Max & Mo Avg
Chromium, TR	µg/L	1/Week	Composite		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg

Effluent Monitoring Requirements for Outfall 001 and Outfalls 002/003 <sup>(1)</sup>					
Parameter	Units	Monitoring Frequency	Type		Reporting Requirement
Chromium, Hexavalent	µg/L	1/Week	Composite		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
pH	s.u.	1/Day	Instantaneous		Daily Min & Daily Max
Fluoride	mg/L	2/Year <sup>(3,6)</sup>	Composite		Daily Max & Mo Avg
		1/Month			
Arsenic, TR	µg/L	2/Year <sup>(3,6)</sup>	Composite		Daily Max & Mo Avg
		1/Month			
Selenium, TR	µg/L	2/Year <sup>(3,6)</sup>	Composite		Daily Max & Mo Avg
		1/Month			
Aluminum, Dissolved	µg/L	2/Year <sup>(3)</sup>	Composite		Report
Cyanide, Total	µg/L	2/Year <sup>(3)</sup>	Grab		Report
Iron, TR	µg/L	2/Year <sup>(3)</sup>	Composite		Report
Lead, TR	µg/L	2/Year <sup>(3)</sup>	Composite		Report
Mercury, TR	µg/L	2/Year <sup>(3)</sup>	Composite		Report
Total Residual Chlorine <sup>(7)</sup>	mg/L	1/Month	Grab		Report
Nitrate + Nitrite (Nov 1 – July 31)	mg/L	2/Year <sup>(3,6)</sup> 1/Month	Composite		Daily Max & Mo Avg
Nitrate + Nitrite (Aug 1 – Oct 31)	mg/L	1/Week <sup>(8)</sup>	Composite		Daily Max & Mo Avg
Total Kjeldahl Nitrogen	mg/L	1/Week <sup>(8)</sup>	Composite		Mo Avg
TN <sup>(9)</sup>	lb/day	1/Month <sup>(8)</sup>	Calculated		Mo Avg
TP	mg/L	1/Month <sup>(8)</sup>	Composite		Mo Avg
	lb/day	1/Month <sup>(8)</sup>	Calculated		Mo Avg
Temperature	degrees C	1/Week	Instantaneous		Daily Max & Mo Avg
Whole Effluent Toxicity, Acute	% Effluent	1/Quarter <sup>(10)</sup>	Grab		Pass/Fail

Footnotes:

- (1) The effluent monitoring location must be after all treatment has been completed (*i.e.*, downstream from all treatment units, and prior to entry to the receiving waters). Monitoring is only required during times with discharge.
- (2) Requires recording device or totalizer.
- (3) Samples required 2/week must be taken at least two days apart, and samples required 2/year must be taken at least four months apart with the first in the first half of the year and the second in the second half of the year.
- (4) Mass-based net TSS calculated by first determining mass-based net TSS discharge on a daily basis, then determining daily maximum and monthly average for the month.
- (5) H<sub>2</sub>S concentrations are calculated based on the dissolved sulfide concentration and pH in accordance with Standard Methods 4500-S<sup>2</sup>-H, unless another method is proposed by CHS and accepted by DEQ. Field data (pH, conductivity (µmhos/cm) and temperature), taken of an unpreserved water sample, shall be recorded at the time the dissolved sulfide sample is collected. This field data must be submitted to the laboratory for use in the H<sub>2</sub>S calculations or CHS must itself use the field data to calculate the H<sub>2</sub>S concentration from the laboratory-provided dissolved sulfide data.
- (6) Monitoring for nitrate+nitrite, arsenic, selenium, and fluoride is required twice a year until October 31, 2019. Beginning November 1, 2019, monitoring will be required monthly.
- (7) CHS may eliminate manganese interference using an approved procedure under 40 CFR 136. Should CHS utilize such a method, DMR reporting for TRC should be based upon net TRC.
- (8) Monitoring required only during the summer season of August 1 – October 31<sup>st</sup>.
- (9) TN is the sum of Nitrate+Nitrite and TKN.
- (10) Two species WET test conducted quarterly during periods with discharge (for Outfalls 001 and Outfalls 002/003) unless reduced monitoring is approved by DEQ under Part I.C.2. At minimum, failure of any acute WET test requires that the permittee comply with the Permit's Special Conditions.



Composite samples shall, as a minimum, be composed of two or more discrete aliquots (samples) of equal volume and time collected in a 24-hour period until November 1, 2019. After this date, composite samples shall, as a minimum, be composed of four or more discrete aliquots (samples) of equal volume. The aliquots shall be combined in a single container for analysis (simple composite). The time between the collection of the first sample and the last sample shall not be less than six (6) hours nor more than 24 hours

2. *Whole Effluent Toxicity Monitoring – Acute Toxicity*

Starting immediately upon the effective date of this permit, the permittee shall, at least once each calendar quarter, conduct an acute static renewal toxicity test on a grab sample of the effluent. Testing will employ two species per quarter and will consist of 5 effluent concentrations (100, 50, 25, 12.5, 6.25 percent effluent) and a control. Dilution water and the control shall consist of the receiving water.

The toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, EPA-821-R-02-012 and the *Region VIII EPA NPDES Acute Test Conditions - Static Renewal Whole Effluent Toxicity Test* testing protocols. The permittee shall conduct an acute 48-hour static renewal toxicity test using *Ceriodaphnia sp.* and an acute 96-hour static renewal toxicity test using fathead minnows (*Pimephales promelas*). The control of pH in the toxicity test utilizing CO<sub>2</sub> enriched atmospheres is allowed to prevent rising pH drift. The target pH selected must represent the pH value of the receiving water at the time of sample collection.

Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration. If more than 10 percent control mortality occurs, the test is considered invalid and shall be repeated until satisfactory control survival is achieved unless a specific individual exception is granted by the Department. This exception may be granted if less than 10 percent mortality was observed at the dilutions containing high effluent concentrations.

If acute toxicity occurs in a routine test, an additional test shall be conducted within 14 days of the date of the initial sample. Should acute toxicity occur in the second test, accelerated testing shall occur once a month for the affected species. If no acute toxicity occurs for six (6) consecutive months for the affected species, CHS shall notify DEQ and the WET testing will revert back to a frequency of once each calendar quarter. In all cases, the results of all toxicity tests must be submitted to the Department in accordance with Part II of this permit.

Failure to initiate, or conduct an adequate Toxicity Identification Evaluation / Toxicity Reduction Evaluation (TIE/TRE), or delays in the conduct of such tests, shall not be considered a justification for noncompliance with the whole effluent toxicity limits contained in Part I.B of this permit. A TRE plan needs to be submitted

to the permitting authority within 45 days after confirmation of the continuance of the effluent toxicity.

The quarterly results from the laboratory shall be reported along with the DMR form submitted for the end of the reporting calendar quarter (e.g., whole effluent results for the reporting quarter ending March 31 shall be reported with the March DMR due April 28th with the remaining quarterly reports submitted with the June, September, and December DMR's). The format for the laboratory report shall be consistent with the latest revision of the EPA form *Region VIII Guidance for Acute Whole Effluent Reporting*, and shall include all chemical and physical data as specified.

If the results for eight consecutive quarters of testing indicate no acute toxicity, the permittee may request a reduction to semi-annual acute toxicity testing on two species. The Department may approve or deny the request based on the results and other available information without an additional public notice. If the request is approved, the test procedures are to be the same as specified above for the test species.

### 3. Upstream Monitoring

As a minimum, the following constituents shall be monitored for the Yellowstone River at the frequency and with the type of measurement indicated. Results must be provided on the DMRs. CHS must use a sufficiently sensitive method to detect the parameters at or above the RRV as specified in Circular DEQ-7 or DEQ-12A; if this is not possible for any of the samples an explanation must be provided. Upstream Monitoring Requirements as specified in this section shall be conducted through **October 30, 2020**.

Upstream Monitoring Requirements				
Parameter	Units	Monitoring Frequency	Type	Reporting Level
Sulfide, Dissolved	µg/L	1/Quarter	Grab	--
Hydrogen Sulfide (H <sub>2</sub> S)	µg/L	1/Quarter	Calculated <sup>(1)</sup>	20
pH	s.u.	1/Quarter	Instantaneous/Grab	0.1
Total Nitrogen <sup>(2)</sup>	µg/L	1/Month <sup>(3)</sup>	Grab or Calculated	0.245
Footnotes:				
(1) H <sub>2</sub> S concentrations are calculated based on the dissolved sulfide concentration and pH in accordance with Standard Methods 4500-S <sup>2-</sup> -H, unless another method is proposed by CHS and accepted by DEQ. Field data (pH, conductivity (µmhos/cm) and temperature), taken of an unpreserved water sample, shall be recorded at the time the dissolved sulfide sample is collected. This field data must be submitted to the laboratory for use in the H <sub>2</sub> S calculations or CHS must itself use the field data to calculate the H <sub>2</sub> S concentration from the laboratory-provided dissolved sulfide data.				
(2) TN can be determined by either the persulfate method or the sum of Nitrate + Nitrite and TKN.				
(3) Monitoring required only during the summer season of August 1 – October 31 <sup>st</sup> .				

CHS shall submit a topo map or aerial photo indicating where the monitoring locations will be prior to taking the first sample. If the sample location is changed, CHS shall submit a revised monitoring location prior to taking the next sample.

D. Special Conditions

1. *Toxicity Identification Evaluation / Toxicity Reduction Evaluation (TIE/TRE)*

Should acute toxicity be detected in the required resample, a TIE-TRE shall be undertaken by the permittee to establish the cause of the toxicity, locate the source(s) of the toxicity, and develop control or treatment for the toxicity. Failure to initiate or conduct an adequate TIE-TRE, or delays in the conduct of such tests, shall not be considered a justification for noncompliance with the whole effluent toxicity limits contained in Part I.B of this permit. A TRE plan needs to be submitted to the Department within 45 days after confirmation of the continuance of effluent toxicity (resample).

2. *Notification Regarding Outfalls 001 and 002 / 003*

CHS Laurel Refinery currently discharges through Outfall 001. Therefore, the permit monitoring requirements are currently required only for Outfall 001 and discharge is not allowed through Outfall 002 and/or Outfall 003. Once CHS completes construction of the diffuser, notification to DEQ of the planned change in discharge location is required, in writing, at least 30 days in advance of re-directing the discharge. Upon such a notification, CHS will be authorized to discharge through the diffuser (Outfalls 002 and/or 003) and not Outfall 001 in accordance with this permit, without further permitting activities.

CHS will be required to notify DEQ of future outfall changes between Outfalls 001 and 002/003 as follows:

- Planned maintenance activities: notify DEQ in writing 30 days prior to changing the outfall used for discharge, including which outfall will be used and the expected starting and ending dates; and
- Emergencies: notify DEQ verbally within 24-hours and in writing seven days after changing the outfall used for discharge.

3. *Storm Water Management*

CHS Laurel Refinery has two outfalls for storm water which are currently covered under Montana storm water industrial general permit (GP) authorization MTR000099. In a DEQ letter to CHS dated August 13, 2018, DEQ required CHS Laurel Refinery to evaluate whether discharge from the two storm water outfalls that are currently authorized under the GP should be classified as “contaminated” and permitted under this individual MPDES permit or “uncontaminated” and eligible to remain authorized under the GP by no later than September 20, 2018. CHS complied with that requirement. Any further activities will be addressed separately.

E. Compliance Schedule

1. CHS shall meet the final effluent limits as follows:

- Arsenic, total recoverable – November 1, 2022

- All other parameters – November 1, 2019

CHS Laurel Refinery shall submit an annual report addressing work performed and anticipated work to be completed to meet the final effluent limits. The annual report must be post-marked no later than January 28<sup>th</sup> of each year, and include actions taken in the previous year and planned actions for the upcoming year.

## II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

### A. Representative Sampling

Samples taken in compliance with the monitoring requirements established under Part I of the permit shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

### B. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under Part 136, Title 40 of the Code of Federal Regulations, unless other test procedures have been specified in this permit. All flow-measuring and flow-recording devices used in obtaining data submitted in self-monitoring reports must indicate values within 10 percent of the actual flow being measured.

### C. Penalties for Tampering

The Montana Water Quality 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 \$10,000, or by imprisonment for not more than six months, or by both.

### D. Reporting of Monitoring Results

Monitoring results must be reported within a Discharge Monitoring Report (DMR). Monitoring results must be submitted electronically (NetDMR web-based application) no later than the 28<sup>th</sup> day of the month following the end of the monitoring period. Whole effluent toxicity (biomonitoring) results must be reported with copies of the laboratory analysis report on forms from the most recent version of EPA Region VIII's "Guidance for Whole Effluent Reporting." If no discharge occurs during the entire reporting period, "No Discharge" must be reported within the respective DMR.

All other reports must be signed and certified in accordance with Part IV.G 'Signatory Requirements' of this permit and submitted to DEQ at the following address:

Montana Department of Environmental Quality  
Water Protection Bureau  
PO Box 200901  
Helena, Montana 59620-0901  
Phone: (406) 444-5546

### E. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit must be submitted to the Department in either electronic or paper format and be postmarked no later than 14 days following each schedule date unless otherwise specified in the permit.

F. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using approved analytical methods as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report. Such increased frequency shall also be indicated.

G. Records Contents

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The initials or name(s) of the individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The time analyses were initiated;
5. The initials or name(s) of individual(s) who performed the analyses;
6. References and written procedures, when available, for the analytical techniques or methods used; and
7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

H. 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 the Department at any time. Data collected on site, copies of Discharge Monitoring Reports, and a copy of this MPDES permit must be maintained on site during the duration of activity at the permitted location.

I. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee shall report any serious incidents of noncompliance as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the Water Protection Bureau at (406) 444-5546 or the Office of Disaster and Emergency Services at (406) 324-4777. The following examples are considered serious incidents:
  - a. Any noncompliance which may seriously endanger health or the environment;
  - b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part III.G of this permit, "Bypass of Treatment Facilities"); or

- c. Any upset which exceeds any effluent limitation in the permit (see Part III.H of this permit, "Upset Conditions").
2. 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.
3. The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Protection Bureau, by phone, (406) 444-5546.
4. Reports shall be submitted to the addresses in Part II.D of this permit, "Reporting of Monitoring Results".

J. Other Noncompliance Reporting

Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part II.D of this permit are submitted. The reports shall contain the information listed in Part II.I.2 of this permit.

K. Inspection and Entry

The permittee shall allow the head of the Department or the Director, or an authorized representative thereof, 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, any substances or parameters at any location.

### III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply

The permittee must comply with 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 give the Department or the Regional Administrator advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.

B. Penalties for Violations of Permit Conditions

The Montana Water Quality Act provides that any person who violates a permit condition of the Act is subject to civil or criminal penalties not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions of the Act is subject to a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than 2 years, or both, for subsequent convictions. MCA 75-5-611(a) also provides for administrative penalties not to exceed \$10,000 for each day of violation and up to a maximum not to exceed \$100,000 for any related series of violations. Except as provided in permit conditions on Part III.G of this permit, "Bypass of Treatment Facilities" and Part III.H of this permit, "Upset Conditions", nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. 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.

D. 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.

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) 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. However, the permittee shall operate, as a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.



F. 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.

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III.G.2 and III.G.3 of this permit.
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 10 days before the date of the bypass.
  - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.I of this permit, "Twenty-four Hour Reporting".
3. Prohibition of bypass:
  - a. Bypass is prohibited and the Department may take enforcement action against a permittee for a bypass, unless:
    - 1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
    - 2) 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 which occurred during normal periods of equipment downtime or preventive maintenance; and
    - 3) The permittee submitted notices as required under Part III.G.2 of this permit.
  - b. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in Part III.G.3.a of this permit.

H. Upset Conditions

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 of Part III.H.2 of this permit 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 (i.e. Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations).

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 Part II.I of this permit, "Twenty-four Hour Notice of Noncompliance Reporting"; and
  - d. The permittee complied with any remedial measures required under Part III.D of this permit, "Duty to Mitigate".
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

J. Changes in Discharge of Toxic Substances

Notification shall be provided to the Department as soon as the permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - a. One hundred micrograms per liter (100 µg/L);
  - b. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
  - c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

- d. The level established by the Department in accordance with 40 CFR 122.44(f).
2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
    - a. Five hundred micrograms per liter (500 µg/L);
    - b. One milligram per liter (1 mg/L) for antimony;
    - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
    - d. The level established by the Department in accordance with 40 CFR 122.44(f).

#### IV. GENERAL REQUIREMENTS

A. Planned Changes

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

B. Anticipated Noncompliance

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

C. 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.

D. 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 application must be submitted at least 180 days before the expiration date of this permit.

E. Duty to Provide Information

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

F. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Department, it shall promptly submit such facts or information with a narrative explanation of the circumstances of the omission or incorrect submittal and why they weren't supplied earlier.

G. Signatory Requirements

All applications, reports or information submitted to the Department or the EPA shall be signed and certified.

1. All permit applications shall be signed as follows:

- a. For a corporation: by a responsible corporate officer;
- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;

- c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.
2. All reports required by the permit and other information requested by the Department shall be signed by a person described above or by a duly authorized representative of that person. A person is considered a duly authorized representative only if:
    - a. The authorization is made in writing by a person described above and submitted to the Department; and
    - b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or an individual occupying a named position.)
  3. Changes to authorization. If an authorization under Part IV.G.2 of this permit is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part IV.G.2 of this permit must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.
  4. Certification. Any person signing a document under this section shall make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

H. Penalties for Falsification of Reports

The Montana Water Quality Act provides that any person who knowingly 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.

I. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public

inspection at the offices of the Department. As required by the Clean Water Act, permit applications, permits and effluent data shall not be considered confidential.

J. 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.

K. Property Rights

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

L. 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.

M. Transfers

This permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Department at least 30 days in advance of the proposed transfer date;
2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them;
3. The Department does not notify the existing permittee and the proposed new permittee of an intent to revoke or modify and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part IV.M.2 of this permit; and
4. Required annual and application fees have been paid.

N. Fees

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

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

O. Reopener Provisions

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

1. **Water Quality Standards:** The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.
2. **Water Quality Standards are Exceeded:** If it is found that water quality standards or trigger values in the receiving stream are exceeded either for parameters included in the permit or others, the department may modify the effluent limits or water management plan.
3. **TMDL or Wasteload Allocation:** TMDL requirements or a wasteload allocation is developed and approved by the Department and/or EPA for incorporation in this permit.
4. **Water Quality Management Plan:** A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit.
5. **Toxic Pollutants:** A toxic standard or prohibition is established under Section 307(a) of the Clean Water Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit.
6. **Toxicity Limitation:** Change in the whole effluent protocol, or any other conditions related to the control of toxicants have taken place, or if one or more of the following events have occurred:
  - a. Toxicity was detected late in the life of the permit near or past the deadline for compliance.
  - b. The TRE/TIE results indicated that compliance with the toxic limits will require an implementation schedule past the date for compliance.
  - c. The TRE/TIE results indicated that the toxicant(s) represent pollutant(s) that may be controlled with specific numerical limits.
  - d. Following the implementation of numerical controls on toxicants, a modified whole effluent protocol is needed to compensate for those toxicants that are controlled numerically.
  - e. The TRE/TIE revealed other unique conditions or characteristics which, in the opinion of the Department, justify the incorporation of unanticipated special conditions in the permit.

V. DEFINITIONS

1. **“Act”** means the Montana Water Quality Act, Title 75, chapter 5, MCA.
2. **“Administrator”** means the administrator of the United States Environmental Protection Agency.
3. **“Acute Toxicity”** occurs when 50 percent or more mortality is observed for either species (See Part I.C of this permit) at any effluent concentration. Mortality in the control must simultaneously be 10 percent or less for the effluent results to be considered valid.
4. **“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.
5. **“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.
6. **“Bypass”** means the intentional diversion of waste streams from any portion of a treatment facility.
7. **“Chronic Toxicity”** means when the survival, growth, or reproduction, as applicable, for either test species, at the effluent dilution(s) designated in this permit (see Part I.C.), is significantly less (at the 95 percent confidence level) than that observed for the control specimens.
8. **“Composite samples”** means a sample composed of four or more discrete aliquots (samples). The aggregate sample will reflect the average quality of the water or wastewater in the compositing or sample period. Composite sample may be composed of constant volume aliquots collected at regular intervals (simple composite) or flow proportioned.
9. **“Daily Discharge”** means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
10. **“Daily Maximum Limit”** means the maximum allowable discharge of a pollutant during a calendar day. Expressed as units of mass, the daily discharge is cumulative mass discharged over the course of the day. Expressed as a concentration, it is the arithmetic average of all measurements taken that day.
11. **“Department”** means the Montana Department of Environmental Quality (DEQ). Established by 2-15-3501, MCA.



12. **"Director"** means the Director of the Montana Department of Environmental Quality.
13. **"Discharge"** means the injection, deposit, dumping, spilling, leaking, placing, or failing to remove any pollutant so that it or any constituent thereof may enter into state waters, including ground water.
14. **"EPA"** means the United States Environmental Protection Agency.
15. **"Federal Clean Water Act"** means the federal legislation at 33 USC 1251, *et seq.*
16. **"Grab Sample"** means a sample which is taken from a waste stream on a one-time basis without consideration of flow rate of the effluent or without consideration for time.
17. **"Instantaneous Maximum Limit"** means the maximum allowable concentration of a pollutant determined from the analysis of any discrete or composite sample collected, independent of the flow rate and the duration of the sampling event.
18. **"Instantaneous Measurement"**, for monitoring requirements, means a single reading, observation, or measurement.
19. **"Minimum Level"** (ML) of quantitation means the lowest level at which the entire analytical system gives a recognizable signal and acceptable calibration point for the analyte, as determined by the procedure set forth at 40 CFR 136. In most cases the ML is equivalent to the Required Reporting Value (RRV) unless otherwise specified in the permit. (ARM 17.30.702(22))
19. **"Mixing zone"** means a limited area of a surface water body or aquifer where initial dilution of a discharge takes place and where certain water quality standards may be exceeded.
20. **"Nondegradation"** 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 the Department prior to April 29, 1993.
21. **"Regional Administrator"** means the administrator of Region VIII of EPA, which has jurisdiction over federal water pollution control activities in the state of Montana.
22. **"Severe property damage"** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
23. **"TIE"** means a toxicity identification evaluation.

24. **"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.
25. **"TRE"** means a toxicity reduction evaluation.
26. **"TSS"** means the pollutant parameter total suspended solids.
27. **"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.

**EXHIBIT B**

Major Industrial  
Permit No.: MT0000264

**MONTANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY**

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.*,

**CHS, Inc.**

is authorized to discharge from its **Laurel Refinery**

located at **802 Highway 212 South, Laurel, MT,**

to receiving waters named, **Italian Drain and Yellowstone River**

in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein. Authorization for discharge is limited to those outfalls specifically listed in the permit.

This permit shall become effective: **November 1, 2015.**

This permit and the authorization to discharge shall expire at midnight, **October 31, 2020.**

Modified Pursuant to Board Order on: \_\_\_\_\_

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I. EFFLUENT LIMITATIONS, MONITORING REQUIREMENTS & OTHER CONDITIONS

A. Description of Discharge Points and Mixing Zone

The authorization to discharge provided under this permit is limited to those outfalls specially designated below as discharge locations. Discharges at any location not authorized under an MPDES permit is a violation of the Montana Water Quality Act and could subject the person(s) responsible for such discharge to penalties under the Act. Knowingly discharging from an unauthorized location or failing to report an unauthorized discharge within a reasonable time from first learning of an unauthorized discharge could subject such person to criminal penalties as provided under Section 75-5-632 of the Montana Water Quality Act.

<u>Outfall</u>	<u>Description</u>
001	<p><b>Location:</b> At the end of the pipe/ditch, discharging into the Italian Drain, located at 45°39'28" N latitude, 108°45'09" W longitude.</p> <p><b>Mixing Zone:</b> None.</p> <p><b>Treatment Works:</b> Refinery wastewater treatment plant.</p>
002	<p><b>Location (Future):</b> Lower port primary diffuser, discharging into the Yellowstone River, located at 45°39'22.32" N latitude, 108°45'10.86" W longitude.</p> <p><b>Mixing Zone:</b> None. There are no effluent limits that require a mixing zone.</p> <p><b>Treatment Works:</b> Refinery wastewater treatment plant.</p>
003	<p><b>Location (Future):</b> Upper port secondary diffuser, discharging into the Yellowstone River, located at 45°39'22.32" N latitude, 108°45'10.86" W longitude.</p> <p><b>Mixing Zone:</b> None. There are no effluent limits that require a mixing zone.</p> <p><b>Treatment Works:</b> Refinery wastewater treatment plant.</p>

**B. Effluent Limitations**

*Interim Effluent Limits – Outfall 001 Italian Ditch*

Beginning on the effective date of this permit and lasting through **October 31, 2019**, the quality of effluent discharged from Outfall 001 by the facility shall, at a minimum, meet the limitations as set forth below:

<b>Outfall 001 - Interim Numeric Discharge Limitations <sup>(1)</sup></b>			
<b>Parameter</b>	<b>Units</b>	<b>Maximum Daily</b>	<b>Average Monthly</b>
5-Day Biochemical Oxygen Demand (BOD <sub>5</sub> )	lb/day	620	331
Net Total Suspended Solids (net TSS)	lb/day	532	339
Chemical Oxygen Demand (COD)	lb/day	4,425	2,288
Oil and Grease	mg/L	10	--
	lb/day	242	128
Phenol	lb/day	4.5	2.2
Ammonia, Total as N	lb/day	418	191
Sulfide	lb/day	3.9	1.8
Chromium, Total Recoverable	lb/day	9.1	5.2
Hexavalent Chromium	lb/day	1.0	0.36
pH	s.u.	Between 6.0 and 9.0, all times	
Whole Effluent Toxicity, Acute, LC <sub>50</sub>	% effluent	No acute toxicity <sup>(2)</sup>	
Footnotes: (1) See Definitions section at end of permit for explanation of terms. (2) Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration.			

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

There shall be no discharge that causes visible oil sheen in the receiving stream.

There shall be no discharge of wastewater which reacts or settles to form an objectionable sludge deposit or emulsion beneath the surface of the receiving stream or upon adjoining shorelines.

There shall be no discharge from Outfall 001 at any time there is discharge from Outfall 002 or Outfall 003.

*Final Effluent Limits Outfall 001- Italian Ditch*

Beginning **November 1, 2019**, until the end of the permit, CHS Laurel Refinery will be required to meet the following effluent limits at Outfall 001:

<b>Outfall 001 - Final Numeric Discharge Limitations <sup>(1)</sup></b>			
<b>Parameter</b>	<b>Units</b>	<b>Effluent Limits</b>	
		<b>Maximum Daily</b>	<b>Average Monthly</b>
5-Day Biochemical Oxygen Demand (BOD <sub>5</sub> )	lb/day	620	331
Net Total Suspended Solids (net TSS)	lb/day	532	339
Chemical Oxygen Demand (COD)	lb/day	4,425	2,288
Oil and Grease	mg/L	10	--
	lb/day	242	128
Phenol	lb/day	4.5	2.2
Ammonia, Total as N	mg/L	3.8	1.2
	lb/day	418	191
Nitrate + Nitrite	mg/L	10	10
Fluoride	mg/L	4.0	4.0
Sulfide	lb/day	3.9	1.8
Arsenic, TR	µg/L	10	10
Chromium, TR	lb/day	9.1	5.2
Hexavalent Chromium	lb/day	1.0	0.36
Selenium, TR	µg/L	8.2	4.1
pH	s.u.	Between 6.0 and 9.0, all times	
Whole Effluent Toxicity, Acute, LC <sub>50</sub>	% effluent	No acute toxicity <sup>(2)</sup>	
Footnote: TR = Total Recoverable			
(1) See Definitions section at end of permit for explanation of terms.			
(2) Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration.			

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

There shall be no discharge that causes visible oil sheen in the receiving stream.

There shall be no discharge of wastewater which reacts or settles to form an objectionable sludge deposit or emulsion beneath the surface of the receiving stream or upon adjoining shorelines.

There shall be no discharge from Outfall 001 at any time there is discharge from Outfall 002 or Outfall 003.

*Outfalls 002 / 003 – Yellowstone River*

Effective upon commencement of discharge through the diffuser Outfalls 002 / 003 until the end of the permit, CHS Laurel Refinery will be required to meet the following effluent limits:

<b>Diffuser Outfalls 002 / 003 - Final Effluent Limits</b>			
<b>Parameter</b>	<b>Units</b>	<b>Effluent Limits</b>	
		<b>Maximum Daily</b>	<b>Average Monthly</b>
5-Day Biochemical Oxygen Demand (BOD <sub>5</sub> )	lb/day	620	331
Net Total Suspended Solids (net TSS)	lb/day	532	339
Chemical Oxygen Demand (COD)	lb/day	4,425	2,288
Oil and Grease	mg/L	10	--
	lb/day	242	128
Phenol	lb/day	4.5	2.2
Ammonia, Total as N	lb/day	418	191
Sulfide	lb/day	3.9	1.8
Arsenic, TR <sup>(1)</sup>	µg/L	<del>11.320</del>	<del>11.313</del>
Chromium, TR	lb/day	9.1	5.2
Hexavalent Chromium	lb/day	1.0	0.36
pH	s.u.	Between 6.0 and 9.0, all times	
Whole Effluent Toxicity, Acute, LC <sub>50</sub>	% effluent	No acute toxicity <sup>(2)</sup>	
Footnote: TR = Total Recoverable (1) Effective <b>November 1, 2022</b> . (2) Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration.			

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

There shall be no discharge that causes visible oil sheen in the receiving stream.

There shall be no discharge of wastewater which reacts or settles to form an objectionable sludge deposit or emulsion beneath the surface of the receiving stream or upon adjoining shorelines.

There shall be no discharge from the diffuser (Outfalls 002 or 003) at any time there is discharge from Outfall 001.



C. Monitoring Requirements

1. *Outfalls 001 and 002/003*

Self-monitoring of effluent shall be conducted, following final treatment, at the following locations, unless another location is requested by CHS and approved by DEQ in writing:

- Outfall 001 – at the flow meter & sampling location; and
- Outfalls 002/003 – diffuser discharge monitored at the outlet of the discharge pumps prior to the forced main.

Samples will reflect the nature of the discharge. Samples shall be collected, preserved and analyzed in accordance with approved procedures listed in 40 CFR 136. Data supplied by CHS must either have a detection or meet the Required Reporting Value (RRV), which is the detection level that must be achieved as listed in Circular DEQ-7. The RRV is DEQ’s best determination of a level of analysis that can be achieved by the majority of the commercial, university, or governmental laboratories using EPA-approved methods or methods approved by DEQ.

At a minimum, the following constituents shall be monitored at the frequencies and with the types of measurements indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge.

<b>Effluent Monitoring Requirements for Outfall 001 and Outfalls 002/003<sup>(1)</sup></b>					
Parameter	Units	Monitoring Frequency	Type		Reporting Requirement
Flow	MGD	Continuous	Instantaneous <sup>(2)</sup>		Daily Max & Mo Avg
BOD <sub>5</sub>	mg/L	2/Week <sup>(3)</sup>	Composite		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
TSS – Intake Water	mg/L	2/Week <sup>(3)</sup>	Composite		None
TSS – Effluent Gross	mg/L	2/Week <sup>(3)</sup>	Composite		None
TSS – Net <sup>(4)</sup>	lb/day	1/Month	Calculated		Daily Max & Mo Avg
COD	mg/L	2/Week <sup>(3)</sup>	Composite		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
Oil and Grease	mg/L	2/Week <sup>(3)</sup>	Grab		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
Phenol	µg/L	1/Week	Grab		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
Ammonia (as N)	mg/L	2/Week <sup>(3)</sup>	Composite		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
Sulfide, Total	µg/L	1/Week	Composite		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
Sulfide, Dissolved	µg/L	1/Week	Composite <sup>(5)</sup>		Daily Max & Mo Avg
Hydrogen Sulfide (H <sub>2</sub> S)	µg/L	1/Week	Calculated <sup>(5)</sup>		Daily Max & Mo Avg
Chromium, TR	µg/L	1/Week	Composite		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg

Effluent Monitoring Requirements for Outfall 001 and Outfalls 002/003 <sup>(1)</sup>					
Parameter	Units	Monitoring Frequency	Type		Reporting Requirement
Chromium, Hexavalent	µg/L	1/Week	Composite		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
pH	s.u.	1/Day	Instantaneous		Daily Min & Daily Max
Fluoride	mg/L	2/Year <sup>(3,6)</sup> 1/Month	Composite		Daily Max & Mo Avg
Arsenic, TR	µg/L	2/Year <sup>(3,6)</sup> 1/Month	Composite		Daily Max & Mo Avg
Selenium, TR	µg/L	2/Year <sup>(3,6)</sup> 1/Month	Composite		Daily Max & Mo Avg
Aluminum, Dissolved	µg/L	2/Year <sup>(3)</sup>	Composite		Report
Cyanide, Total	µg/L	2/Year <sup>(3)</sup>	Grab		Report
Iron, TR	µg/L	2/Year <sup>(3)</sup>	Composite		Report
Lead, TR	µg/L	2/Year <sup>(3)</sup>	Composite		Report
Mercury, TR	µg/L	2/Year <sup>(3)</sup>	Composite		Report
Total Residual Chlorine <sup>(7)</sup>	mg/L	1/Month	Grab		Report
Nitrate + Nitrite (Nov 1 – July 31)	mg/L	2/Year <sup>(3,6)</sup> 1/Month	Composite		Daily Max & Mo Avg
Nitrate + Nitrite (Aug 1 – Oct 31)	mg/L	1/Week <sup>(8)</sup>	Composite		Daily Max & Mo Avg
Total Kjeldahl Nitrogen	mg/L	1/Week <sup>(8)</sup>	Composite		Mo Avg
TN <sup>(9)</sup>	lb/day	1/Month <sup>(8)</sup>	Calculated		Mo Avg
TP	mg/L	1/Month <sup>(8)</sup>	Composite		Mo Avg
	lb/day	1/Month <sup>(8)</sup>	Calculated		Mo Avg
Temperature	degrees C	1/Week	Instantaneous		Daily Max & Mo Avg
Whole Effluent Toxicity, Acute	% Effluent	1/Quarter <sup>(10)</sup>	Grab		Pass/Fail

**Effluent Monitoring Requirements for Outfall 001 and Outfalls 002/003 <sup>(1)</sup>**

Parameter	Units	Monitoring Frequency	Type	Reporting Requirement
Footnotes:				
<p>(1) The effluent monitoring location must be after all treatment has been completed (<i>i.e.</i>, downstream from all treatment units, and prior to entry to the receiving waters). Monitoring is only required during times with discharge.</p> <p>(2) Requires recording device or totalizer.</p> <p>(3) Samples required 2/week must be taken at least two days apart, and samples required 2/year must be taken at least four months apart with the first in the first half of the year and the second in the second half of the year.</p> <p>(4) Mass-based net TSS calculated by first determining mass-based net TSS discharge on a daily basis, then determining daily maximum and monthly average for the month.</p> <p>(5) <del>H<sub>2</sub>S calculated based on dissolved sulfide concentrations and pH in accordance with Standard Methods Method 4500-S<sup>2-</sup> unless another method is proposed and accepted by DEQ.</del> H<sub>2</sub>S concentrations are calculated based on the dissolved sulfide concentration and pH in accordance with Standard Methods 4500-S<sup>2-</sup>-H, unless another method is proposed by CHS and accepted by DEQ. Field data (pH, conductivity (µmhos/cm) and temperature), taken of an unpreserved water sample, shall be recorded at the time the dissolved sulfide sample is collected. This field data must be submitted to the laboratory for use in the H<sub>2</sub>S calculations or CHS must itself use the field data to calculate the H<sub>2</sub>S concentration from the laboratory-provided dissolved sulfide data.</p> <p>(6) Monitoring for nitrate+nitrite, arsenic, selenium, and fluoride is required twice a year until October 31, 2019. Beginning November 1, 2019, monitoring will be required monthly.</p> <p>(7) CHS may eliminate manganese interference using an approved procedure under 40 CFR 136. Should CHS utilize such a method, DMR reporting for TRC should be based upon net TRC.</p> <p>(8) Monitoring required only during the summer season of August 1 – October 31<sup>st</sup>.</p> <p>(9) TN is the sum of Nitrate+Nitrite and TKN.</p> <p>(10) Two species WET test conducted quarterly during periods with discharge (for Outfalls 001 and Outfalls 002/003) unless reduced monitoring is approved by DEQ under Part I.C.2. At minimum, failure of any acute WET test requires that the permittee comply with the Permit's Special Conditions.</p>				

Composite samples shall, as a minimum, be composed of two or more discrete aliquots (samples) of equal volume and time collected in a 24-hour period until November 1, 2019. After this date, composite samples shall, as a minimum, be composed of four or more discrete aliquots (samples) of equal volume. The aliquots shall be combined in a single container for analysis (simple composite). The time between the collection of the first sample and the last sample shall not be less than six (6) hours nor more than 24 hours

2. *Whole Effluent Toxicity Monitoring – Acute Toxicity*

Starting immediately upon the effective date of this permit, the permittee shall, at least once each calendar quarter, conduct an acute static renewal toxicity test on a grab sample of the effluent. Testing will employ two species per quarter and will consist of 5 effluent concentrations (100, 50, 25, 12.5, 6.25 percent effluent) and a control. Dilution water and the control shall consist of the receiving water.

The toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, EPA-821-R-02-012 and the *Region VIII EPA NPDES Acute Test Conditions - Static Renewal Whole Effluent Toxicity Test* testing protocols. The permittee shall conduct an acute 48-hour static renewal toxicity test using *Ceriodaphnia sp.* and an acute 96-hour static renewal toxicity test using fathead minnows (*Pimephales promelas*). The control of pH in the toxicity test utilizing CO<sub>2</sub> enriched atmospheres is allowed to prevent rising pH drift.

The target pH selected must represent the pH value of the receiving water at the time of sample collection.

Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration. If more than 10 percent control mortality occurs, the test is considered invalid and shall be repeated until satisfactory control survival is achieved unless a specific individual exception is granted by the Department. This exception may be granted if less than 10 percent mortality was observed at the dilutions containing high effluent concentrations.

If acute toxicity occurs in a routine test, an additional test shall be conducted within 14 days of the date of the initial sample. Should acute toxicity occur in the second test, accelerated testing shall occur once a month for the affected species. If no acute toxicity occurs for six (6) consecutive months for the affected species, CHS shall notify DEQ and the WET testing will revert back to a frequency of once each calendar quarter. In all cases, the results of all toxicity tests must be submitted to the Department in accordance with Part II of this permit.

Failure to initiate, or conduct an adequate Toxicity Identification Evaluation / Toxicity Reduction Evaluation (TIE/TRE), or delays in the conduct of such tests, shall not be considered a justification for noncompliance with the whole effluent toxicity limits contained in Part I.B of this permit. A TRE plan needs to be submitted to the permitting authority within 45 days after confirmation of the continuance of the effluent toxicity.

The quarterly results from the laboratory shall be reported along with the DMR form submitted for the end of the reporting calendar quarter (e.g., whole effluent results for the reporting quarter ending March 31 shall be reported with the March DMR due April 28th with the remaining quarterly reports submitted with the June, September, and December DMR's). The format for the laboratory report shall be consistent with the latest revision of the EPA form *Region VIII Guidance for Acute Whole Effluent Reporting*, and shall include all chemical and physical data as specified.

If the results for eight consecutive quarters of testing indicate no acute toxicity, the permittee may request a reduction to semi-annual acute toxicity testing on two species. The Department may approve or deny the request based on the results and other available information without an additional public notice. If the request is approved, the test procedures are to be the same as specified above for the test species.

### 3. *Upstream Monitoring*

As a minimum, the following constituents shall be monitored for the Yellowstone River at the frequency and with the type of measurement indicated. Results must be provided on the DMRs. CHS must use a sufficiently sensitive method to detect the parameters at or above the RRV as specified in Circular DEQ-7 or DEQ-12A; if this is not possible for any of the samples an explanation must be provided.

Upstream Monitoring Requirements as specified in this section shall be conducted through **October 30, 2020**.

Upstream Monitoring Requirements				
Parameter	Units	Monitoring Frequency	Type	Reporting Level
Sulfide, Dissolved	µg/L	1/Quarter	Grab	--
Hydrogen Sulfide (H <sub>2</sub> S)	µg/L	1/Quarter	Calculated <sup>(1)</sup>	20
pH	s.u.	1/Quarter	Instantaneous/Grab	0.1
Total Nitrogen <sup>(2)</sup>	µg/L	1/Month <sup>(3)</sup>	Grab or Calculated	0.245

Footnotes:

(1) ~~Calculate H<sub>2</sub>S based on dissolved sulfide concentrations and pH in accordance with Standard Methods Method 4500-S<sub>2</sub> , unless another method is proposed and accepted by DEQ. H<sub>2</sub>S concentrations are calculated based on the dissolved sulfide concentration and pH in accordance with Standard Methods 4500-S<sup>2</sup>-H, unless another method is proposed by CHS and accepted by DEQ. Field data (pH, conductivity (µmhos/cm) and temperature), taken of an unpreserved water sample, shall be recorded at the time the dissolved sulfide sample is collected. This field data must be submitted to the laboratory for use in the H<sub>2</sub>S calculations or CHS must itself use the field data to calculate the H<sub>2</sub>S concentration from the laboratory-provided dissolved sulfide data.~~

(2) TN can be determined by either the persulfate method or the sum of Nitrate + Nitrite and TKN.

(3) Monitoring required only during the summer season of August 1 – October 31<sup>st</sup>.

CHS shall submit a topo map or aerial photo indicating where the monitoring locations will be prior to taking the first sample. If the sample location is changed, CHS shall submit a revised monitoring location prior to taking the next sample.

D. Special Conditions

1. *Toxicity Identification Evaluation / Toxicity Reduction Evaluation (TIE/TRE)*

Should acute toxicity be detected in the required resample, a TIE-TRE shall be undertaken by the permittee to establish the cause of the toxicity, locate the source(s) of the toxicity, and develop control or treatment for the toxicity. Failure to initiate or conduct an adequate TIE-TRE, or delays in the conduct of such tests, shall not be considered a justification for noncompliance with the whole effluent toxicity limits contained in Part I.B of this permit. A TRE plan needs to be submitted to the Department within 45 days after confirmation of the continuance of effluent toxicity (resample).

2. *Notification Regarding Outfalls 001 and 002 / 003*

CHS Laurel Refinery currently discharges through Outfall 001. Therefore, the permit monitoring requirements are currently required only for Outfall 001 and discharge is not allowed through Outfall 002 and/or Outfall 003. Once CHS completes construction of the diffuser, notification to DEQ of the planned change in discharge location is required, in writing, at least 30 days in advance of re-directing the discharge. Upon such a notification, CHS will be authorized to discharge through the diffuser (Outfalls 002 and/or 003) and not Outfall 001 in accordance with this permit, without further permitting activities.

CHS will be required to notify DEQ of future outfall changes between Outfalls 001 and 002/003 as follows:

- Planned maintenance activities: notify DEQ in writing 30 days prior to changing the outfall used for discharge, including which outfall will be used and the expected starting and ending dates; and
- Emergencies: notify DEQ verbally within 24-hours and in writing seven days after changing the outfall used for discharge.

3. *Storm Water Management*

CHS Laurel Refinery has two outfalls for storm water which are currently covered under Montana storm water industrial general permit (GP) authorization MTR000099. In a DEQ letter to CHS dated August 13, 2018, DEQ required CHS Laurel Refinery to evaluate whether discharge from the two storm water outfalls that are currently authorized under the GP should be classified as “contaminated” and permitted under this individual MPDES permit or “uncontaminated” and eligible to remain authorized under the GP by no later than September 20, 2018. CHS complied with that requirement. Any further activities will be addressed separately.

E. Compliance Schedule

1. CHS shall meet the final effluent limits as follows:

- Arsenic, total recoverable – November 1, 2022
- All other parameters – November 1, 2019

CHS Laurel Refinery shall submit an annual report addressing work performed and anticipated work to be completed to meet the final effluent limits. The annual report must be post-marked no later than January 28<sup>th</sup> of each year, and include actions taken in the previous year and planned actions for the upcoming year.

## II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

### A. Representative Sampling

Samples taken in compliance with the monitoring requirements established under Part I of the permit shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

### B. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under Part 136, Title 40 of the Code of Federal Regulations, unless other test procedures have been specified in this permit. All flow-measuring and flow-recording devices used in obtaining data submitted in self-monitoring reports must indicate values within 10 percent of the actual flow being measured.

### C. Penalties for Tampering

The Montana Water Quality 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 \$10,000, or by imprisonment for not more than six months, or by both.

### D. Reporting of Monitoring Results

Monitoring results must be reported within a Discharge Monitoring Report (DMR). Monitoring results must be submitted electronically (NetDMR web-based application) no later than the 28<sup>th</sup> day of the month following the end of the monitoring period. Whole effluent toxicity (biomonitoring) results must be reported with copies of the laboratory analysis report on forms from the most recent version of EPA Region VIII's "Guidance for Whole Effluent Reporting." If no discharge occurs during the entire reporting period, "No Discharge" must be reported within the respective DMR.

All other reports must be signed and certified in accordance with Part IV.G 'Signatory Requirements' of this permit and submitted to DEQ at the following address:

Montana Department of Environmental Quality  
Water Protection Bureau  
PO Box 200901  
Helena, Montana 59620-0901  
Phone: (406) 444-5546

### E. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit must be submitted to the Department in either electronic or paper format and be postmarked no later than 14 days following each schedule date unless otherwise specified in the permit.

F. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using approved analytical methods as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report. Such increased frequency shall also be indicated.

G. Records Contents

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The initials or name(s) of the individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The time analyses were initiated;
5. The initials or name(s) of individual(s) who performed the analyses;
6. References and written procedures, when available, for the analytical techniques or methods used; and
7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

H. 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 the Department at any time. Data collected on site, copies of Discharge Monitoring Reports, and a copy of this MPDES permit must be maintained on site during the duration of activity at the permitted location.

I. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee shall report any serious incidents of noncompliance as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the Water Protection Bureau at (406) 444-5546 or the Office of Disaster and Emergency Services at (406) 324-4777. The following examples are considered serious incidents:
  - a. Any noncompliance which may seriously endanger health or the environment;
  - b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part III.G of this permit, "Bypass of Treatment Facilities"); or



- c. Any upset which exceeds any effluent limitation in the permit (see Part III.H of this permit, "Upset Conditions").
2. 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.
3. The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Protection Bureau, by phone, (406) 444-5546.
4. Reports shall be submitted to the addresses in Part II.D of this permit, "Reporting of Monitoring Results".

J. Other Noncompliance Reporting

Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part II.D of this permit are submitted. The reports shall contain the information listed in Part II.I.2 of this permit.

K. Inspection and Entry

The permittee shall allow the head of the Department or the Director, or an authorized representative thereof, 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, any substances or parameters at any location.

### III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply

The permittee must comply with 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 give the Department or the Regional Administrator advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.

B. Penalties for Violations of Permit Conditions

The Montana Water Quality Act provides that any person who violates a permit condition of the Act is subject to civil or criminal penalties not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions of the Act is subject to a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than 2 years, or both, for subsequent convictions. MCA 75-5-611(a) also provides for administrative penalties not to exceed \$10,000 for each day of violation and up to a maximum not to exceed \$100,000 for any related series of violations. Except as provided in permit conditions on Part III.G of this permit, "Bypass of Treatment Facilities" and Part III.H of this permit, "Upset Conditions", nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. 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.

D. 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.

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) 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. However, the permittee shall operate, as a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

F. 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.

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III.G.2 and III.G.3 of this permit.
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 10 days before the date of the bypass.
  - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.I of this permit, "Twenty-four Hour Reporting".
3. Prohibition of bypass:
  - a. Bypass is prohibited and the Department may take enforcement action against a permittee for a bypass, unless:
    - 1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
    - 2) 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 which occurred during normal periods of equipment downtime or preventive maintenance; and
    - 3) The permittee submitted notices as required under Part III.G.2 of this permit.
  - b. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in Part III.G.3.a of this permit.

H. Upset Conditions

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 of Part III.H.2 of this permit 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 (i.e. Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations).

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 Part II.I of this permit, "Twenty-four Hour Notice of Noncompliance Reporting"; and
  - d. The permittee complied with any remedial measures required under Part III.D of this permit, "Duty to Mitigate".
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

J. Changes in Discharge of Toxic Substances

Notification shall be provided to the Department as soon as the permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - a. One hundred micrograms per liter (100 µg/L);
  - b. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
  - c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

- d. The level established by the Department in accordance with 40 CFR 122.44(f).
2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
    - a. Five hundred micrograms per liter (500 µg/L);
    - b. One milligram per liter (1 mg/L) for antimony;
    - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
    - d. The level established by the Department in accordance with 40 CFR 122.44(f).

#### IV. GENERAL REQUIREMENTS

A. Planned Changes

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

B. Anticipated Noncompliance

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

C. 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.

D. 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 application must be submitted at least 180 days before the expiration date of this permit.

E. Duty to Provide Information

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

F. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Department, it shall promptly submit such facts or information with a narrative explanation of the circumstances of the omission or incorrect submittal and why they weren't supplied earlier.

G. Signatory Requirements

All applications, reports or information submitted to the Department or the EPA shall be signed and certified.

1. All permit applications shall be signed as follows:

- a. For a corporation: by a responsible corporate officer;
- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;

- c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.
2. All reports required by the permit and other information requested by the Department shall be signed by a person described above or by a duly authorized representative of that person. A person is considered a duly authorized representative only if:
  - a. The authorization is made in writing by a person described above and submitted to the Department; and
  - b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or an individual occupying a named position.)
3. Changes to authorization. If an authorization under Part IV.G.2 of this permit is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part IV.G.2 of this permit must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. Certification. Any person signing a document under this section shall make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

H. Penalties for Falsification of Reports

The Montana Water Quality Act provides that any person who knowingly 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.

I. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public

inspection at the offices of the Department. As required by the Clean Water Act, permit applications, permits and effluent data shall not be considered confidential.

J. 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.

K. Property Rights

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

L. 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.

M. Transfers

This permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Department at least 30 days in advance of the proposed transfer date;
2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them;
3. The Department does not notify the existing permittee and the proposed new permittee of an intent to revoke or modify and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part IV.M.2 of this permit; and
4. Required annual and application fees have been paid.

N. Fees

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

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



O. Reopener Provisions

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

1. **Water Quality Standards:** The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.
2. **Water Quality Standards are Exceeded:** If it is found that water quality standards or trigger values in the receiving stream are exceeded either for parameters included in the permit or others, the department may modify the effluent limits or water management plan.
3. **TMDL or Wasteload Allocation:** TMDL requirements or a wasteload allocation is developed and approved by the Department and/or EPA for incorporation in this permit.
4. **Water Quality Management Plan:** A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit.
5. **Toxic Pollutants:** A toxic standard or prohibition is established under Section 307(a) of the Clean Water Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit.
6. **Toxicity Limitation:** Change in the whole effluent protocol, or any other conditions related to the control of toxicants have taken place, or if one or more of the following events have occurred:
  - a. Toxicity was detected late in the life of the permit near or past the deadline for compliance.
  - b. The TRE/TIE results indicated that compliance with the toxic limits will require an implementation schedule past the date for compliance.
  - c. The TRE/TIE results indicated that the toxicant(s) represent pollutant(s) that may be controlled with specific numerical limits.
  - d. Following the implementation of numerical controls on toxicants, a modified whole effluent protocol is needed to compensate for those toxicants that are controlled numerically.
  - e. The TRE/TIE revealed other unique conditions or characteristics which, in the opinion of the Department, justify the incorporation of unanticipated special conditions in the permit.

V. DEFINITIONS

1. **“Act”** means the Montana Water Quality Act, Title 75, chapter 5, MCA.
2. **“Administrator”** means the administrator of the United States Environmental Protection Agency.
3. **“Acute Toxicity”** occurs when 50 percent or more mortality is observed for either species (See Part I.C of this permit) at any effluent concentration. Mortality in the control must simultaneously be 10 percent or less for the effluent results to be considered valid.
4. **“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.
5. **“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.
6. **“Bypass”** means the intentional diversion of waste streams from any portion of a treatment facility.
7. **“Chronic Toxicity”** means when the survival, growth, or reproduction, as applicable, for either test species, at the effluent dilution(s) designated in this permit (see Part I.C.), is significantly less (at the 95 percent confidence level) than that observed for the control specimens.
8. **“Composite samples”** means a sample composed of four or more discrete aliquots (samples). The aggregate sample will reflect the average quality of the water or wastewater in the compositing or sample period. Composite sample may be composed of constant volume aliquots collected at regular intervals (simple composite) or flow proportioned.
9. **“Daily Discharge”** means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
10. **“Daily Maximum Limit”** means the maximum allowable discharge of a pollutant during a calendar day. Expressed as units of mass, the daily discharge is cumulative mass discharged over the course of the day. Expressed as a concentration, it is the arithmetic average of all measurements taken that day.
11. **“Department”** means the Montana Department of Environmental Quality (DEQ). Established by 2-15-3501, MCA.

12. **"Director"** means the Director of the Montana Department of Environmental Quality.
13. **"Discharge"** means the injection, deposit, dumping, spilling, leaking, placing, or failing to remove any pollutant so that it or any constituent thereof may enter into state waters, including ground water.
14. **"EPA"** means the United States Environmental Protection Agency.
15. **"Federal Clean Water Act"** means the federal legislation at 33 USC 1251, *et seq.*
16. **"Grab Sample"** means a sample which is taken from a waste stream on a one-time basis without consideration of flow rate of the effluent or without consideration for time.
17. **"Instantaneous Maximum Limit"** means the maximum allowable concentration of a pollutant determined from the analysis of any discrete or composite sample collected, independent of the flow rate and the duration of the sampling event.
18. **"Instantaneous Measurement"**, for monitoring requirements, means a single reading, observation, or measurement.
19. **"Minimum Level"** (ML) of quantitation means the lowest level at which the entire analytical system gives a recognizable signal and acceptable calibration point for the analyte, as determined by the procedure set forth at 40 CFR 136. In most cases the ML is equivalent to the Required Reporting Value (RRV) unless otherwise specified in the permit. (ARM 17.30.702(22))
19. **"Mixing zone"** means a limited area of a surface water body or aquifer where initial dilution of a discharge takes place and where certain water quality standards may be exceeded.
20. **"Nondegradation"** 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 the Department prior to April 29, 1993.
21. **"Regional Administrator"** means the administrator of Region VIII of EPA, which has jurisdiction over federal water pollution control activities in the state of Montana.
22. **"Severe property damage"** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
23. **"TIE"** means a toxicity identification evaluation.

24. **"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.
25. **"TRE"** means a toxicity reduction evaluation.
26. **"TSS"** means the pollutant parameter total suspended solids.
27. **"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.

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ATTORNEY FOR THE  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA**

<b>IN THE MATTER OF:</b>  <b>THE NOTICE OF APPEAL AND REQUEST FOR HEARING BY CHS, INC. REGARDING ISSUANCE OF MPDES PERMIT NO. MT0000264</b>	<b>CASE NOS. BER 2019-01-WQ &amp; BER 2015-07-WQ</b>  <b>STIPULATION FOR FINAL AGENCY DECISION</b>
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COME NOW Appellant CHS, Inc. (“CHS”) and the Montana Department of Environmental Quality (“DEQ”), collectively (“Parties”), and hereby stipulate and agree as follows:

1. Pursuant to Mont. Code Ann. § 75-5-403, the Board of Environmental Review (“Board”) has authority to hear contested case appeals of DEQ’s Montana Pollutant Discharge Elimination System (“MPDES”) permitting decisions, such that the Board may affirm, modify, or reverse a permitting action of DEQ.

2. DEQ is a department of the executive branch of state government, duly created and existing under the authority of Mont. Code Ann. § 2-15-3501. The Department has statutory authority to administer Montana's water quality statutes, including the review and issuance of MPDES Permits under Mont. Code Ann. § 75-5-402 and ARM 17.30.1301.

3. CHS is an association registered to do business in Montana, located in Yellowstone County, Montana, and is the owner and operator of the MPDES permitted facility which has been issued MPDES Permit No. MT0000264.

4. DEQ issued a major modification of MPDES Permit No. MT0000264 for CHS's Laurel Refinery, with an effective date of January 1, 2019 (the "2019 Permit").

5. On January 3, 2019, CHS appealed certain provisions of the 2019 Permit before the Board. *See* Notice of Appeal (January 3, 2019).

6. On April 22, 2019, CHS filed an Amended Notice of Appeal, pursuant to a stipulation filed by the Parties. *See* Amended Notice of Appeal (April 22, 2019).

7. On July 15, 2019, the Hearing Examiner issued an Order Vacating Deadlines and Granting Stay, pursuant to a joint motion filed by the Parties and for purposes of providing the Parties additional time to discuss settlement.

8. On December 4, 2019, the Parties filed a Stipulation for Final Agency Decision, that fully resolved four of the eight issues identified in CHS's Amended Notice of Appeal (Issue Nos. 3, 4, 6, and 7) and partially resolved an additional issue (Issue No. 5). The Board adopted this Stipulation in its Order for Final Agency Decision, entered December 13, 2019, and also adopted a modified permit representing the stipulated changes ("First Board Modified Permit").

9. On August 29, 2020, ARM 17.30.618, the rule concerning Natural and Nonanthropogenic Water Quality Standards, became effective. This rule established water quality standards pursuant to Mont. Code Ann. § 75-5-222 for Total Recoverable Arsenic for the Yellowstone River, including the segment of the river into which CHS is permitted to discharge.

10. Following the Board's decision on this Stipulation, the contested case proceedings concerning all remaining issues in this appeal, i.e., Amended Appeal Issues Nos. 1, 2, 5, and 8 will be resolved.

11. As pertinent to CHS's Amended Appeal Issue No. 1, CHS disputes the arsenic limit and mixing zone determination for Outfall 001; however, because it is not now discharging from Outfall 001 and does not intend to discharge from Outfall 001 absent unanticipated bypass or upset circumstances, rather than continue this litigation, CHS will endeavor to resolve the issue during the pendency of the permit renewal currently before

DEQ. CHS therefore agrees to dismiss Amended Appeal Issue No. 1 without prejudice.

12. As pertinent to CHS's Amended Appeal Issue No. 2, the Final Effluent Limitations for Total Recoverable Arsenic as listed on Page 6 of the First Board Modified Permit, are modified to represent a maximum daily concentration of 20 µg/L and an average monthly concentration of 13 µg/L.

13. As pertinent to part of CHS's Amended Appeal Issue No. 5, regarding the method for Hydrogen Sulfide monitoring, the text in Footnote No. 5 on Page 8 and Footnote 1 on Page 10 of the First Board Modified Permit is deleted and replaced with the following: "H<sub>2</sub>S concentrations are calculated based on the dissolved sulfide concentration and pH in accordance with Standard Methods 4500-S<sup>2</sup>-H, unless another method is proposed by CHS and accepted by DEQ. Field data (pH, conductivity (µmhos/cm) and temperature), taken of an unpreserved water sample, shall be recorded at the time the dissolved sulfide sample is collected. This field data must be submitted to the laboratory for use in the H<sub>2</sub>S calculations or CHS must itself use the field data to calculate the H<sub>2</sub>S concentration from the laboratory-provided dissolved sulfide data."

14. As pertinent to CHS's Amended Appeal Issue No. 8, CHS withdraws this Amended Appeal Issue.



15. The modified Permit attached hereto as Exhibit A appropriately incorporates all remaining modifications to the appealed 2019 Permit as contemplated in this Stipulation.

16. Exhibit B, a track changes/redline version of the modified Permit, has been attached to this Stipulation to better highlight the Parties' proposed changes to the modified Permit.

17. The Parties request the Board adopt, as the final agency decision concerning Amended Appeal Issues Nos. 1, 2, 5, and 8, the modified Permit attached hereto as Exhibit A, pursuant to its authority to hear contested case appeals of MPDES Permits under Mont. Code Ann. § 75-5-403(2) and ARM 17.30.1370(4).

18. Each of the signatories to this Stipulation represents that he or she is authorized to enter this Stipulation and to bind the Parties represented by him or her to the terms of this Stipulation.

19. CHS's Appeal Issues Nos. 1, 2, 5, and 8 have been fully and finally compromised and settled by agreement of the Parties and the Parties herein stipulate to and respectfully request the Board's entry of a final agency decision as set forth herein.

20. The parties agree that "[t]he Legislature directed the board and the department to ensure that water quality standards are applied at the

nonanthropogenic condition of a water body.” MAR 17-412, No. 16, Resp. to Cmt. No. 3. By entering this Stipulation, CHS is not waiving any defenses to any future enforcement of the Permit’s effluent limits for total recoverable arsenic, including any defense based on changes in the nonanthropogenic condition of arsenic in the Yellowstone River.

21. The parties agree that “[w]hile variability is already accounted for within the new standards, the standards may be revised should median nonanthropogenic concentrations change significantly.” MAR 17-412, No. 16, Resp. to Cmt. No. 9. By entering this Stipulation, CHS is not waiving any argument concerning the future application of 40 C.F.R. §§ 122.44(1) and 122.62(a)(3)(i) to any permit modification or renewal, including, but not limited to, the future imposition of effluent limits for total recoverable arsenic and whether the imposition of such limits would be exempted from anti-backsliding requirements.

22. Pursuant to its authority to hear contested case appeals of MPDES Permits under Mont. Code Ann. § 75-5-403(2) and ARM 17.30.1370(4), the Board may adopt, as its final agency decision, the modified Permit attached hereto as Exhibit A, as well as the attached (Proposed) Board Order for Final Agency Decision.

23. All conditions of the modified Permit, attached hereto as Exhibit A, will be fully effective and enforceable upon approval of the Board.

24. The Parties shall each pay their own attorney fees and costs.

25. The Board's Decision shall represent the FINAL AGENCY DECISION for purposes of the Montana Administrative Procedure Act, Section 2-4-623, MCA.

DATED this 22nd day of  
October, 2020.

/s/ Kurt R. Moser  
Kurt R. Moser  
Montana Department of Environmental Quality  
1520 East Sixth Avenue  
P.O. Box 200901  
Helena, MT 59620-0901  
  
ATTORNEY FOR THE DEPARTMENT OF  
ENVIRONMENTAL QUALITY

DATED this 22nd day of  
October, 2020.

/s/ Victoria A. Marquis  
William W. Mercer  
Victoria A. Marquis  
Holland & Hart LLP  
401 North 31st Street  
Suite 1500  
P.O. Box 639  
Billings, Montana 59103-0639  
  
ATTORNEYS FOR APPELLANT CHS, INC.

## CERTIFICATE OF SERVICE

I hereby certify that this 22nd day of October, 2020, I caused to be served a true and correct copy of the foregoing document and any attachments to all parties or their counsel of record as set forth below:

William W. Mercer/Victoria A. Marquis Holland & Hart LLP 401 North 31st Street, Suite 1500 P.O. Box 639 Billings, MT 59103-0639 Phone: (406) 252-2166 wwmerc@hollandhart.com <a href="mailto:vamarquis@hollandhart.com">vamarquis@hollandhart.com</a>	<input type="checkbox"/> FedEx postage prepaid <input checked="" type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile Transmission <input type="checkbox"/> Personal Delivery
Deb Sutliff, Secretary Board of Environmental Review 1520 E. Sixth Avenue/P.O. Box 200901 Helena, MT 59620-0901 (406) 444-2544 <a href="mailto:dsutliff@mt.gov">dsutliff@mt.gov</a>	<input type="checkbox"/> FedEx postage prepaid <input checked="" type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile Transmission <input type="checkbox"/> Personal Delivery
Sarah Clerget, Esq., Hearing Examiner Agency Legal Services Bureau 1712 Ninth Avenue/P.O. Box 201440 Helena, MT 59620-1440 (406) 444-5797 sclerget@mt.gov <a href="mailto:asolem@mt.gov">asolem@mt.gov</a>	<input type="checkbox"/> FedEx postage prepaid <input checked="" type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile Transmission <input type="checkbox"/> Personal Delivery
Jon Kenning, Bureau Chief Water Protection Bureau 1520 E. Sixth Avenue/P.O. Box 200901 Helena, MT 59620-0901 (406) 444-0420 jkenning@mt.gov	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile Transmission <input type="checkbox"/> Personal Delivery

/s/ Kurt R. Moser

Kurt R. Moser  
 MT-Department of Environmental Quality

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

IN THE MATTER OF  
THE NOTICE OF APPEAL AND  
REQUEST FOR HEARING BY CHS,  
INC. REGARDING ISSUANCE OF  
MPDES PERMIT NO. MT0000264

Case Nos. BER 2019-01 WQ & BER  
2015-07 WQ

**BOARD ORDER FOR  
FINAL AGENCY DECISION**

This matter is before the Board of Environmental Review (“Board”) upon CHS, Inc.’s (“CHS”) Amended Notice of Appeal, dated April 22, 2019, and the Board has received a Stipulation for Entry of Final Agency Decision (“Stipulation”) by and between CHS and the Department of Environmental Quality (“DEQ”), dated October 22, 2020. The Board has reviewed and considered the Stipulation and has been advised that CHS’s Amended Appeal issues have been fully and finally compromised and settled upon the merits as further ORDERED herein. The Board finds good cause for entry of the Final Agency Decision as stipulated and requested by the Parties.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. Pursuant to Mont. Code Ann. § 75-5-403, the Board has authority to hear contested case appeals of DEQ’s Montana Pollutant Discharge Elimination

System (“MPDES”) permitting decisions, such that the Board may affirm, modify, or reverse a permitting action of DEQ.

2. DEQ is a department of the executive branch of state government, duly created and existing under the authority of Mont. Code Ann. § 2-15-3501.

The Department has statutory authority to administer Montana’s water quality statutes, including the review and issuance of MPDES Permits under Mont. Code Ann. § 75-5-402 and ARM 17.30.1301.

3. CHS is an association registered to do business in Montana, located in Yellowstone County, Montana, and is the owner and operator of the MPDES permitted facility which has been issued MPDES Permit No. MT0000264.

4. DEQ issued a major modification of MPDES No. MT0000264 for CHS’s Laurel Refinery, with an effective date of January 1, 2019 (the “2019 Permit”).

5. On January 3, 2019, CHS timely appealed certain provisions of Permit No. MT0000264 before the Board. *See* Notice of Appeal (January 13, 2019).

6. On April 22, 2019, CHS filed an Amended Notice of Appeal, pursuant to a stipulation filed by the Parties. *See* Amended Notice of Appeal (April 22, 2019).

7. On July 15, 2019, the Hearing Examiner issued an Order Vacating Deadlines and Granting Stay, pursuant to a joint motion filed by the Parties and for purposes of providing the Parties additional time to discuss settlement.

8. On December 4, 2019, the Parties filed a Stipulation for Final Agency Decision, that fully resolved four of the eight issues identified in CHS's Amended Notice of Appeal (Issue Nos. 3, 4, 6, and 7) and partially resolved an additional issue (Issue No. 5). The Board adopted that stipulation in its Order for Final Agency Decision, entered December 13, 2019, and also adopted a modified permit representing the stipulated changes ("First Board Modified Permit").

9. On August 29, 2020, ARM 17.30.618, the rule concerning Natural and Nonanthropogenic Water Quality Standards, became effective. This rule established water quality standards pursuant to Mont. Code Ann. § 75-5-222 for Total Recoverable Arsenic for the Yellowstone River, including the segment of the river into which CHS is permitted to discharge.

10. As pertinent to CHS's Amended Appeal Issue No. 1, CHS disputes the arsenic limit and mixing zone determination for Outfall 001; however, because it is not now discharging from Outfall 001 and does not intend to discharge from Outfall 001 absent unanticipated bypass or upset circumstances, rather than continue this litigation, CHS will endeavor to resolve the issue during the pendency of the permit renewal currently before DEQ. CHS

therefore agrees to dismiss Amended Appeal Issue No. 1 without prejudice.

11. As pertinent to CHS's Amended Appeal Issue No. 2, the Final Effluent Limitations for Total Recoverable Arsenic as listed on Page 6 of the First Board Modified Permit, are modified to represent a maximum daily concentration of 20 µg/L and an average monthly concentration of 13 µg/L.

12. As pertinent to part of CHS's Amended Appeal Issue No. 5, regarding the method for Hydrogen Sulfide monitoring, the text in Footnote No. 5 on Page 8 and Footnote 1 on Page 10 of the First Board Modified Permit is deleted and replaced with the following: "H<sub>2</sub>S concentrations are calculated based on the dissolved sulfide concentration and pH in accordance with Standard Methods 4500-S<sup>2</sup>-H, unless another method is proposed by CHS and accepted by DEQ. Field data (pH, conductivity (µmhos/cm) and temperature), taken of an unpreserved water sample, shall be recorded at the time the dissolved sulfide sample is collected. This field data must be submitted to the laboratory for use in the H<sub>2</sub>S calculations or CHS must itself use the field data to calculate the H<sub>2</sub>S concentration from the laboratory-provided dissolved sulfide data."

13. As pertinent to CHS's Amended Appeal Issue No. 8, CHS has withdrawn this Amended Appeal Issue.

14. The parties agree that "[t]he Legislature directed the board and the department to ensure that water quality standards are applied at the nonanthropogenic condition of a water body." MAR 17-412, No. 16, Resp. to BOARD ORDER FOR FINAL AGENCY DECISION



Cmt. No. 3. By entering the Stipulation, CHS is not waiving any defenses to any future enforcement of the Permit's effluent limits for total recoverable arsenic, including any defense based on changes in the nonanthropogenic condition of arsenic in the Yellowstone River.

15. The parties agree that “[w]hile variability is already accounted for within the new standards, the standards may be revised should median nonanthropogenic concentrations change significantly.” MAR 17-412, No. 16, Resp. to Cmt. No. 9. By entering the Stipulation, CHS is not waiving any argument concerning the future application of 40 C.F.R. §§ 122.44(1) and 122.62(a)(3)(i) to any permit modification or renewal, including, but not limited to, the future imposition of effluent limits for total recoverable arsenic and whether the imposition of such limits would be exempted from anti-backsliding requirements.

16. CHS's Appeal Issues Nos. 1, 2, 5, and 8 have been fully and finally compromised and settled by agreement of the Parties.

17. Pursuant to its authority to hear contested case appeals of MPDES Permits under Mont. Code Ann. § 75-5-403(2) and ARM 17.30.1370(4), the Board **HEREBY ADOPTS AS THE FINAL AGENCY DECISION**, the modified Permit attached hereto as Exhibit A.

18. All modifications to the First Board Modified Permit as contemplated by the parties through this Stipulation and within Exhibit A

become fully effective and enforceable upon approval of the Board.

19. The Parties shall each pay their own attorney fees and costs.

20. The Board's Decision as to the above-captioned matters shall represent the FINAL AGENCY DECISION for purposes of the Montana Administrative Procedure Act, Section 2-4-623, MCA.

DATED this \_\_\_\_ day of October, 2020.

By: \_\_\_\_\_  
Christine Deveny  
Chair  
Board of Environmental Review

cc: Sarah Clerget (Hearing Examiner)  
Kurt R. Moser  
William Mercer  
Victoria Marquis  
Jon Kenning (DEQ)  
Deb Sutliff (BER)