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DEQ Montana Department of Environmental Quality

BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, DECEMBER 13, 2019
METCALF BUILDING, ROOM 111
1520 EAST 6th AVENUE, HELENA, MONTANA

NOTE: Interested persons, members of the public, and the media are welcome to attend at the location stated above. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone or by e-mail at Lindsay.Ford@mt.gov no later than 24 hours prior to the meeting to advise her of the nature of the accommodation needed.

9:00 AM

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the October 4, 2019, meeting minutes.

Public Comment.

B. REVIEW AND APPROVE 2020 SCHEDULE

1. The Board will establish the 2020 meeting schedule.

Public Comment.

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATE

1. Enforcement cases assigned to the Hearing Examiner

a. **In the matter of the Notice of Appeal and Request for Hearing by CMG Construction, Inc. Regarding Notice of Violations and Administrative Compliance and Penalty Order, Docket No. OC-17-12, BER 2017-08 OC**. On June 12, 2019, the parties filed a Joint Motion to Stay Schedule citing a potential settlement of this matter. Since that time the parties have requested multiple stays and extensions. On October 17, 2019 Ms. Clerget issued a scheduling order putting the case on a litigation schedule. On November 1, 2019, CMG requested an extension of time on a discovery deadline, stating that a settlement has been reached but needed to be finalized. Ms. Clerget granted to November 18, 2019. CMG has since filed two subsequent extensions, citing essentially the same reason. The last extension was granted until December 16, 2019, but Ms. Clerget stated in the order that no further extensions would be granted.

b. **In the matter of violations of the Water Quality Act by Reflections at Copper Ridge, LLC, at Reflections at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105376), BER 2015-01 WQ and In the matter of violations of the Water Quality Act by Copper Ridge Development Corporation at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105377), BER 2015-02 WQ**. At its August 9, 2019 meeting the Board remanded this case back to Ms. Clerget for additional findings concerning the 4

photographs excluded at the June 13th owner/operator hearing. On September 9, 2019, Ms. Clerget held a status conference with the parties and discussed the schedule. The parties requested staggered initial disclosures ending October 25, 2019. The parties submitted an agreed upon schedule for the remaining deadlines and on November 25, 2019, Ms. Clerget issued a scheduling order that set deadlines through dispositive motions, which will be fully briefed in June 2020.

2. Non-enforcement cases assigned to the Hearings Examiner

   a. **In the matter of the Notice of Appeal and Request for Hearing by Alpine Pacific Utilities Regarding Issuance of MPDES Permit No. MTX000164, BER 2019-06 WQ**. On August 9, 2019, the BER appointed Sarah Clerget as hearing examiner to preside over this contested case. On September 9, 2019, Ms. Clerget issued a scheduling order and the parties are proceeding through discovery, which closes in June of 2020.

   b. **In the Matter of the Notice of Appeal and Request for Hearing by City of Great Falls Regarding Issuance of MPDES Permit No. MT0021920.** On August 9, 2019, the Board received a request for hearing. At its October meeting the Board appointed Sarah Clerget to act as hearing examiner in this case. A Prehearing Order was issued in this case on October 15, 2019 and the parties submitted an agreed upon schedule on October 29th. Ms. Clerget issued a Scheduling Order on October 31, 2019 which set a schedule through dispositive motions, which will be fully briefed in September of 2020.

   c. **In the matter of the notice of appeal of final MPDES Permit No. MT0000264 issued by DEQ for the Laurel Refinery in Laurel, Yellowstone County, Montana, BER 2015-07 WQ.** On February 8, 2019, the BER appointed Sarah Clerget as hearing examiner to preside over this contested case. The Board directed Ms. Clerget to consolidate this case with BER 2019-01 WQ (CHS) for scheduling purposes, and therefore update on this case is the same as above.

   d. **In the matter of Westmoreland Resources, Inc.'s, appeal of final MPDES permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT, BER 2015-06 WQ.** This case had been stayed pending a Montana Supreme Court decision, which was issued in September 2019. Pursuant to Ms. Clerget's order, the parties submitted a joint proposed schedule on November 22, 2019. Ms. Clerget issued a Scheduling Order on November 27, 2019, which set deadlines through dispositive motions, which will be fully briefed in December of 2020.

   e. **In the matter of the notice of appeal and request for hearing by Montanore Minerals Corporation Regarding Issuance of MPDES Permit No. MT0030279, Libby, Montana, BER2017-03 WQ.** A two-day hearing on this matter on held on December 3-4, 2018. An oral argument on the parties' proposed FOFCOLs was held on May 7, 2019, making it ripe for decision from the hearing examiner. On August 19, 2019, Montanore filed a Notice of Supplemental Authority. The Notice stated that on July 24, 2019, the First Judicial District Court had issued its Order on cross motions for summary

judgment in Cause No. CDV 2017-641, a declaratory relief action brought in District Court by MEIC, Save Our Cabinets, and Earthworks challenging DEQ's issuance of MPDES Permit No. MT0030279. While the District Court action was limited to conditions of the MPDES Permit that were not at issued before the Board, the District Court Order vacated the entire Permit, thus affecting the status of this case. Through status reports filed on September 13, 2019, the DEQ and Montanore requested a stay of this case pending the outcome of any Supreme Court appeal of the District Court Order. On September 17, 2019, Ms. Clerget issued an Order staying this matter. The parties have cross-appealed the District Court's decision to the Supreme Court under Cause No. DA 19-0553**.**

f. **In the Matter of Notice of Appeal of Opencut Mining Permit #2351 Issued to Golden West Properties, LLC by Frank and Paulette Wagner Regarding Concerns and Unanswered Questions. BER 2018-04 OC, and In the Matter of Notice of Appeal of Opencut Mining Permit #2351 Issued to Golden West Properties, LLC by David Weyer on behalf of the Residents of Walden Meadows Subdivision. BER 2018-05 OC**. On August 30, 2019, Ms. Clerget issued her Order on the parties' motions including (1) leave to file second amended complaint; (2) motion in *limine*; and (3) cross-motions for summary judgment. Golden West and DEQ requested a new pretrial motion deadline, which was granted on September 18, 2019. The parties submitted an amended agreed upon schedule and Ms. Clerget issued an Amended Scheduling Order on September 25, 2019. Pursuant to the schedule, DEQ and Golden West filed second motions for summary judgment, which (after several extensions) were fully briefed on November 21, 2019 and are ripe for decision from the hearing examiner.

g. **In the Matter of the Application for an Amendment of a Major Facility Siting Act Certificate by Talen Montana LLC**. On July 12, 2019, Talen filed a Motion to Dismiss Westmoreland's Appeal, which was fully briefed on August 8, 2019. On August 14, 2019, Ms. Clerget held oral argument on Talen's Motion to Dismiss, at which all parties appeared and argued. On August 20, 2019, Ms. Clerget issued an Order granting in part and denying in part Talen's Motion to Dismiss. The Order also reset some of the procedural deadlines. On November 13, 2019, the parties filed an "Expedited Joint Motion to Suspend Schedule". The parties sought to suspend the schedule for 30 days pending motions to govern proceedings. The parties will file their motions to govern proceedings on or before December 17, 2019.

h. **In the Matter of the Notice of Appeal and Request for Hearing by Spring Creek Coal, LLC Regarding Issuance of MPDES Permit No. MT0024619**. On April 12, 2019, the BER appointed Sarah Clerget as hearing examiner to preside over this contested case. Ms. Clerget issued a Scheduling Order on June 21, 2019 and the parties are proceeding accordingly. By December 30, 2019 the parties will either file a stipulated settlement agreement or a joint proposed scheduling order.

i. **In the Matter of Notice of Appeal and Request for Hearing by Western Energy Company Regarding Approval of Surface Mining Permit No. C2011003F, BER 2019-03 OC**. On May 31, 2019, the BER appointed Sarah

Clerget as hearing examiner to preside over the contested case. On October 21, per DEQ's request, Ms. Clerget stayed discovery deadlines pending resolution of a discovery motion. DEQ filed a Motion for Protective order on October 25, 2016 and on October 29, 2019 MEIC filed a response and Motion to Compel. Both motions were fully briefed, and oral argument was held on November 13, 2019. Ms. Clerget issued an order denying the protective order and compelling discovery on November 27, 2019. The parties are completing discovery accordingly and dispositive motions are currently due January 6, 2020.

3. Contested Cases not assigned to a Hearing Examiner

a. **In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ**.

On September 10, 2019, the Montana Supreme Court issued its opinion reversing the First Judicial District Court in Montana Environmental Information Center and Sierra Club v. Montana DEQ and Western Energy Company. The Montana Supreme Court reversed the District Court on decisions of law and determined that DEQ properly interpreted rules implementing the Montana Water Quality Act (specifically ARM 17.30.637(4)). In so doing, the Court recognized that DEQ has the flexibility to exempt ephemeral waters from the water quality standards applicable to Class C-3 waters without the Board of Environmental Review reclassifying the waters. The Court also determined that DEQ lawfully permitted representative sampling of outfalls under Western Energy Company's MPDES permit. The Montana Supreme Court remanded the case back to District Court for further proceedings to determine certain issues of material fact, specifically whether DEQ acted properly in regard to a stretch of East Fork Arnells Creek that is potentially impaired and intermittent, whether it is necessary for DEQ to adopt a TMDL for impaired segments of East Fork Arnells Creek, and whether the representative monitoring selected by DEQ is factually supported. On October 10, 2019, MEIC and Sierra Club (MEIC) filed a petition for rehearing to amend the Opinion arguing the Montana Supreme Court's remedy, reversing the District Court's summary judgment and remanding questions of fact to the District Court is in conflict with controlling decisions that were not addressed by the Montana Supreme Court. DEQ and WECo objected to MEIC's petition. On November 19, 2019, the Montana Supreme Court held its Order was not in conflict with a statute or controlling decision not addressed and MEIC's petition for rehearing was denied.

c. **Montana Environmental Information Center, and Sierra Club v. Montana Department of Environmental Quality, Montana Board of Environmental Review, and Western Energy Co. (DV-2019-34, Rosebud County) (District Court).** On June 6, 2019 the BER issued its final agency action in BER 2016-03 SW ("Western Energy"). On July 3, 2019 Conservation Groups filed a Petition for Review of Final Agency Action. The BER is named as a Defendant in the Petition. The BER has retained Amy Christensen to represent it in this matter at the District Court.

B. OTHER BRIEFING ITEMS

1. The department will update the Board on rulemaking to increase engineering review fees for public water and wastewater systems under ARM 17.38.106.

III. ACTION ITEMS

A. NEW CONTESTED CASE

1. **In the Matter of the Notice of Appeal and Request for Hearing by the Rippling Woods Homeowners Association regarding approval of opencut mining permit no. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-08 OC.** On November 8, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

2. **In the Matter of the Notice of Appeal and Request for Hearing by Stephen Richard and Victoria Angyus regarding approval of opencut mining permit no. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-09 OC.** On November 25, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

3. **In the Matter of the Notice of Appeal and Request for Hearing by Gretchen Langton regarding approval of opencut mining permit no. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-10 OC.** On November 26, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

4. **In the Matter of the Notice of Appeal by Linda Slater Regarding Approval of Opencut Mining Permit No. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-11 OC.** On November 26, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

5. **In the Matter of the Notice of Appeal by Sarah Slater Regarding Approval of Opencut Mining Permit No. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-12 OC.** On November 28, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

6. **In the Matter of the Notice of Appeal by John DeGroot Regarding Approval of Opencut Mining Permit No. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-13 OC.** On November 25, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

7. **In the Matter of the Notice of Appeal by Brian Langton Regarding Approval of Opencut Mining Permit No. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-14 OC.** On November 27, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

8. **In the Matter of the Notice of Appeal by Lisa and Mark Van Keulen Regarding Approval of Opencut Mining Permit No. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-15 OC.** On November 27, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

9. **In the Matter of the Notice of Appeal by Kurt Vause Regarding Approval of Opencut Mining Permit No. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-16 OC.** On November 28, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

10. **In the Matter of the Notice of Appeal by Jennifer and Randy Lint Regarding Approval of Opencut Mining Permit No. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-17 OC.** On November 29, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

11. **In the Matter of the Notice of Appeal by Kathleen Meyer and Patrick McCarron Regarding Approval of Opencut Mining Permit No. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-18 OC.** On November 29, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

12. **In the Matter of the Notice of Appeal by Anne Lambert Regarding Approval of Opencut Mining Permit No. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-19 OC.** On November 29, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

13. **In the Matter of the Notice of Appeal by Annette McDonald Regarding Approval of Opencut Mining Permit No. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-20 OC.** On November 22, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for

procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

14. **In the Matter of the Notice of Appeal by Robert and Keith Beall Regarding Approval of Opencut Mining Permit No. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-21 OC.** On November 24, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

B. ACTION ON CONTESTED CASES

1. **An appeal in the matter of amendment application AM3, Signal Peak Energy LLC's Bull Mountain Coal Mine #1 Permit No. C1993017, BER 2016-07 SM.**
    i. **District Court Case [update only]:** The parties took a subpoena dispute to the District Court on June 1, 2018 with Cause No. DV 18-0869. The BER was named as a Defendant in that District Court case, and Ms. Clerget filed a "Notice of Non-Participation" before the District Court on behalf of the BER. The District Court issued a ruling on the subpoena issue on November 14, 2018 and attorney's fees on March 25, 2019. On May 22, 2019 Signal Peak appealed to the Montana Supreme Court in Cause No. DA 19-0299. Opening briefs were filed September 20, 2019. The BER has retained Amy Christensen to represent it before the Supreme Court.

    ii. **Contested Case [action item]:** Ms. Clerget assumed jurisdiction from the prior hearing examiner on September 8, 2017, for procedural purposes only. On April 5, 2019 cross motions for summary judgment were fully briefed (DEQ's Motion is for partial summary judgment). On May 31, 2019 the Board assigned the case to Ms. Clerget. Ms. Clerget issued an Order on Cross Motion for Summary Judgment on November 14, 2019, which granted partial summary judgment on one issue, and denied summary judgment on the remaining issues. A scheduling conference was held on November 26, 2019 and the contested case is scheduled for hearing in April 2020. However, the Board needs to **clarify the jurisdictional grant** to the hearing examiner from the May 2019 meeting: Did/does the BER intend to grant the hearing examiner jurisdiction for the purposes of deciding the summary judgment decision only, or for the entirety of the case through final recommended decision (FOFCOL)?

2. **In the matter of the Notice of Appeal and Request for Hearing by CHS, Inc. regarding issuance of MPDES Permit No. MT0000264, BER 2019-01 WQ.** On February 8, 2019, the BER appointed Sarah Clerget as hearing examiner to preside over this contested case. The Board directed Ms. Clerget to consolidate this case with BER 2015-07 WQ for scheduling purposes. On July 8, 2019, the parties filed a Motion to Stay the Amended Scheduling Order citing settlement discussions. On July 15, 2019, Ms. Clerget granted the stay. The parties filed a Joint Motion for Extension on November 29, 2019. The parties were given until December 4, 2019, to file a settlement agreement on a portion of the appeal issues. The parties filed a

settlement agreement on a portion of the appeal on December 4, 2019. The Board must decide whether to **approve or reject the Stipulation.**

IV. BOARD COUNSEL UPDATE

Counsel for the Board will report on general Board business, procedural matters, and questions from Board Members.

V. GENERAL PUBLIC COMMENT

Under this item, members of the public may comment on any public matter within the jurisdiction of the Board that is not otherwise on the agenda of the meeting. Individual contested case proceedings are not public matters on which the public may comment.

VI. ADJOURNMENT

DEQ Montana Department of Environmental Quality

BOARD OF ENVIRONMENTAL REVIEW
MINUTES

October 4, 2019

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Deveny at 9:00 a.m., on Friday, October 4, 2019 in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, Montana.

Attendance

Board Members Present in person: Chairperson Christine Deveny

Board Members Present by Phone: Chris Tweeten, Dexter Busby, Hillary Hanson, Melissa Hornbein, David Lehnherr

Board Members Absent: None

Board Attorney Present: Sarah Clerget, Attorney General's Office (AGO)

Board Liaison Present: George Mathieus

Board Secretary Present: Lindsay Ford

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Ed Hayes, Kirsten Bowers, Kurt Moser, Sandy Scherer, Galen Steffens, Eric Severs, Ed Coleman, Craig Henriksen, Rhonda Payne, Liz Ulrich, Rebecca Harbage, Eugene Pizzini, Myla Kelly, Tim Davis

Interested & Other Persons Present: Peggy Trenk – Treasure State Resources Association

Roll was called: one Board member was present in person and six Board members were present via teleconference, providing a quorum.

I.A. Administrative Items – Review and Approve Minutes

I.A.1. **August 9, 2019 Meeting Minutes**

Ms. Hornbein moved to approve the meeting minutes. Chairperson Deveny seconded the motion, which passed unanimously.

II.A.1. Briefing Items – Enforcement Cases assigned to the Hearing Examiner

II.A.1.a. **In the matter of the Notice of Appeal and Request for Hearing by CMG Construction, Inc. Regarding Notice of Violations and Administrative Compliance and Penalty Order, Docket No. OC-17-12, BER 2017-08 OC.**

Ms. Clerget stated the case is no longer stayed. The parties have approximately 30 days for discovery responses, and then the matter will proceed through a summary judgement schedule.

II.A.1.b. **In the matter of violations of the Water Quality Act by Reflections at Copper Ridge, LLC, at Reflections at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105376), BER 2015-01 WQ and In the matter of violations of the Water Quality Act by Copper Ridge Development Corporation at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105377), BER 2015-02 WQ.**

Ms. Clerget stated initial disclosures are coming. The parties requested staggered initial disclosures and will provide a schedule outlining additional discovery. The parties expect to include depositions and written discovery in the additional discovery, so it will probably take a few months. The case will then be set for a hearing.

II.A.2. Briefing Items – Non-Enforcement Cases Assigned to a Hearing Examiner

II.A.2.a. **In the matter of the Notice of Appeal and Request for Hearing by Alpine Pacific Utilities Regarding Issuance of MPDES Permit No. MTX000164, BER 2019-06 WQ.**

Ms. Clerget stated a scheduling order has been issued and the case is in early stages of discovery.

II.A.2.b. **In the matter of the Notice of Appeal and Request for Hearing by CHS, Inc. regarding issuance of MPDES Permit No. MT0000264, BER 2019-01 WQ.**

Ms. Clerget said the case is stayed. The parties are working on a settlement and have until November 29, 2019, to provide a status update, or to propose a schedule for litigation.

II.A.2.c. **In the matter of the notice of appeal of final MPDES Permit No. MT0000264 issued by DEQ for the Laurel Refinery in Laurel, Yellowstone County, Montana, BER 2015-07 WQ.**

Ms. Clerget noted this case has been combined with case BER 2019-01 WQ.

II.A.2.d. **In the matter of Westmoreland Resources, Inc.'s, appeal of final MPDES permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT, BER 2015-06 WQ.**

Ms. Clerget stated the parties have until October 10, 2019, to file a status report.

II.A.2.e. **In the matter of amendment application AM3, Signal Peak Energy LLC's Bull Mountain Coal Mine #1 Permit No. C1993017, BER 2016-07 SM.**

Chairperson Deveny reported the Board filed a notice of nonparticipation in the District Court matter, and expects the Board to take similar action in the appeal that is pending before the Montana Supreme Court.

Ms. Clerget reported on the contested case: there are summary judgement motions containing cross motions for summary judgement, and the parties are waiting for her decision.

II.A.2.f. **In the matter of the notice of appeal and request for hearing by Montanore Minerals Corporation Regarding Issuance of MPDES Permit No. MT0030279, Libby, Montana, BER2017-03 WQ.**

Ms. Clerget stated the case is stayed pending the parties' appeal to the Supreme Court. The decision about continuing this case will be made after it has progressed in the Supreme and/or District Court.

II.A.2.g. **In the Matter of Notice of Appeal of Opencut Mining Permit #2351 Issued to Golden West Properties, LLC by Frank and Paulette Wagner Regarding Concerns and Unanswered Questions. BER 2018-04 OC, and In the Matter of Notice of Appeal of Opencut Mining Permit #2351 Issued to Golden West Properties, LLC by David Weyer on behalf of the Residents of Walden Meadows Subdivision. BER 2018-05 OC.**

Ms. Clerget stated an order on motions has been issued, including motions for summary judgement. One party requested an additional round of summary judgement, which she granted. The parties have until November to finish that, and the hearing is scheduled for January.

II.A.2.h. **In the Matter of the Application for an Amendment of a Major Facility Siting Act Certificate by Talen Montana LLC.**

Ms. Clerget stated the case is proceeding rapidly and will be before the Board at their December meeting. A four-day hearing is scheduled for November.

II.A.2.i. **In the Matter of the Notice of Appeal and Request for Hearing by Spring Creek Coal, LLC Regarding Issuance of MPDES Permit No. MT0024619.**

Ms. Clerget stated the case is proceeding according to the scheduling order.

II.A.2.j. **In the Matter of Notice of Appeal and Request for Hearing by Western Energy Company Regarding Approval of Surface Mining Permit No. C2011003F, BER 2019-03 OC.**

Ms. Clerget stated an intervention order has been ruled on. The mine and the union intervened and are proceeding according to the scheduling order.

II.A.3. Contested Cases not assigned to a Hearing Examiner

II.A.3.a. **In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.**

Ms. Bowers said the Supreme Court issued an order favorable to the Department, but the case is remanded to District Court on some questions of fact.

II.A.3.b. **Montana Environmental Information Center, and Sierra Club v. Montana Department of Environmental Quality, Montana Board of Environmental Review, and Western Energy Co. (DV-2019-34, Rosebud County) (District Court).**

Chairperson Deveny shared a written update from Amy Christensen, outside counsel: "MEIC and the Sierra Club filed a petition for judicial review of BER's decision to approve the permit for the Rosebud Mine. BER filed a motion to dismiss because BER should not have been named in the petition, since it was the deciding agency, not a party to the underlying contested case proceeding. MEIC and Sierra Club filed their response brief on September 26, and BER will file its reply brief no later than October 10, 2019."

II.B. Other Action Items

II.B.1. **The Department would like to brief the Board on our outreach, actions and timeline for requesting adoption of a human health based manganese groundwater standard.**

Ms. Kelly briefed the Board.

III.A. Action Items – APPEAL, AMEND, OR ADOPT FINAL RULES:

III.A.1. **In 2012, to meet the requirements of the federal Regional Haze program, the U.S. Environmental Protection Agency adopted a Federal Implementation Plan establishing emission limits for several power plants and industrial facilities in Montana. Recently, the Department's Air Quality Bureau has been working with stakeholders to develop a State Implementation Plan to replace the federal requirements and put the state of Montana back in the lead for Regional Haze. The Air Quality Bureau is asking the Board, on behalf of the parties, to issue Orders adopting the federal requirements. Effective on adoption in and issuance of a Board Order, the requirements will be enforceable by the Department.**

Ms. Ulrich briefed the Board and answered questions.

Chairperson Deveny moved to request the orders proposed for the Regional Haze issue be adopted. Ms. Hornbein seconded the motion which passed unanimously.

III.B. New Contested Cases

III.B.1. **In the Matter of the Notice of Appeal and Request for Hearing by City of Great Falls Regarding Issuance of MPDES Permit No. MT0021920.**

Ms. Clerget gave the Board members their options, including assigning it to the Hearings Examiner.

Mr. Tweeten moved to assign Sarah Clerget as the hearing examiner for the totality of the case. Mr. Busby seconded the motion which passed unanimously.

IV. Board Counsel Update

Ms. Clerget stated she and chairperson Deveny are working with the Department on statutory obligations of the biennial rule review.

Chairperson Deveny noted that the schedule for the 2020 Board meetings will be voted on at the December meeting.

V. General Public Comment

None were offered.

VI. Adjournment

Mr. Busby moved to adjourn the meeting. Chairperson Deveny seconded the motion, which passed unanimously. Chairperson Deveny adjourned the meeting at 9:35 a.m.

Board of Environmental Review October 4, 2019 minutes approved:

_____

CHRISTINE DEVENY
CHAIRPERSON
BOARD OF ENVIRONMENTAL REVIEW

_____

DATE

BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR SETTING OF THE 2020 MEETING SCHEDULE

AGENDA # I.B.1.

AGENDA ITEM SUMMARY - Setting of 2020 Meeting Schedule

AFFECTED PARTIES SUMMARY - Board members, Department personnel, and members of the public who appear before the Board will be affected.

BACKGROUND - Establishment of a 2020 Board meeting schedule at this meeting will enable Board members, the Department, and the public to plan and schedule matters that involve the Board and other activities far enough in advance to minimize scheduling conflicts and the need for emergency meetings.

HEARING INFORMATION - No hearing is necessary.

BOARD OPTIONS - The Board has authority to set whatever schedule it wishes to set. It is advisable for the Board to schedule meetings approximately two months apart. This allows the Board to adopt rules approximately four months after initiation of rule proceedings and provides adequate time for compilation of public comments and preparation of notices and hearing officer reports. In addition, should the Board at the four-month meeting decide to ask for more information or major revisions, two-month intervals allow the Board to consider and take action on the matter at the next meeting without renoticing the matter in the Montana Administrative Register. Renoticing is required if notice of adoption is not published within six months of the notice of initiation.

Considering the factors listed above and recent input from Board members regarding their 2020 schedules, the Department has developed a tentative meeting schedule for the Board's consideration. It is:

February 7
April 17
June 12
August 7
October 9
December 11

DEQ RECOMMENDATION - The Department recommends that the Board consider the matter and set an appropriate schedule.

Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: November 12, 2019

SUBJECT: Board of Environmental Review Case No. BER 2019-08 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL BY THE RIPPLING WOODS HOMEOWNERS ASSOCIATION REGARDING APPROVAL OF OPENCUT MINING PERMIT NO. 2949, MOUDY PIT SITE, RAVALLI COUNTY, MT	Case No. BER 2019-08 OC

On November 8, 2019 the BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Mark Lucas
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Bureau Chief
Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

November 3, 2019

Opencut Mining Section
Coal & Opencut Mining Bureau
Department of Environmental Qaulity
PO Box 200901, Helena, MT 59620-0901

Re: Appeal of Approval of Opencut Mining Permit #2949
Wade Moudy
Moudy Pit Site in Ravalli County, Montana

To Whom It May Concern:

We believe we meet the criteria addressed in your letter dated October 30, 2019 to request an appeal of the Bureau's approval of Permit #2949. As outlined in previous comments made to the bureau, the approval of this permit will adversely affect the water rights and water quality of surrounding residential homeowners---not to mention their property values---in addition to Big Creek itself. We have found several areas of the application that are persistently deficient. Your October 30, 2019 approval letter indicated four subsequent deficiency notices, however, more than four letters were e-mailed from your department. We're wondering why those other letters weren't mentioned. Further, the approval for the Opencut permit #2949 leaves several of the supporting documents blank which leaves us to believe items A, B, P, R, T, U V W, AA, BB, DD, EE, FF, GG & HH and other items were not addressed in the approved application. The application states, as an example, "see B7-2" but B7-2 doesn't seem to be in the approved application. Further, no appendix is provided and there is a lack of references for supporting documents.

We request copies of all evidence and documentation provided to the DEQ that precipitated eliminating deficient items listed on the previous deficiency letters. We are seeking an extension to adequately prepare an appeal; thirty days is not sufficient time. Therefore, we request additional time necessary to review evidence and documentation not yet received with the deficiency letters.

There are a number of concerned citizens from the surrounding area that will be greatly impacted by this operation and have indicated they want to participate in the appeal process. There are three separate, yet adjacent neighborhoods that have covenants for just the purpose of not having something like this impact our quality of life and property values. A final issue is the lack of addressing Jennifer BoatWright Lint's well that is within 1,000 feet of the project site. Ms. Lint presented this information at the public meeting held at the Bitterroot River Inn and Conference Center on Tuesday, December 12, 2017 and on multiple other occasions. The lack of addressing this issue warrants an extension to appeal and to have Mr. Moudy cease work immediately.

We feel we have not received sufficient information and/or documentation to complete an appeal and therefore request a response to these requests as soon as possible in addition to an extension to the appeal deadline.

Sincerely,

The Rippling Woods Homeowners Association

By Nancy Jacobsen

DEQ
Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: November 25, 2019

SUBJECT: Board of Environmental Review Case No. BER 2019-09 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL BY STEPHEN RICHARD AND VICTORIA ANGYUS REGARDING APPROVAL OF OPENCUT MINING PERMIT NO. 2949, MOUDY PIT SITE, RAVALLI COUNTY, MT	Case No. BER 2019-09 OC

On November 25, 2019 the BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Mark Lucas
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Bureau Chief
Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

November 25, 2019

Board of Environmental Review
Department of Environmental Quality
PO Box 200901, Helena, MT 59620-0901

Re: Opencut Mining Permit #2949
Wade Moudy Pit Site in Ravalli County, Montana

To Whom It May Concern:

We are writing to request consideration for appeal of the Wade Moudy Open Cut Mining Permit #2949.
We have lived for 35 years just 1 mile due west of the Moudy Pit site and have many concerns regarding the impacts this will have the wildlife, the environment and us.

We are lovers of wildlife and have enjoyed seeing a great variety of animals on that property. In the spring we especially enjoy seeing the elk calving and the sand hill cranes with their chicks. We spend a lot of our free time on Big Creek and the Bitterroot River and have concerns about an open pit mine's impact on these waterways. We love the peace and quiet that our home and property provides and have concerns that this gravel pit will result in noise pollution and increased dust. We are also concerned about the devaluation of our property.

As we have come to understand, the goal of the Montana DEQ is to support a clean, healthy environment and to protect people's health and quality of life. What we don't understand is how this approval supports that. Please reconsider this decision.

Sincerely,

Stephen Richard and Victoria Angyus

DEQ
Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: November 26, 2019

SUBJECT: Board of Environmental Review Case No. BER 2019-10 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL BY GRETCHEN LANGTON REGARDING APPROVAL OF OPENCUT MINING PERMIT NO. 2949, MOUDY PIT SITE, RAVALLI COUNTY, MT	Case No. BER 2019-10 OC

On November 26, 2019 the BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Mark Lucas
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Bureau Chief
Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

To: Board of Environmental Review
Attn: Lindsay Ford

To Whom it May Concern;

My name is Gretchen Langton. My house and property are within a 1000 ft of Wade Moudy's Gravel Pit site on Big Creek in Ravalli County (Opencut Permit #2949). I am writing to request an appeal to this permit on the following grounds:

1) This permit does not adequately address negative impacts to historic ditch rights within the boundaries of the pit for multiple landowners and water users. The permit inaccurately refers to ditches as "unused" or "abandoned" that are in use and that are not abandoned.

2) This permit does not adequately address wetlands in an area that has historically been considered wetlands by both former owners and former irrigators as well as current owners and current irrigators.

3) This permit requires features such as a concrete pad for refueling equipment, etc. And yet, the trucks and excavators and crusher have been running since the approval of the permit without the agreed upon measures to prevent groundwater contamination in the area, known for its extremely high water table.

4) This permit has not included well water monitoring for all residences within the 1000 ft boundary of the pit site.

5) This permit does not appear adequately consider water quality in Big Creek which will inevitably be impacted due to the close proximity of Big Creek to the pit site, due to the porous nature of the affected ground, and due to natural contour of the area.

6) This permit does not take into consideration negative impacts to elk that calve with 1000 ft of the pit site.

7) This permit makes no mention of the access off Hwy 93, which appears to cross over two lanes of traffic and a frequently utilized, paved bike/walking path when approaching from the South. (The speed limit here is 70 miles per hour and the access historically was for "farm use only".)

8) This permit does not take into account the negative impact of water loss (groundwater loss and most likely creek water loss), due to evaporation, from three ponds totaling nine acres, to landowners and to the Bitterroot River into which Big Creek flows. This water loss will negatively impact a fragile fishery for Native Bull Trout and Native Cutthroat Trout, both dependent upon Big Creek's continuous annual flow.

9) This permit affects me and my property personally due to increased dust pollution from the pit site and increased sound pollution, both of which will decrease my property values.

I have been told to keep my comments "strickly business" and not speak of personal feelings because feelings don't matter. But I am disregarding this advice because Big Creek is a part of "spiritual geography" and I am physically sickened by this shortsided effort to hurt the place I love. Thus, I am driven to explain my position. Our family has lived on Big Creek for well over 100 years. We have prided ourselves in being conscientious stewards of the land. It has been, in partnership with other like-minded

landowners, that the quality and quantity of water in Big Creek has been preserved and maintained. My grandparents loved Big Creek so much that they asked that their ashes to be buried and headstones erected to face this precious waterway. I can't help but think, it is good that they are not alive to witness the greedy travesty unfolding in their hallowed neighborhood. Big Creek runs in our family and I am heartbroken at the reckless, money driven lack of care for this precious resource.

Please consider this letter as one more appeal to Opencut Permit #2949.

Gretchen L Langton

Sent from my Verizon 4G LTE Droid

DEQ
Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: November 26, 2019

SUBJECT: Board of Environmental Review Case No. BER 2019-11 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL BY LINDA SLATER REGARDING APPROVAL OF OPENCUT MINING PERMIT NO. 2949, MOUDY PIT SITE, RAVALLI COUNTY, MT	Case No. BER 2019-11 OC

On November 26, 2019 the BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Mark Lucas
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Bureau Chief
Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

I am writing to urge you to vote against this pit.It will affect well water for several citizrns as well as irrigation water fir the surrounding farms.It is near where elk have their offspring andthe noise and dust will cause breathing problems.This is a beautyfull part of Mt. right next to Big Creek.My brother ,father and grandfather have taking a pck trup up to the top of the mt. to clean out Big Creek for 100 years.Pleae consider all of this . My propety raises organic beef cattle. Linda Slater

DEQ
Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: December 2, 2019

SUBJECT: Board of Environmental Review Case No. BER 2019-12 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL BY SARAH SLATER REGARDING APPROVAL OF OPENCUT MINING PERMIT NO. 2949, MOUDY PIT SITE, RAVALLI COUNTY, MT	Case No. BER 2019-12 OC

On November 28, 2019 the BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Mark Lucas
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Bureau Chief
Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

November, 28, 2019

To: Board of Environmental Review

Attn: Lindsay Ford

From: Sarah Slater
419 N Pearl Street, Apt B
Denver, CO 80203

To Whom it Concerns,

My name is Sarah Slater and my cousins (including Gretchen Langton) and extended family live in the Bitterroot Valley, within a 1000 ft of Wade Moudy's Gravel Pit site on Big Creek, in Ravalli County (Opencut Permit #2949). I was born in Hamilton, Montana and currently live in Denver, but I visit my family at Big Creek often. I am filing this letter to appeal this permit because it will have negative environmental, economic, and health impacts for my extended family (which includes my cousin Gretchen Langton and my uncle Jeffrey Langton) who live on and care for Big Creek Ranch.

I am writing to request an appeal to this permit on the following grounds:

1) This permit does not adequately address the extremely negative impacts to historic ditch rights, within the boundaries of the pit, for multiple landowners and water users. The permit inaccurately refers to ditches as "unused" or "abandoned" that are in use and that are not abandoned.

2) This permit does not adequately address wetlands, in an area that has historically been considered wetlands, by former owners, former irrigators, as well as current owners, and current irrigators.

3) This permit requires features such as a concrete pad for refueling equipment and other machinery. And yet, trucks, excavators, and a crusher have been operating since the approval of the permit, without the agreed upon measures to prevent groundwater contamination in the area, known for its extremely high water table.

4) This permit does not include well water monitoring for all residences within the 1000 ft boundary of the pit site.

5) This permit does not appear adequately consider water quality in Big Creek, which will inevitably be impacted, due to the close proximity of Big Creek to the pit site. The porous nature of the surrounding ground will be impacted by the gravel pit, due to the natural contour of the area.

6) This permit does not take into consideration negative impacts to elk populations that calve with 1000 ft of the pit site. Other wildlife will be negatively impacted as well by sound, water and air pollution from the gravel pit.

7) This permit makes no mention of the access off Hwy 93, which appears to cross over two lanes of traffic and a frequently utilized, paved bike/walking path when approaching from the South; the speed limit here is 70 miles per hour and the access historically was for "farm use only".

8) This permit does not take into account the negative impacts of groundwater and creek water loss loss, due to evaporation, from three ponds, totaling nine acres. Local landowners who rely on the Bitterroot River, into which Big Creek flows, will bear the brunt of potentially negative impacts to their water supplies.

9) This water loss will negatively impact a fragile fishery for Native Bull Trout and Native Cutthroat Trout, both of which are dependent upon Big Creek's continuous annual flow.

10) This permit affects myself and my family, due to increased dust pollution from the pit site and increased sound pollution, both of which will decrease their property values and quality of life.

My family has lived on Big Creek for well over 100 years, and we have prided ourselves in being conscientious stewards of the land. Only because of our partnerships with other like-minded landowners, has the quality and quantity of water in Big Creek been preserved and maintained. I'm asking you to please consider the detrimental impacts to wildlife and people in the surrounding areas of Wade Moudy's gravel pit.

Please consider this letter as one more appeal to Opencut Permit #2949.

Sarah G. Slater, Denver, Colorado
303-929-8576

DEQ
Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: December 2, 2019

SUBJECT: Board of Environmental Review Case No. BER 2019-13 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL BY JOHN DEGROOT REGARDING APPROVAL OF OPENCUT MINING PERMIT NO. 2949, MOUDY PIT SITE, RAVALLI COUNTY, MT	Case No. BER 2019-13 OC

On November 25, 2019 the BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Mark Lucas
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Bureau Chief
Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

From: John Degroot <devildawg1102v@aol.com>
Date: Monday, November 25, 2019
Subject: Re: Open Cut Permit number 2949
To: Lindsay.ford <Lindsay.ford@mt.gov>
Cc: NJacobsen <NJacobsen@rcac.org>

To whom it may concern:

I feel this permit never ever addressed the impacts on our environment. What about the Big Creek area and its wildlife? What about wells in the area? What about our property values? What about dust pollution, noise pollution? What about Monday through Saturday listening to a rock crusher and heavy equipment rumbling around? I want answers and I want proof that these questions were all looked at scientifically, I doubt seriously this was done. Would you want to listen to the noise involved? Would you want to have to smell the obnoxious dust involved? I can tell you the answer, it is NO!!! you would not want it in your backyard but who the hell cares it isn't in your backyard. It is where WE live so out sight out of mine, isn't that the truth of the matter?

This is all about greed, we have enough gravel pits on Highway 93 to choke a damn horse, they are nothing more than eyesores and this nonsense that "oh after we are done we will return the land to its former beauty" is just nonsense talk. It is all about the money they can make and the surrounding neighbors be damned.

I want to know who will oversee these people and on what regularity will they be inspected? You folks are understaffed and don't have the man power to oversee this debacle.

One more thing.....I AM A TAXPAYER, I want answers and I OPPOSE this permit to either Townsend of Moudy.

Thank you,

J De Groot

2888 Hlway 93 N

Victor, Montana 59875

Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: December 2, 2019

SUBJECT: Board of Environmental Review Case No. BER 2019-14 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL BY BRIAN LANGTON REGARDING APPROVAL OF OPENCUT MINING PERMIT NO. 2949, MOUDY PIT SITE, RAVALLI COUNTY, MT	Case No. BER 2019-14 OC

On November 27, 2019 the BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Mark Lucas
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Bureau Chief
Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

From: karen langton [mailto:ktlbrlangton68@gmail.com]
Sent: Wednesday, November 27, 2019 12:15 PM
To: Ford, Lindsay <Lindsay.Ford@mt.gov>
Subject: [EXTERNAL] Big Creek Protective Association

My name is Brian Langton and I live at 555 Mittower Rd West, Victor, MT. We live a half a mile from the Moudy gravel pit which is also close to our location on Big Creek. My family and I are concerned with the loss of decreed and lake-stored irrigation water for the Moudy neighbors, as well as for ourselves. Three historic ditches traverse his property: Strange I ditch, Strange II ditch and the Parkhill ditch. On the north side of Big Creek, two of our diversions, Brown ditch and Locke ditch, exit the creek very near to the pit. All of these ditches have been in use since installed (dug) in the 1880s. With the pit eventually reaching 20 feet or more in depth, water will be drawn from the surface as well as sub-surface to fill the resulting pond. A pond is a huge consumptive use of water by way of lateral seepage and evaporation. While Moudy is a recent water rights holder, my family has senior rights that date back to the earliest water rights in this adjoining location.
There are also neighbors living East of the gravel pit/ponds whose decreed and stored irrigation water may also be greatly diminished. The concern is that there will be a loss of irrigation water as well as having their household wells contaminated by diesel gas equipment, oil and chemicals. This same contamination could likely find its way into Big Creek as surface and ground water carry it there.

Sincerely,
Brian Langton and family

Please confirm that you have received this communication via email --thank you

DEQ
Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: December 2, 2019

SUBJECT: Board of Environmental Review Case No. BER 2019-15 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL BY LISA AND MARK VAN KEULEN REGARDING APPROVAL OF OPENCUT MINING PERMIT NO. 2949, MOUDY PIT SITE, RAVALLI COUNTY, MT	Case No. BER 2019-15 OC

On November 27, 2019 the BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Mark Lucas
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Bureau Chief
Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

From: Mark van Keulen [mailto:markvk007@gmail.com]
Sent: Wednesday, November 27, 2019 4:43 PM
To: Ford, Lindsay <Lindsay.Ford@mt.gov>
Subject: [EXTERNAL] Appeal to Opencut Permit #2949

To: Board of Environmental Review

Attn: Lindsay Ford

To Whom it May Concern;

Our names are Lisa and Mark van Keulen. Our house, property, and two wells are within 1000 ft of Wade Moudy's Gravel Pit site on Big Creek in Ravalli County (Opencut Permit #2949). We are writing to request an appeal to this permit on the following grounds:

1) This permit does not adequately address negative impacts to historic ditch rights within the boundaries of the pit for multiple landowners and water users. The permit inaccurately refers to ditches as "unused" or "abandoned" that are in use and that are not abandoned. We own Water rights in Big Creek Lakes. Our water is obtained from Big Creek via Parkhill Ditch. The gravel pit permit shows that the pit location is planned for the same place where the Parkhill ditch runs. This can be verified on the irrigation maps. We do not want our stock and irrigation water adulterated with particulates and contaminants flowing right out of a gravel mine.

2) This permit does not adequately address wetlands in an area that has historically been considered wetlands by both former owners and former irrigators as well as current owners and current irrigators.

3) This permit requires features such as a concrete pad for refueling equipment, etc. And yet, the trucks and excavators and crusher have been running since the approval of the permit without the agreed upon measures to prevent groundwater contamination in the area, known for its extremely high water table.

4) We currently use two wells on our property. This permit has not included well water monitoring for all residences within the 1000 ft boundary of the pit site.

5) This permit does not appear adequately consider water quality in Big Creek which will inevitably be impacted due to the close proximity of Big Creek to the pit site, due to the porous nature of the affected ground, and due to natural contour of the area.

6) This permit does not take into consideration negative impacts to elk that calve with 1000 ft of the pit site.

7) This permit makes no mention of the access off Hwy 93, which appears to cross over two lanes of traffic and a frequently utilized, paved bike/walking path when approaching from the South. (The speed limit here is 70 miles per hour and the access historically was for "farm use only".)

8) This permit does not take into account the negative impact of water loss (groundwater loss and most likely creek water loss), due to evaporation, from three ponds totaling nine acres, to landowners and to the Bitterroot River into which Big Creek flows. This water loss will negatively impact a fragile fishery for Native Bull Trout and Native Cutthroat Trout, both dependent upon Big Creek's continuous annual flow.

9) This permit negatively affects our property due to increased dust pollution from the pit site and increased noise pollution, both of which will decrease our property values and our quality of life. Breathing the dust and having it settle on everything will not be healthy. This doesn't even mention that our direct view of the Bitterroots will instead be dominated by a noisy, dusty, gravel pit operation. Trucks will be roaring by us on both sides of our property all day, every day. Allowing this type of operation negatively affects us and so many of our neighbors. It will destroy the balance and land stewardship that have existed for so many years until now.

10) Our house and property lie directly downhill from the gravel pit site. Surface water and storm runoff will flow right through our property, carrying with it the contaminants from the gravel pit. Because of the gravel pit proximity, we will be victims of surface water, groundwater, and irrigation ditch contamination. Again, we have not seen any plan that adequately addresses these shortcomings.

Please consider this letter as one more appeal to Opencut Permit #2949, and please respond with a verification that you have received this appeal.

Sincerely,

Mark and Lisa van Keulen

DEQ
Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: December 2, 2019

SUBJECT: Board of Environmental Review Case No. BER 2019-16 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL BY KURT VAUSE REGARDING APPROVAL OF OPENCUT MINING PERMIT NO. 2949, MOUDY PIT SITE, RAVALLI COUNTY, MT	Case No. BER 2019-16 OC

On November 28, 2019 the BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Mark Lucas
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Bureau Chief
Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

November 28, 2019

Open cut Mining Section
Coal & Open cut Mining Bureau
Department of Environmental Quality
PO Box 200901, Helena, MT 59620-0901

Re: Appeal of Approval of Open-cut Mining Permit #2949 Wade Moudy
Moudy Pit Site in Ravalli County, Montana

Sent via email to: Lindsay.Ford@mt.gov

To Whom It May Concern:

This letter is written to conform to the requirements of filing an appeal in the above-referenced permit (Permit #2949). Requirements for filing an appeal of the decision are those specified by the Montana Department of Environmental Quality (DEQ) as described in DEQ's October 30, 2019 public notice to issue Open -cut Mining Permit #2949 to Wade Moudy.

I was a participant in the December 12, 2017 Public Meeting at the Bitterroot River Inn in Hamilton. The intent of this appeal is to the points previously raised. The attached written comments were also made to DEQ at that time and are once-again relevant.

I am also aware of others who participated in prior public meetings who have pointed out these other issues:

1) Potential negative impacts to Big Creek and the wildlife that depend upon this fragile estuary, home to calving elk, Bull Trout, Great Horned Owls and a host of other animals.
2) Protection of neighboring wells fueled by groundwater.
3) Conflict of interest regarding monitoring (i.e. allowing a company employed by the pit owner to police the pit owner)
4) Decreased property values for all residents affected by the operation of a 13 yr. long, Monday through Saturday gravel pit operating heavy equipment to include a rock crusher.
5) Confusion as to whether historic ditches on or near the site will be negatively impacted.
6) Exponentially increased dust pollution and noise pollution, and potentially light pollution (which is not considered in the permit).

So the nature of this appeal is that DEQ detail how it has addressed each of the following: the issues listed above; those noted in my oral testimony of Dec. 12, 2017; and, those written comments (attached) previously submitted in Dec. 2017. DEQ's documentation of how those issues have been addressed through permit conditions, stipulations, or are dismissed should reference all relevant documents the Department used as its basis in reaching an affirmative decision to issue the permit

Further, the concerns No's. 1 – 6 above reflect issues that seek clarification as to either: a) issues of whether process errors have happened (e.g., no discussion and/or decision regarding noise/light pollution) being following in decision-making; or b) material facts that are pertinent to a decision reflecting public comment and expectations (e.g., property values of nearby residents, or neighboring wells being considered) .

For all these reasons, the following undersigned individual appeals the decision of DEQ to issue Open-cut mining permit #2949 to Wade Moudy.

Sincerely,

Kurt Vause

Kurt Vause
2796 Whites Lane
Victor, MT 59875

Review of Open-pit permit applications for:

1. Townsend Pit 128
2. Moudy Pit

Comments: Comments are classified as General, applicable to both, or comments applicable to specific project permit application.

References are included as attachments.

General:

1. With estimated 900,000 CY of material to be harvested, will open pit mines in area cause Big Creek to change from being a filling creek to a draining creek (ie., will current GW flows into creekbank that likely occur through the alluvial fan of the Big Creek drainage) become spillage out of creekbed)? Will creekflow be changed particularly during periods of higher runoff while pits are being filled?

   See topo map and assumed GW gradient thru project areas (Fig. 1)

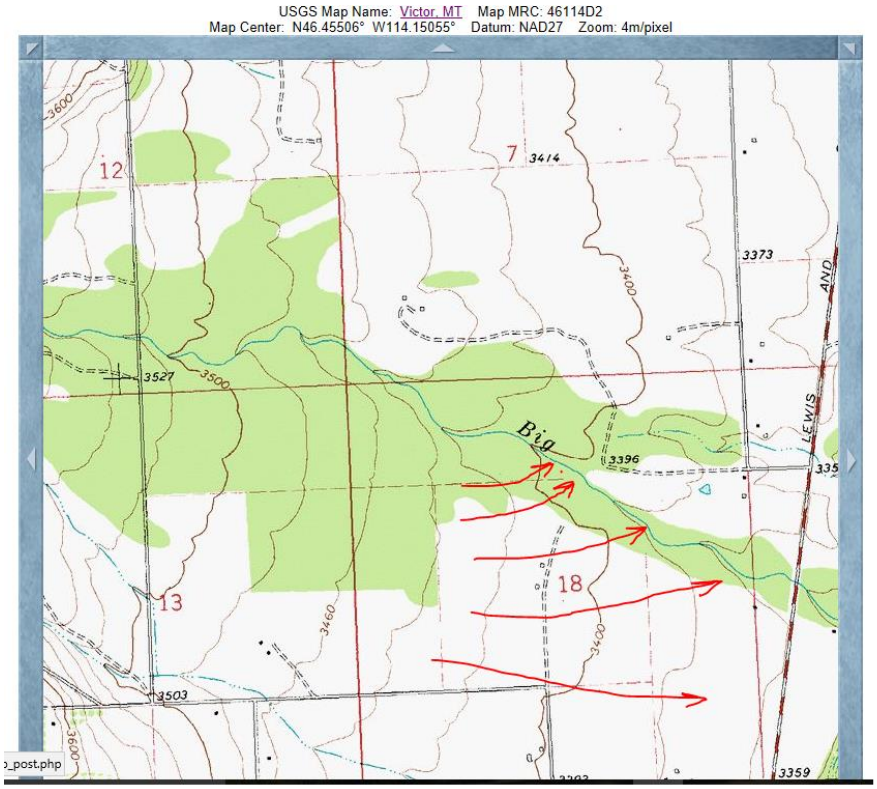


Figure 1 – Anticipated existing groundwater flow paths

2. If there are no permanent changes to groundwater gradient with two mines in proximity to one another, upon filling and submergence as ponds, and re-establishment of groundwater flow is there an issue with water temperatures of groundwater downstream of the pits when they are filled? Will water temperatures within the creek be affected, and any cold-water resident species of trout be impacted, particularly in warm weather periods? (See attached report: "Hydraulic Impacts of Quarries and Gravel Pits, MN Department of Natural Resources, 2005).
3. While not applicable to upstream wells, and while only one well is in the Montana GWIC Data base within 1000 ft. of either mine, both mine operations indicated draglines will be used. Are there any more definitive studies that describe impacts on turbidity in ground water downgradient of proposed mine sites? It appears that readily-accessible literature on ground water quality changes occurring around sand/gravel extraction sites is site specific and unclear. Likewise, will there be a long-term potential for open water ponds to create increased opportunity for pathogenic organisms (from either surface runoff or migrating waterfowl) to affect downgradient groundwater users?

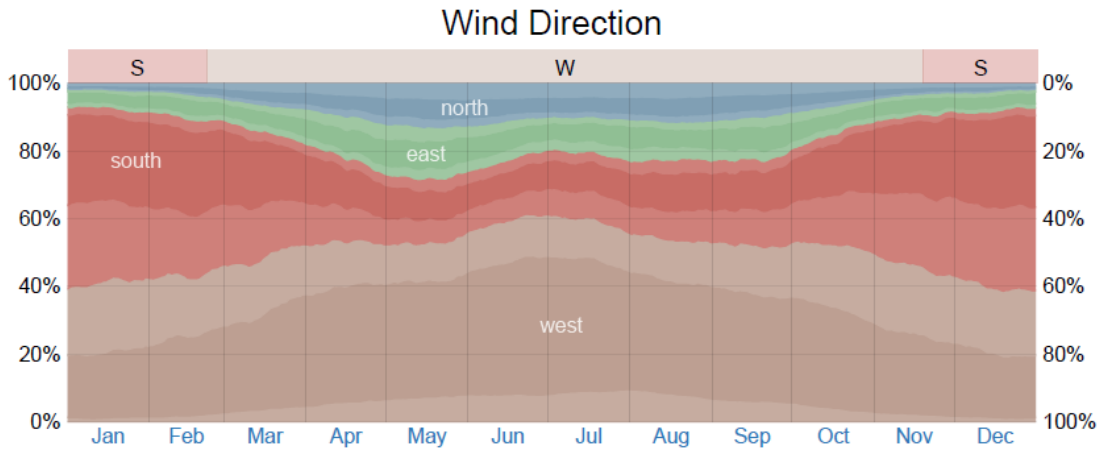
   See attached report: COMMENTS RECEIVED AND RESPONSES CONCERNING THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (EIS) FOR Jordan Aggregates EIS, Sand Creek Township, Scott County, Minnesota)

Applicable to each Pit Proposal

1. Fugitive Dust Emissions:

Prevailing wind direction in the area appears to be as shown below (data from Internet):

> The predominant average hourly wind direction in Stevensville varies throughout the year.
>
> The wind is most often from the west for 8.9 months, from February 22 to November 19, with a peak percentage of 61% on June 23. The wind is most often from the south for 3.1 months, from November 19 to February 22, with a peak percentage of 54% on January 1.



The percentage of hours in which the mean wind direction is from each of the four cardinal wind directions (north, east, south, and west), excluding hours in which the mean wind speed is less than 1 mph. The lightly tinted areas at the boundaries are the percentage of hours spent in the implied intermediate directions (northeast, southeast, southwest, and northwest).

Figure 2 - Wind Direction in Stevensville, MT [1,2]

Notes:

1.

> All other weather data, including cloud cover, precipitation, wind speed and direction, and solar flux, come from NASA's MERRA-2 Modern-Era Retrospective Analysis (https://gmao.gsfc.nasa.gov/reanalysis/MERRA-2/). This reanalysis combines a variety of wide-area measurements in a state-of-the-art global meteorological model to reconstruct the hourly history of weather throughout the world on a 50-kilometer grid.

2.

> We draw particular cautious attention to our reliance on the MERRA-2 model-based reconstructions for a number of important data series. While having the tremendous advantages of temporal and spatial completeness, these reconstructions: (1) are based on computer models that may have model-based errors, (2) are coarsely sampled on a 50 km grid and are therefore unable to reconstruct the local variations of many microclimates, and (3) have particular difficulty with the weather in some coastal areas, especially small islands.

Particularly during the dry summer periods, absent precipitation, northerly or northeasterly winds will create the potential for dust emissions to emanate from pit operations. Permit applications are rather sketchy about how fugitive dust emissions are to be handled.

Experience with dust emissions from open pit sand & gravel extraction have been described elsewhere (See attached report: University of Minnesota UMore Park Sand and Gravel Resources Draft EIS, June 2010, pp's. 210-216). See also attached report c.11s-19-1 (1995).

Are there any requirements of the operator(s) to take reasonable precautions to limit fugitive dust emissions beyond the work area, or opacity impacts from dust plumes, or hours during which opacity impacts from dust plumes will occur?

2. Noise impacts:

Each proposal indicates permitted hours of operation are 24/7/365 days per year. It is understood that "intermittent" operations will occur on site, however, with permitted hours of operation being any time day or night, any day of year, it is not clear when operations will actually occur.

Other studies of noise impacts from open-pit mine operations suggest predominant noise impacts relate to crushing, screening and haul operations (e.g., reference attached report: University of Minnesota UMore Park Sand and Gravel Resources Draft EIS, June 2010, pp's. 200-210).

Are there any noise regulations which will pertain to the operation of each site? In application of any regulations, will such regulations also apply to truck traffic from each of the two pits?

3. Traffic impacts:

Access to each pit appears to be from Bell Crossing West /Meridian Road. Each road appears to receive relatively light traffic today. Future development near the Bell Crossing – US 93 interchange will alter that some. One is gravel; the other has some form of bituminous surface (chip and seal, RAP, or other). However, the current condition of each right-of-way may be impacted by the anticipated loading of truck traffic in/out of the proposed pit operations.

Assuming 900,000 CY of material removal, will road maintenance be provided in the event the road beds deteriorate? If so, will the entity responsible for road maintenance (authority having jurisdiction over right-of-way) have a revenue source to properly maintain these right-of-ways? Or, will the reclamation bond be a source of that maintenance money?

Specific comments:

Townsend Pit

B. 7. 1 – add black bear, Turkeys, other?

C5 1. – hours of operation. Being permitted 25/7/365 – are there any applicable noise limits on rock crushing and screening operations? On truck hauling operations? Noise during night time hours – impact to adjacent and nearby properties for pit operations at depths to 25 ft. below ground surface (BGS). Are there reputable studies showing noise impacts within 1000 yards of operation? Are those impacts within allowable, reasonable noise levels?

D2.1. – more details needed on dust control, airborne particulate emissions from site

1 E. – what additional details exist for water rights operation. If water table to be brought to a piezometric surface = 3 ft. BGS at pit, what does that do to increase groundwater gradient in adjoining areas that are subject to same aquifer?

D.2. 2. – if no dewatering to be done, then is excavation to be done in wet? If so, is dragline or other equipment anticipated or is material extraction always to be done during periods of low water table elevation? If done during periods of low water table and no water is present, then dry period will be period of maximum dust potential. With prevailing winds at site during dry season, what dust control measures are to be implemented with no on—site water?

D. 4 1. And 2. – if intermittent operation, and all hours of any day are permitted, does that allow movement any time of day/night of materials and equipment as per operator prerogative? Does that allow transport in/out of heavy equipment, mined materials, screening/crushing operations at operator prerogative?

D.4. 4 – dragline indicated. See comment to question D.2. 2.

D.7. 2 – does hardened concrete storage at site mean the site will be a location where concrete products are produced, or rather, off-site produced concrete will be stored? Will a permit allow concrete product production on site?

Moudy Pit

B. 7. 1 – add black bear, Turkeys, other?

B. 8. 1 – with well with static level at 22 ft. BGS, cone of influence may be expected to draw down the water surface to something like 35-40 ft. BGS (max). How does a pond surface at depths indicated in permit contribute to or draw away water that would otherwise be source of supply for well? With well 900 ft. from edge of permit area (re: B.9) , in soils of type indicated in well logs, is that a problem?

C. 5. 1 – hours of operation 24/7/365. – are there any applicable noise limits on rock crushing and screening operations? On truck hauling operations? Noise during night time hours – impact to adjacent and nearby properties for pit operations at depths to 25 ft. BGS. Are there reputable studies showing noise impacts within 1000 yards of operation? Are those impacts within allowable, reasonable noise levels?

D2.1. – more details needed on dust control, airborne particulate emissions from site

D.2. 2. – if no dewatering to be done, then is excavation to be done in wet? If so, is dragline or other equipment anticipated or is material extraction always to be done during periods of low water table elevation? If done during periods of low water table and no water is present, then dry period will be period of maximum dust potential. With prevailing winds at site during dry season, what dust control measures are to be implemented with no on—site water?

D. 4 1. And 2. – if intermittent operation, and all hours of any day are permitted, does that allow movement any time of day/night of materials and equipment as per operator prerogative? Does that allow transport in/out of heavy equipment, mined materials, screening/crushing operations at operator prerogative?

D.4. 4 – dragline indicated. See comment to question D.2. 2.

D.7. 2 – does hardened concrete storage at site mean the site will be a location where concrete products are produced, or rather, off-site produced concrete will be stored? Will a permit allow concrete product production on-site?

Kurt and Deb Vause

2796 Whites Lane

Victor, MT 59875

907/317-7363

DEQ
Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: December 2, 2019

SUBJECT: Board of Environmental Review Case No. BER 2019-17 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL BY JENNIFER AND RANDY LINT REGARDING APPROVAL OF OPENCUT MINING PERMIT NO. 2949, MOUDY PIT SITE, RAVALLI COUNTY, MT	Case No. BER 2019-17 OC

On November 29, 2019 the BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Mark Lucas
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Bureau Chief
Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

From: Jennifer Lint [mailto:jboatwrightlint@gmail.com]
Sent: Friday, November 29, 2019 3:21 PM
To: Ford, Lindsay <Lindsay.Ford@mt.gov>
Subject: [EXTERNAL] Appeal of Opencut Permit #2949

Ms Ford -

Please accept this as my husband, Randy Lint, and my notice of appeal of the DEQ's permit #2949. We own parcel 872430, and are a direct adjacent landowner, with several hundred feet of Big Creek flowing through our property.

Please also accept this request the December 13th hearing be vacated and reset to be held in Hamilton, Montana. DEQ's records show the large number of people who turned out for the first meeting. Asking 70 people with jobs to travel to Helena is unduly burdensome. I myself cannot attend the hearing that day as I already have court hearings scheduled.

I join in all the other appeals which have been presented.

The permit must be withdrawn for numerous reasons.

First, the permitting process employed by DEQ is unconstitutional in that it does not allow for public input following the initial application. Montana's constitution assures public involvement in governmental decisions. An application which can be serially submitted, without additional opportunity for a public comment period and hearing on each resubmission renders the DEQ's decision constitutionally infirm.

Public involvement is not just a constitutional issue, it provides DEQ with essential information from persons directly impacted, information DEQ doesn't have the manpower to seek out themselves. Case in point: in my written comments and at the hearing, I noted that my well is within the 1000 foot zone of the pit. And my well is *still not* identified as being within the 1000 foot zone. Both the applicant and DEQ were on notice since the original comment period that my well is within the zone and yet the permit was issued anyway.

DEQ is also without the information that the application fails to identify a habitable structure on the Moudy property, a small building with electric service and a chimney (presumably for heat) and no known septic permit.

The application states that, as part of sound mitigation, piles of dirt have been placed "at the adjacent property owner's request". I'm not sure what adjacent owner requested them, I did not, and they are piled up on my western boundary which abuts Moudy's property, completely obstructing my view to the west. Moreover, these piles appeared shortly after I called in Moudy's cohort, Todd Townsend, for illegally burning construction debris (Townsend was cited for the illegal burn and rebar, concrete and other items were found in his burn pit).

Whether this errant and missing information are errors of commission or omission is irrelevant, however it calls into question the integrity of the entire application, as well as Tetra Tech's credibility as an analyst. And it reinforces the need for public comment and hearing at *each* submission of an application, not just the original submission.

Second, the latest application remains wholly deficient in the following areas:

1) This permit does not adequately address negative impacts to historic ditch rights within the boundaries of the pit for multiple landowners and water users. The permit inaccurately refers to ditches as "unused" or "abandoned" that are in use and that are not abandoned. While water rights can be lost through nonuse, the same is not true for ditches which are a real property right.

2) This permit does not adequately address wetlands in an area that has historically been considered wetlands by both former owners and former irrigators as well as current owners and current irrigators.

3) This permit requires features such as a concrete pad for refueling equipment, but there is no oversight to assure this in place, and the permit is now live. The application's inclusion of the concrete pad is acknowledgment of the very high water table and likelihood of groundwater contamination.

4) As noted above, the application does not include well water monitoring for all residences within the 1000 ft boundary of the pit site and is silent as to the habitable structure on the Moudy property.

5) This permit does not adequately consider water quality in Big Creek which will inevitably be impacted. It is well established that water will seep in all manners and through all possible layers, one need only look to litigation currently at the US Supreme Court regarding the ocean contamination by waster water injection wells in Hawaii.

6) This permit does not take into consideration negative impacts to elk that calve with 1000 ft of the pit site.

7) This permit makes no mention of the access off Hwy 93, which appears to cross over two lanes of traffic and a frequently utilized, paved bike/walking path when approaching from the South. (The speed limit here is 70 miles per hour and the access historically was for "farm use only".)

8) This permit does not take into account the negative impact of water loss (groundwater loss and most likely creek water loss), due to evaporation, from three ponds totaling nine acres, to landowners and to the Bitterroot River into which Big Creek flows. The application does not sufficiently address how the pit will not filch water from Big Creek, and how water in the pit will not seep back into Big Creek. Any water loss from Big Creek, or contamination of it, will negatively impact a fragile fishery for Native Bull Trout and Native Cutthroat Trout, both dependent upon Big Creek's continuous annual flow.

9) The application does not adequately address.areas of sound mitigation include digging noises and large truck back up signals.

10) The bond is wholly insufficient as it does not take into account mitigation costs from contamination to groundwater and Big Creek.

Lastly, granting the permit violates adjacent landowners and others who use and rely upon Big Creek's pristine flow, right to a clean environment as guaranteed under the Montana constitution. Some uses just cannot be mitigated. This is one. And by the time the damage to Big Creek and the drainage is

discovered,and the property values of adjacent landowners plummet, it will be too late and no amount of mitigation will bring it back to the current, unadulterated condition.

Thank you for your consideration.

Jennifer and Randy Lint

DEQ
Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: December 2, 2019

SUBJECT: Board of Environmental Review Case No. BER 2019-18 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL BY KATHLEEN MEYER AND PATRICK MCCARRON REGARDING APPROVAL OF OPENCUT MINING PERMIT NO. 2949, MOUDY PIT SITE, RAVALLI COUNTY, MT	Case No. BER 2019-18 OC

On November 29, 2019 the BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Mark Lucas
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Bureau Chief
Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

From: Kathleen Meyer [mailto:kaameyer@montana.com]
Sent: Friday, November 29, 2019 4:43 PM
To: Ford, Lindsay <Lindsay.Ford@mt.gov>
Subject: [EXTERNAL] Fwd: Request for Appeal

Sorry, trying again, hopefully with the correct email address.

Begin forwarded message:

From: Kathleen Meyer <kaameyer@montana.com>
Date: November 29, 2019 at 4:32:25 PM MST
To: linsay.ford@mt.gov
Subject: Request for Appeal

November 29, 2019

Dear Montana Board of Environmental Review:

We are requesting an appeal of Open Cut Mining Permit #2949. There seem to be various items missed when evaluating the permit.

We are a neighboring property, our NW corner butts up to the Bell Crossing/Highway 93 intersection, and we happen to think, on top of everything else, that the idea of more gravel pits welcoming tourists to the beautiful Bitterroot Valley is an abomination. And a great threat to the neighborhood and the natural integrity of Big Creek.

Sincerely,
Kathleen Meyer
Patrick McCarron
2756 Hwy 93 N
Victor, MT 59875

Sent from my iPad

DEQ
Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: December 2, 2019

SUBJECT: Board of Environmental Review Case No. BER 2019-19 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL BY ANNE LAMBERT REGARDING APPROVAL OF OPENCUT MINING PERMIT NO. 2949, MOUDY PIT SITE, RAVALLI COUNTY, MT	Case No. BER 2019-19 OC

On November 29, 2019 the BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Mark Lucas
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Bureau Chief
Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

RE: Appeal of Opencut Mining Permit #2949 Issued to Wade Moudy (Moudy Pit Site)

NOTICE OF APPEAL AND REQUEST FOR HEARING

To the Board of Environmental Review:

I, Anne Lambert, a homeowner on Big Creek, and a member of the Rippling Woods Homeowners Association (RWHA), appeal the Montana Department of Environmental Quality's October 30, 2019, approval of Opencut Mining Permit #2949 (the "Permit") issued to Wade Moudy (the "Applicant") for the operation of a gravel/sand pit in Ravalli County.

The Open Mining Act and enabling Administrative Rules require that any applicant for a permit include a detailed plan of operation, which would allow DEQ and stakeholders to understand the nature and scope of the request. The DEQ did not comply with its responsibilities to fully evaluate the Permit and its effects on the residents, wildlife, and Big Creek. DEQ approved a permit that was devoid of facts, deficient in detail, and lacked the necessary studies that would allow a reasonable observer to be informed. The subsequent changes to the Permit were different enough that local stakeholders should have been updated and provided a further opportunity for comment. The Permit should be suspended until DEQ has re-assessed the Permit.

BRIEF BACKGROUND

1. The Applicant submitted his permit in October 2017. The proposed site is located in Ravalli County.

2. An initial meeting on the proposed application took place on November 20, 2017 in the Victor Senior Center. Coverage of the meeting was described in the local paper. https://bitterrootstar.com/2017/11/gravel-pits-proposed-near-big-creek-concern-local-residents/

3. A subsequent open comment session took place on December 12, 2017. During

the open comment session for the Permit, the RWHA made an appearance and provided comment and opposition to the Permit as presented. Coverage of the hearing can be found at: https://nbcmontana.com/news/local/public-weighs-in-on-gravel-pit-proposals-near-victor

4. To the best of requester's knowledge, no subsequent updates or amendments were provided to impacted stakeholders. Although DEQ sent subsequent deficiency letters to the Applicant, there were no further opportunities for a hearing.

5. The Permit was approved on October 30, 2019. A copy of the approved, final permit is available on the DEQ website.

6. The Permit included additional information primarily on well rights. The Permit failed to include any noise assessments or impact studies on local wildlife. The site is directly south of Big Creek. Big Creek flows from the east and empties as a tributary to the Bitterroot River. Big Creek has a major environmental impact on the local wildlife. Big Creek does not go dry during the summer. As a result, it provides year-round water to abundant species. This draws animals year round for specific purposes. For example, the elk and deer calving takes place every spring in the area. The Big Creek drainage is also spawning grounds for various fish species.

ARGUMENT

The grounds of DEQ's error include, but are not limited to, the following:

7. Residents are entitled under Article II, Section 3 of the Montana State Constitution to a clean and healthful environment and the right to protecting their property. The permitting process provided short shrift to the pits impact on the neighbor's interests, which include how the project would affect both their property and Big Creek. It goes without saying

that the proposed operation will create a considerable amount of noise, dust, and traffic. This will impact both the wildlife and residents in the neighboring areas.

8. Within 500 feet of the site is Big Creek, the natural habitat for fish and wildlife. Visitors and residents alike have a reasonable expectation to enjoy the wildlife activities around Big Creek, from fishing to animal watching to simply enjoying its presence. A fish and wildlife survey should have been required as part of the application to discuss impact and mitigation. ARM 17.24.222(1)(e). After all, it can be reasonably anticipated that operations will disrupt the status quo, ranging from lighting to noise to dust to potential water use. The impact on migrating species cannot be understated, and its impact must be evaluated. Only after a study has been conducted can additional mitigation measures be considered. Mont. Code Ann. § 82-4-434(n). The approval of the Permit as-is is unreasonable because it is devoid of any objective standards to evaluate and determine whether the permitted activities would affect Big Creek.

9. In addition to noise that could disturb animals, the Permit fails to properly discuss the noise impact and mitigation on residents. Mont. Code Ann. § 82-4-434(2)(m). First, the Application provides no assessment on the anticipated amount of noise that would be generated. Assuming the Applicant uses their stated crusher, grizzly, and screen, how much noise does that generate and how loud will it be? The potentially affected residents have no idea because neither the Applicant nor DEQ has provided an explanation. In letters dated February 12, 2018 and April 1, 2019, DEQ notified the Applicant that "The proposed plan does not make adequate provision for noise impacts on nearby residential areas." Under Section D.10 of the approved Permit, the Applicant proposes multiple mitigation measures. However, it is unclear how such mitigation will be implemented. The basics of who, what, where, when, why, and how are missing. Will the neighbors to the north and northwest have any mitigation or will Big Creek be

on the receiving end of hearing-damaging 100 db crushers? All of this information is necessary to determine to what degree, if any, the operation could constitute a "nuisance." While the Applicant has some latitude to do what he wants on his property, he does not have the right to activities that seriously infringe on other people's use and enjoyment. Given the vagueness of the Permit, no meaningful response or objection can be provided because there is no initial point of reference on what actions are to be taken, never mind mitigation. DEQ must require additional information, and if appropriate studies, on noise impact from the Applicant's activities.

10. Second, DEQ's mitigation of noise through restricted hours of use is also unreasonable. Mont. Code Ann. § 82-4-434(2)(m). The permitted hours under Section C.5.d are 7 a.m. to 7 p.m. Monday to Friday and extended hours of 6 a.m. to 8 p.m. for up to four weeks every six months. These approved hours are inconsistent with prior statements by the Applicant. As noted in the November 20 hearing, the Applicant admitted that he would be willing to do an eight-hour work day, five days a week. In the December meeting, the Applicant's hours changed yet again to potentially ten to twelve hours but with more on certain weeks. DEQ has approved everything the Applicant wanted with no mitigation for the neighbors. That is unreasonable.

11. Moreover, the hours are unreasonable as a year-round schedule. The lack of restrictions to at least daylight hours means operations could take place at night. Nowhere in the Application does it discuss night work, which is something that would definitely affect local residents. This is all notwithstanding how a full-time operation would affect local wildlife. A crusher making noise at 6 a.m. less than 500 feet from Big Creek would likely affect the patterns and habits of local wildlife. As such, DEQ needs to re-evaluate the reasonableness of a year-round schedule and take into consideration how this impacts neighbors and Big Creek.

12. Finally, DEQ failed to properly evaluate the role of water usage in dust control. The Applicant indicated under Section D.2 that water would be used for dust control. However, it is unclear where the water comes from. The Application has a representation that "Water will be imported from a short distance away or will be provided by some other permitted process." Application at 105 (representation by Tetra Tech). In the December 12 public meeting, it appears the Applicant represented that dust control may require water from their water rights (ditches) and/or Big Creek Lake. In that case, the Application itself may be misleading or incorrect on water usage. ARM 17.24.218(1)(h)(i). Moreover, a cumulative hydrological impact assessment may be necessary.

13. Permitted activities may yet be appropriate at the site. However, the Permit as-is does not provide enough information to allow DEQ or any stakeholders to determine how permitted activities will impact Big Creek and its neighbors. Without such information, DEQ erred in approving the Permit. The Permit should be declared unlawful and DEQ is to reassess the permit consistent with the Open Mining Act and applicable laws.

Respectfully submitted this 29th day of November, 2019.

Anne Lambert
alambert3@gmail.com

Anne Lambert

DEQ
Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: December 2, 2019

SUBJECT: Board of Environmental Review Case No. BER 2019-20 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL BY ANNETTE MCDONALD REGARDING APPROVAL OF OPENCUT MINING PERMIT NO. 2949, MOUDY PIT SITE, RAVALLI COUNTY, MT	Case No. BER 2019-20 OC

On November 22, 2019 the BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Mark Lucas
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Bureau Chief
Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

From: Annette McDonald [mailto:annettemcdee@gmail.com]
Sent: Friday, November 22, 2019 11:42 AM
To: Ford, Lindsay <Lindsay.Ford@mt.gov>
Subject: [EXTERNAL] PLEASE FORWARD IF NECESSARY.

To Whom It May Concern:

I wish to submit a letter of opposition to the approval of the open-cut mining by Todd Townsend and his partners.

My property is very close to their suggested gravel pit activity. Not only am I concerned about the effect on my property value due to this suggested EYESORE, but there is overwhelming evidence on the effects on the many wildlife, due to the wetlands in this area. I am also deeply concerned about my well, which will be affected by this unneeded gravel pit.

It is totally unfair that the interests of homeowners directly affected by this suggested endeavor are dismissed and be bulldozed over by those who do not live in this area; that those who are unaffected, (including Todd Townsend!), make a decision which will have a negative impact on residents in this area, forever.

I believe Todd Townsend started this activity before any approval was given, due to the constant stream of trucks which already go in and out of the area west of his offices. In conclusion, to allow someone of HIS choosing to "police" the activity is patently **ABSURD!**

Sincerely

Annette McDonald
803 Indian Prairie Loop
Victor, MT 59875

(406) 360-8020

Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: December 2, 2019

SUBJECT: Board of Environmental Review Case No. BER 2019-21 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL BY ROBERT AND KEITH BEALL REGARDING APPROVAL OF OPENCUT MINING PERMIT NO. 2949, MOUDY PIT SITE, RAVALLI COUNTY, MT	Case No. BER 2019-21 OC

On November 24, 2019 the BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Mark Lucas
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Bureau Chief
Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

From: Annette McDonald [mailto:annettemcdee@gmail.com]
Sent: Sunday, November 24, 2019 5:20 PM
To: Ford, Lindsay <Lindsay.Ford@mt.gov>
Subject: [EXTERNAL] PLEASE FORWARD IF NECESSARY.

To Whom It May Concern:

We wish to submit a letter of opposition to the approval of the open-cut mining by Todd Townsend and his partners.

Our property is very close to their suggested gravel pit activity. Not only are we concerned about the effect on our property value due to this suggested EYESORE, but there is overwhelming evidence on the effects on the many wildlife, due to the wetlands in this area. We are also deeply concerned about our well, which will be affected by this unneeded gravel pit.

It is totally unfair that the interests of homeowners directly affected by this suggested endeavor are dismissed and bulldozed over by those who do not live in this area; that those who are unaffected, (including Todd Townsend!), make a decision which will have a negative impact on residents in this area, forever.

We also believe Todd Townsendhas already started this activity before any approval was given, due to the constant stream of trucks which already go in and out of the area west of his offices. In conclusion, to allow someone of HIS choosing to “police” the activity is patently **ABSURD!**

Sincerely

Robert N. Beall
Robert Beall, Jr
Keith Beall
479 Curlew Orchard
Victor, MT 59875

STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU

Tim Fox
Attorney General

1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440

TO: The Montana Board of Environmental Review

FROM: Sarah Clerget, Board Attorney

RE: Review of a Stipulation

DATE: December 5, 2019

The purpose of this memo is to assist BER when reviewing the Stipulation in the above-referenced contested case. Here, the parties have stipulated to resolving four out of eight appeal issues identified in CHS's Amended Notice of Appeal and have agreed to a modified Permit which is attached as exhibit A. A track changed version is attached as exhibit B.

Essentially, the Stipulation functions the same way as a proposed FOFCOL from the hearing examiner, except that it was reached by an agreement of the parties rather than through a proposed decision. The Board has two options, it can approve the stipulation or reject the stipulation.

Once a decision is made, BER may utilize the Board Secretary or Board Attorney to assist in drafting the final order memorializing the Board's substantive decision, for the signature of the Board Chair. The parties have provided a proposed draft of the Final Board Order for this purpose.

Since the Board's decision will not be dispositive of the entire case (as there are four remaining appeal issues not decided by the Stipulation) and since the Board has already assigned this case to a hearing examiner in its entirety, the case will remain with the hearing examiner until a final proposed order is issued.

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ATTORNEY FOR THE 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 NO. BER 2019-01-WQ** **STIPULATION FOR FINAL AGENCY DECISION**

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. Four of the eight issues identified in CHS's Amended Notice of Appeal may be completely resolved and one issue partially resolved under the terms of this Stipulation, should the Board adopt a final agency decision as specified herein and as further set forth in the modified Permit attached hereto as Exhibit A and incorporated herein by this reference. Under the terms of this Stipulation, CHS's Amended Notice of Appeal Issues Nos. 3, 4, 6, and 7 would be fully resolved and Amended Notice of Appeal Issue No. 5 would be partially resolved.

9. Following the Board's decision on this Stipulation, the contested case proceedings concerning Amended Appeal Issues Nos. 1, 2, 5, and 8 will continue.

10. As pertinent to CHS's Amended Appeal Issue No. 3, regarding Required Reporting Values ("RRVs") for Hydrogen Sulfide, it is appropriate to remove the "RRV" column, Footnote No. 2, and Footnote No. 6 from the 2019 Permit (pages 7 and 8 of the 2019 Permit). DEQ acknowledges that the RRV for Total Sulfide will be based on Energy Labs' Reporting Level. While the RRV column was added to provide clarity, the column may suggest that certain

limited exceptions to the RRV requirements found in Department Circular DEQ-7 are inapplicable.

11. As pertinent to CHS's Amended Appeal Issue No. 4 regarding composite sampling, CHS states that its facility and operations constrain manual composite sample collection. Although not required to, CHS currently maintains a primary and a backup autosampler. DEQ acknowledges that in the unlikely event CHS experiences autosampler failure, DEQ agrees that CHS may request, and DEQ may approve a temporary waiver of the timing and sampling requirements.

12. As pertinent to part of CHS's Amended Appeal Issue No. 5, regarding Hydrogen Sulfide monitoring, it is appropriate to delete the second sentence of Footnote No. 7 to the table entitled "Effluent Monitoring Requirements for Outfall 001 and Outfalls 002/003" on Page 8 of the 2019 Permit. More specifically, the sentence to be deleted is, "Nondetect at the RRV is considered compliance with the H2S effluent limit." This sentence was included in error and it incorrectly implies there is a H_2S effluent limit in the 2019 Permit. CHS reserves the right to continue the Amended Appeal Issue No. 5 regarding the method for Hydrogen Sulfide monitoring.

13. As pertinent to CHS's Amended Appeal Issue No. 6, during the current permit cycle, CHS has submitted WET testing results indicating no

acute toxicity of its effluent. As a result, it is appropriate to allow CHS to submit semi-annual acute toxicity testing instead of quarterly. Provided CHS's WET testing results continue to demonstrate no acute toxicity, CHS may continue with the semi-annual testing regime through the remainder of the term of the 2019 Permit (through October 31, 2020 and any related period of administrative continuance provided under ARM 17.30.1313). However, should CHS's testing results indicate a WET testing failure, CHS would be required to follow the testing regime as specified on Pages 9-10 of the 2019 Permit.

14. As pertinent to CHS's Amended Appeal Issue No. 7, regarding TRC monitoring, it is appropriate to remove the monitoring requirement for manganese oxide from page 8 of the 2019 Permit, as well as the related footnote. In addition, a footnote will be added to the Total Residual Chlorine ("TRC") parameter on page 8 of the 2019 Permit as follows: "CHS may eliminate manganese interference using an approved procedure under 40 CFR Part 136. Should CHS utilize such a method, DMR reporting for TRC should be based upon net TRC." This change is appropriate because the manganese oxide monitoring requirement included in the 2019 Permit was not based on an approved method to account for TRC interference. DEQ acknowledges CHS is

currently monitoring and reporting gross TRC. Effective February 1, 2020, CHS will monitor and report net TRC.

15. The modified Permit attached hereto as Exhibit A appropriately incorporates 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. 3, 4, 5 (in part), 6, and 7, 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. 3, 4, 6, and 7 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. 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, specifically reserving the CHS's appeal rights through contested case proceedings concerning CHS's Amended Appeal Issues Nos. 1, 2, 5 and 8 as listed in its Amended Notice of Appeal, dated April 22, 2019.

21. All conditions of the modified Permit, attached hereto as Exhibit A, will be fully effective and enforceable on February 1, 2020, with the exception of any stayed conditions resulting from CHS's remaining Appeal Issues Nos. 1, 2, 5 and 8.

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

23. The Board's Decision as to Amended Appeal Issues Nos. 3, 4, 5 (in part), 6, and 7 shall represent the FINAL AGENCY DECISION for purposes of the Montana Administrative Procedure Act, Section 2-4-623, MCA.

DATED this 4th day of December, 2019.

/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 4th day of December, 2019.

/s/ *Victoria A. Marquis*
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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 4th day of December, 2019, 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:

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/s/ *Kurt R. Moser*
Kurt R. Moser
MT-Department of Environmental Quality

EXHIBIT A.

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.

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

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:

Outfall 001 - Interim Numeric Discharge Limitations (1)			
Parameter	**Units**	**Maximum Daily**	**Average Monthly**
5-Day Biochemical Oxygen Demand (BOD_5)	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_{50}	% effluent	No acute toxicity (2)	

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:

Outfall 001 - Final Numeric Discharge Limitations [1]			
Parameter	**Units**	**Effluent Limits**	
		Maximum Daily	**Average Monthly**
5-Day Biochemical Oxygen Demand (BOD_5)	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_{50}	% effluent	No acute toxicity [2]	

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:

Diffuser Outfalls 002 / 003 - Final Effluent Limits			
Parameter	**Units**	**Effluent Limits**	
		Maximum Daily	**Average Monthly**
5-Day Biochemical Oxygen Demand (BOD_5)	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 (1)	µg/L	11.3	11.3
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_{50}	% effluent	No acute toxicity (2)	

Footnote: TR = Total Recoverable
(1) Effective **November 1, 2022**.
(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.

Effluent Monitoring Requirements for Outfall 001 and Outfalls 002/003 (1)					
Parameter	Units	Monitoring Frequency	Type		Reporting Requirement
Flow	MGD	Continuous	Instantaneous(2)		Daily Max & Mo Avg
BOD_5	mg/L	2/Week (3)	Composite		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
TSS – Intake Water	mg/L	2/Week (3)	Composite		None
TSS – Effluent Gross	mg/L	2/Week (3)	Composite		None
TSS – Net (4)	lb/day	1/Month	Calculated		Daily Max & Mo Avg
COD	mg/L	2/Week (3)	Composite		Daily Max & Mo Avg
	lb/day	1/Month	Calculated		Daily Max & Mo Avg
Oil and Grease	mg/L	2/Week (3)	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 (3)	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 (5)		Daily Max & Mo Avg
Hydrogen Sulfide (H_2S)	µg/L	1/Week	Calculated (5)		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 (1)					
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 (3,6) 1/Month	Composite		Daily Max & Mo Avg
Arsenic, TR	µg/L	2/Year (3,6) 1/Month	Composite		Daily Max & Mo Avg
Selenium, TR	µg/L	2/Year (3,6) 1/Month	Composite		Daily Max & Mo Avg
Aluminum, Dissolved	µg/L	2/Year (3)	Composite		Report
Cyanide, Total	µg/L	2/Year (3)	Grab		Report
Iron, TR	µg/L	2/Year (3)	Composite		Report
Lead, TR	µg/L	2/Year (3)	Composite		Report
Mercury, TR	µg/L	2/Year (3)	Composite		Report
Total Residual Chlorine (7)	mg/L	1/Month	Grab		Report
Nitrate + Nitrite (Nov 1 – July 31)	mg/L	2/Year (3,6) 1/Month	Composite		Daily Max & Mo Avg
Nitrate + Nitrite (Aug 1 – Oct 31)	mg/L	1/Week (8)	Composite		Daily Max & Mo Avg
Total Kjeldahl Nitrogen	mg/L	1/Week (8)	Composite		Mo Avg
TN (9)	lb/day	1/Month (8)	Calculated		Mo Avg
TP	mg/L	1/Month (8)	Composite		Mo Avg
	lb/day	1/Month (8)	Calculated		Mo Avg
Temperature	degrees C	1/Week	Instantaneous		Daily Max & Mo Avg
Whole Effluent Toxicity, Acute	% Effluent	1/Quarter(10)	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_2S calculated based on dissolved sulfide concentrations and pH in accordance with Standard Methods Method 4500-S2- unless another method is proposed and accepted by DEQ.
(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 31st.
(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_2 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_2S)	µg/L	1/Quarter	Calculated (1)	20
pH	s.u.	1/Quarter	Instantaneous/Grab	0.1
Total Nitrogen (2)	µg/L	1/Month (3)	Grab or Calculated	0.245

Footnotes:
(1) Calculate H_2S based on dissolved sulfide concentrations and pH in accordance with Standard Methods Method 4500-S2-, unless another method is proposed and accepted by DEQ.
(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 31st.

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 28th 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 28th 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 that $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.**

~~FOR THE MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY~~

~~Jon Kenning, Chief~~
~~Water Protection Bureau~~
~~Water Quality Division~~

~~Modification Date~~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.

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

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:

Outfall 001 - Interim Numeric Discharge Limitations [1]			
Parameter	**Units**	**Maximum Daily**	**Average Monthly**
5-Day Biochemical Oxygen Demand (BOD_5)	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_{50}	% effluent	No acute toxicity [2]	

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:

Outfall 001 - Final Numeric Discharge Limitations (1)			
Parameter	**Units**	**Effluent Limits**	
		Maximum Daily	**Average Monthly**
5-Day Biochemical Oxygen Demand (BOD_5)	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_{50}	% effluent	No acute toxicity (2)	

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:

Diffuser Outfalls 002 / 003 - Final Effluent Limits			
Parameter	**Units**	**Effluent Limits**	
		Maximum Daily	**Average Monthly**
5-Day Biochemical Oxygen Demand (BOD_5)	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 (1)	µg/L	11.3	11.3
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_{50}	% effluent	No acute toxicity (2)	

Footnote: TR = Total Recoverable
(1) Effective **November 1, 2022**.
(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.

Effluent Monitoring Requirements for Outfall 001 and Outfalls 002/003 (1)

Parameter	Units	Monitoring Frequency	Type	~~RRV (2)~~	Reporting Requirement
Flow	MGD	Continuous	Instantaneous(~~3~~2)	–	Daily Max & Mo Avg
BOD_5	mg/L	2/Week (~~4~~3)	Composite	–	Daily Max & Mo Avg
	lb/day	1/Month	Calculated	–	Daily Max & Mo Avg
TSS – Intake Water	mg/L	2/Week (~~4~~3)	Composite	–	None
TSS – Effluent Gross	mg/L	2/Week (~~4~~3)	Composite	–	None
TSS – Net (~~5~~4)	lb/day	1/Month	Calculated	–	Daily Max & Mo Avg
COD	mg/L	2/Week (~~4~~3)	Composite	–	Daily Max & Mo Avg
	lb/day	1/Month	Calculated	–	Daily Max & Mo Avg
Oil and Grease	mg/L	2/Week (~~4~~3)	Grab	~~1~~	Daily Max & Mo Avg
	lb/day	1/Month	Calculated	–	Daily Max & Mo Avg
Phenol	µg/L	1/Week	Grab	~~10~~	Daily Max & Mo Avg
	lb/day	1/Month	Calculated	–	Daily Max & Mo Avg
Ammonia (as N)	mg/L	2/Week (~~4~~3)	Composite	~~0.07~~	Daily Max & Mo Avg
	lb/day	1/Month	Calculated	–	Daily Max & Mo Avg
Sulfide, Total	µg/L	1/Week	Composite	~~40~~ (~~6~~)	Daily Max & Mo Avg
	lb/day	1/Month	Calculated	–	Daily Max & Mo Avg
Sulfide, Dissolved	µg/L	1/Week	Composite (~~7~~5)	–	Daily Max & Mo Avg
Hydrogen Sulfide (H_2S)	µg/L	1/Week	Calculated (~~7~~5)	~~20~~	Daily Max & Mo Avg
Chromium, TR	µg/L	1/Week	Composite	~~10~~	Daily Max & Mo Avg
	lb/day	1/Month	Calculated	–	Daily Max & Mo Avg

Effluent Monitoring Requirements for Outfall 001 and Outfalls 002/003 (1)					
Parameter	Units	Monitoring Frequency	Type	~~RRV (2)~~	Reporting Requirement
Chromium, Hexavalent	µg/L	1/Week	Composite	~~2~~	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 (~~4~~3,~~8~~6) 1/Month	Composite	~~0.2~~	Daily Max & Mo Avg
Arsenic, TR	µg/L	2/Year (~~4~~3,~~8~~6) 1/Month	Composite	~~1~~	Daily Max & Mo Avg
Selenium, TR	µg/L	2/Year (~~4~~3,~~8~~6) 1/Month	Composite	~~1~~	Daily Max & Mo Avg
Aluminum, Dissolved	µg/L	2/Year (3)	Composite	~~9~~	Report
Cyanide, Total	µg/L	2/Year (3)	Grab	~~3~~	Report
Iron, TR	µg/L	2/Year (3)	Composite	~~20~~	Report
Lead, TR	µg/L	2/Year (3)	Composite	~~0.3~~	Report
Mercury, TR	µg/L	2/Year (3)	Composite	~~0.005~~	Report
Total Residual Chlorine (7)	mg/L	1/Month	Grab	~~0.1~~	Report
~~Manganese Oxide (9)~~	~~µg/L~~	~~1/Month~~	~~Grab~~	~~1~~	~~Report~~
Nitrate + Nitrite (Nov 1 – July 31)	mg/L	2/Year (~~4~~3,~~8~~6) 1/Month	Composite	~~0.02~~	Daily Max & Mo Avg
Nitrate + Nitrite (Aug 1 – Oct 31)	mg/L	1/Week (~~10~~8)	Composite	~~0.02~~	Daily Max & Mo Avg
Total Kjeldahl Nitrogen	mg/L	1/Week (~~10~~8)	Composite	~~0.225~~	Mo Avg
TN (~~11~~9)	lb/day	1/Month (~~10~~8)	Calculated	~~--~~	Mo Avg
TP	mg/L	1/Month (~~10~~8)	Composite	~~0.003~~	Mo Avg
	lb/day	1/Month (~~10~~8)	Calculated	~~--~~	Mo Avg
Temperature	degrees C	1/Week	Instantaneous	~~0.1~~	Daily Max & Mo Avg
Whole Effluent Toxicity, Acute	% Effluent	1/Quarter (~~12~~10)	Grab		Pass/Fail

Effluent Monitoring Requirements for Outfall 001 and Outfalls 002/003 (1)					
Parameter	Units	Monitoring Frequency	Type	~~RRV (2)~~	Reporting Requirement

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) Analytical methods must have sufficient sensitivity to either detect the parameter with quantified results (including J-flagged) or report a non-detect with a method detection level at or below the RRV.~~

~~(3)~~(2) Requires recording device or totalizer.

~~(4)~~(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.

~~(5)~~(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.

~~(6) RRV based on Energy Labs Reporting Level.~~

~~(7)~~(5) H_2S calculated based on dissolved sulfide concentrations and pH in accordance with Standard Methods Method 4500-S2- unless another method is proposed and accepted by DEQ. ~~Nondetect at the RRV is considered compliance with the H_2S effluent limit.~~

~~(8)~~(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.

~~(9)~~(7) ~~Monitoring for manganese oxide is only for discharges from Outfall 001~~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.

~~(10)~~(8) Monitoring required only during the summer season of August 1 – October 31st.

~~(11)~~(9) TN is the sum of Nitrate+Nitrite and TKN.

~~(12)~~(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_2 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_2S)	µg/L	1/Quarter	Calculated (1)	20
pH	s.u.	1/Quarter	Instantaneous/Grab	0.1
Total Nitrogen (2)	µg/L	1/Month (3)	Grab or Calculated	0.245

Footnotes:
(1) Calculate H_2S based on dissolved sulfide concentrations and pH in accordance with Standard Methods Method 4500-S2-, unless another method is proposed and accepted by DEQ.
(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 31st.

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 28th 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 28th 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 that $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.

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 No. BER 2019-01 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 December 4, 2019. The Board has reviewed and considered the Stipulation and has been advised that CHS's Amended Appeal Issues Nos. 3, 4, 6, and 7 have been fully and finally compromised and settled upon the merits and that CHS's Amended Appeal Issue No. 5 has been partially settled by agreement of the Parties and 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. Four of the eight issues identified in CHS's Notice of Appeal and Request for Hearing are resolved through the Board's adoption a final agency decision as specified herein and as further specified in the MPDES Permit, attached hereto as Exhibit A and incorporated herein by this reference. The fully resolved issues are CHS's Amended Appeal Issues Nos. 3, 4, 6, and 7. CHS's Amended Appeal Issue No. 5 is partially resolved.

9. As pertinent to CHS's Amended Appeal Issue No. 3, regarding Required Reporting Values ("RRVs") for Hydrogen Sulfide, it is appropriate to remove the "RRV" column, Footnote No. 2, and Footnote No. 6 from the 2019 Permit (pages 7 and 8 of the 2019 Permit). DEQ acknowledges that the RRV for Total Sulfide will be based on Energy Labs' Reporting Level. While the RRV column was added to provide clarity, the column may suggest that certain limited exceptions to the RRV requirements found in Department Circular DEQ-7 are inapplicable.

10. As pertinent to CHS's Amended Appeal Issue No. 4, regarding composite sampling. CHS states that its facility and operations constrain manual composite sample collection. Although not required to do so, CHS currently

maintains a primary and a backup autosampler. DEQ acknowledges that in the unlikely event CHS experiences autosampler failure, DEQ agrees that CHS may request and DEQ may approve a temporary waiver of related sampling requirements.

11. As pertinent to part of CHS's Amended Appeal Issue No. 5, regarding Hydrogen Sulfide Monitoring, it is appropriate to delete the second sentence of Footnote No. 7 from the table entitled "Effluent Monitoring Requirements for Outfall 001 and Outfalls 002/003" on Page 8 of the 2019 Permit. More specifically, the sentence to be deleted is, "Nondetect at the RRV is considered compliance with the H2S effluent limit." This sentence was included in error and it incorrectly implies there is a H2S effluent limit in the 2019 Permit. CHS reserves the right to continue the Amended Appeal Issue No. 5 regarding the method for Hydrogen Sulfide monitoring.

12. As pertinent to CHS's Amended Appeal Issue No. 6, regarding Whole Effluent Toxicity ("WET") testing requirements, CHS has submitted WET testing results indicating no acute toxicity of its effluent. As a result, it is appropriate to allow CHS to submit semi-annual acute toxicity testing instead of quarterly. Provided CHS's WET testing results continue to demonstrate no acute toxicity, CHS may continue with the semi-annual testing regime through the remainder of the term of the 2019 Permit (through October 31, 2020 and any related period of

administrative continuance provided under ARM 17.30.1313). However, should CHS's testing results indicate a WET testing failure, CHS would be required to follow the testing regime as specified on Pages 9-10 of the 2019 Permit.

13. As pertinent to CHS's Amended Appeal Issue No. 7, regarding TRC monitoring, it is appropriate to remove the monitoring requirement for manganese oxide from page 8 of the 2019 Permit, as well as the related footnote. In addition, a footnote will be added to the Total Residual Chlorine parameter on page 8 of the 2019 Permit as follows: "CHS may eliminate manganese interference using an approved procedure under 40 CFR Part 136. Should CHS utilize such a method, DMR reporting for TRC should be based upon net TRC." This change is appropriate because the manganese oxide monitoring requirement included in the 2019 Permit was not based on an approved method to account for TRC interference. DEQ acknowledges CHS is currently monitoring and reporting gross TRC. Effective February 1, 2020, CHS will monitor and report net TRC.

14. The modified Permit attached hereto as Exhibit A appropriately incorporates modifications to the appealed 2019 Permit as contemplated in the Stipulation.

15. 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, specifically reserving the CHS's appeal rights through contested case proceedings concerning CHS's Amended Appeal Issue Nos. 1, 2, 5, and 8 as listed in its Amended Notice of Appeal, dated April 22, 2019.

16. All modifications to the 2019 Permit as contemplated by the parties through this Stipulation and within Exhibit A become fully effective and enforceable on February 1, 2020, with the exception of any stayed conditions resulting from CHS's remaining Amended Appeal Issues Nos. 1, 2, 5, and 8.

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

18. The Board's Decision as to Amended Appeal Issues Nos. 3, 4, 5 (in part), 6, and 7 shall represent the FINAL AGENCY DECISION for purposes of the Montana Administrative Procedure Act, Section 2-4-623, MCA.

19. On or before January 17, 2020, the Parties shall contact Aleisha Solem, Paralegal, at Agency Legal Services Bureau, to set a telephonic scheduling conference to reset the vacated dates of the Scheduling Order for purposes of hearing CHS's Amended Appeal Issues Nos. 1, 2, 5, and 8.

DATED this ____day of December, 2019.

By: _____
Christine Deveny
Chair
Board of Environmental Review

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