Montana
Board of Environmental Review
P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: www.deq.state.mt.us

AGENDA

FRIDAY, MAY 30, 2014
METCALF BUILDING, ROOM 111
1520 EAST SIXTH AVENUE, HELENA, MONTANA
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NOTE: *Individual agenda items are not assigned specific times. For public notice purposes, the meeting will begin no earlier than the time specified; however, the Board might not address the specific agenda items in the order they are scheduled. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone at (406) 444-6701 or by e-mail at jwittenberg@mt.gov no later than 4 days prior to the meeting to advise her of the nature of the accommodation you need.*

9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the March 21, 2014, meeting minutes.

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATE

1. Enforcement cases assigned to the Hearing Examiner

a. **In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps and Dennis Rasmussen at the Trailer Terrace, PWSID No. MT0000025, Great Falls, Cascade County, BER 2012-11 PWS.** A *Fourth Order Granting Extension* was issued on December 1, 2013, giving the parties through April 1, 2014, to settle the matter or file a joint proposed prehearing schedule. On April 9, 2014, a telephonic conference was held in which the deadline to file a proposed rehearing schedule or to settle the case was continued until August 1, 2014.

b. **In the matter of violations of the Sanitation in Subdivisions Act and Public Water Supply Laws by Roger Emery at the Sunrise Motel, Sidney, Richland County, BER 2013-06 SUB.** On March 20, 2014, the hearing examiner issued the *First Scheduling Order*, setting the contested case hearing for September 10, 2014.

2. 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 April 9, 2014, the hearings examiner issued an *Order Granting the Joint Unopposed Motion for Partial Remand of Permit to Department of Environmental Quality and for Suspension of Proceedings*. On May 14, 2014, DEQ filed a *Status Report* regarding the matter. A modified permit will be made available for public comment on or before June 9, 2014.

   b. **In the matter of the notice of appeal for hearing by Montana Environmental Information Center regarding DEQ's approval of coal mine permit No. C1993017 issued to Signal Peak Energy, LLC, for Bull Mountain Mine No. 1 in Roundup, MT, BER 2013-07 SM.** The following documents have been filed in this matter since the March 21 Board meeting, and resolution of two motions is pending.

   - 3/21/14 – Appellant Montana Environmental Information Center's Unopposed Motion for Extension of Briefing Deadlines
   - 4/01/14 – Appellant Montana Environmental Information Center's Motion to Amend and Join Sierra Club as a Co-appellant and Brief in Support
   - 4/10/14 – Signal Peak Energy LLC's Response in Opposition to MEIC's Motion to Amend and Join Sierra Club as Co-appellant
   - 4/11/14 – Appellant Montana Environmental Information Center's Motion for Summary Judgment and Brief in Support
   - 4/24/14 – DEQ's Unopposed Motion to Extend Briefing Schedule and Memorandum in Support
   - 4/25/14 – Appellant Montana Environmental Information Center's Reply in Support of its Motion to Amend and Join Sierra Club as Co-appellant
   - 5/05/14 – Order Extending Briefing Schedule

III. ACTION ITEMS

A. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Amend ARM 17.8.501 Definitions and 17.8.504 Air Quality Permit Application Fees, to adjust air quality permit application fees to more closely reflect the cost of processing a permit application, clarify relevant definitions, and make other housekeeping amendments.

2. Amend ARM 17.8.818 Review of Major Stationary Sources and Major Modifications – Source Applicability and Exemptions and 17.8.820 Source Impact Analysis, to reflect changes to major New Source Review Prevention of Significant Deterioration of Air Quality permitting regulations, Significant Impact Levels (SILs), and Significant Monitoring Concentration (SMC) for $PM_{2.5}$.

B. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. In the matter of proposed final adoption of amended ARM 17.8.102 incorporating the air quality rules adopted in the 2013 edition of the Code of Federal Regulations and current updates to state statutes and regulations that are incorporated by reference in the rules.

C. NEW CONTESTED CASES

1. **In the matter of the notice of appeal and request for hearing by Yellowstone Energy Limited Partnership (YELP) regarding issuance of MPDES Permit NO. MT0030180 for YELP's facility in Billings, MT, BER 2014-01 WQ.** The Board received the appeal on April 3, 2014. The Interim Hearings Examiner issued the *First Prehearing Order* on April 10, 2012. On April 29, 2014, the attorney for YELP filed *Unopposed Motion to Stay Proceedings*, and on May 6, 2014, the Interim Hearings Examiner issued *Order Granting Motion to Stay Proceedings*, requiring a status report no later than August 1, 2014. The Board may assign a permanent hearings examiner or decide to hear the matter.

2. **In the matter of appeal and request for hearing by Missoula County regarding DEQ's issuance of MPDES Permit No. MT0000035 issued to M2Green Redevelopment's site in Frenchtown, MT, BER 2014-02 WQ.** The Board received the appeal on April 14, 2014. On April 17, the Interim Hearings Examiner issued the *First Prehearing Order*. A *Stipulated Scheduling Order* was submitted by the parties on May 7, 2014. The Board may assign a permanent hearings examiner or decide to hear the matter.

3. **In the matter of the notice of appeal and request for hearing by the Clark Fork Coalition regarding DEQ's issuance of MPDES Permit NO. MT0000035 issued to M2Green Redevelopment's site in Frenchtown, MT, BER 2014-03 WQ.** The Board received the appeal on April 14, 2014. On April 17, the interim hearings examiner issued the *First Prehearing Order*. The Board may assign a permanent hearings examiner or decide to hear the matter.

IV. 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.

V. ADJOURNMENT

Montana
Board of Environmental Review
P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: www.deq.state.mt.us

MINUTES

March 21, 2014

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Madam Chair Shropshire at 9:02 a.m., on Friday, March 21, 2014, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Madam Chair Shropshire and Larry Mires

Board Members Present via Phone: Joan Miles, Chris Tweeten, Joe Russell, and Heidi Kaiser

Board Members Absent: Marietta Canty

Board Attorney Present: Katherine Orr, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tracy Stone-Manning (Director); Tom Livers (Deputy Director); Steve Kilbreath – Director's Office; John North, Carol Schmidt, Norman Mullen, Paul Nicol, Dana David – Legal; Jon Dilliard, Eugene Pizzini, Rachel Clark, Barb Kingery – Public Water Supply & Subdivisions Bureau; David Klemp, Eric Merchant, Julie Merkel, Rebecca Harbage, Hoby Rash, Ed Warner – Air Resources Management Bureau; John Arrigo – Enforcement Division; Ed Coleman, Chris Cronin, Bob Smith – Industrial & Energy Minerals Bureau; Eric Urban, Dave Feldman – Water Quality Planning Bureau;

Interested Persons Present *(Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.)*: Benjamin Schmidt – Missoula City-County Health Department; Anne Hedges – Montana Environmental Information Center;

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At the request of Chairman Shropshire, Mr. Livers took roll call of Board members present.

I.A.1 Review and approve January 21, 2014, Board meeting minutes.

Chairman Shropshire called for a motion to approve the January 21, 2014, meeting minutes. Mr. Mires noted that the minutes indicated, under the Call to Order, that the meeting was called to order on July 26, 2013, but should be January 21, 2014. Mr. Mires MOVED to adopt the minutes with the correction. Ms. Miles SECONDED the motion. The motion CARRIED 6-0.

II.A.1.a In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps and Dennis Rasmussen at the Trailer Terrace, PWSID No. MT0000025, Great Falls, Cascade County, BER 2012-11 PWS. *(No discussion took place regarding this matter.)*

II.A.1.b In the matter of violations of the Sanitation in Subdivision Act and Public Water Supply Laws by Roger Emery at the Sunrise Motel, Sidney, Richland County, BER 2013-06 SUB. *(No discussion took place regarding this matter.)*

II.A.2.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. Orr said WECO and the department are working out terms of the permit, so the proceedings will be suspended pending those attempts.

II.A.2.b In the matter of the notice of appeal for hearing by Montana Environmental Information Center regarding DEQ's approval of coal mine permit No. C1993017 issued to Signal Peak Energy, LLC, for Bull Mountain Mine No. 1 in Roundup, MT, BER 2013-07 SM.

Ms. Orr said this matter is possibly going to have disposition on summary judgment.

III.A.1 In the matter of the amendment of the Missoula City-County air quality regulations to clarify the wildfire smoke emergency episode avoidance plan; add a temporary permitting process for portable industrial sources; clarify general outdoor burning procedures and the definition of bonfire; modify existing paving rules; provide general rule clarification and the addition of solid fuel burning devices for licensed mobile food vendors; and remove the administrative review process for certain permitting actions.

Mr. Merchant provided context regarding the proposed revisions. He explained that the rule initiation and associated public processes took place at the local level, and the department has determined that the proposed rule revisions are procedurally and substantively consistent with the applicable statutory requirements for adoption and implementation of changes to the regulatory program. Mr. Merchant responded to questions from the Board.

Mr. Schmidt said Missoula City-County Health Department is requesting that the Montana State Board of Environmental Review simultaneously approve two records of adoption for the Missoula City-County Air Pollution Control Program. He provided background information on the proposals.

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Chairman Shropshire called for a motion to amend the Missoula County air quality regulations. Ms. Miles so MOVED. Mr. Russell SECONDED the motion. After some discussion, Ms. Miles amended her motion to approve the amendment of Missoula City-County air quality regulations, and the amendment process. Mr. Russell concurred with the amendment. Chairman Shropshire asked if there was anyone in the audience who would like to comment on the matter. No one responded. The motion CARRIED with a 6-0 vote.

Ms. Miles congratulated Missoula City-County Health Department on their national accreditation award. She said they are now one of 31 public health departments in the country that have gone through a voluntary accreditation process to ensure they are operating at high performance. Mr. Russell and Chairman Shropshire echoed the congratulations.

III.B.1 In the matter of the request to initiate rulemaking to amend Title 17, Chapter 36, Subchapter 9, On-Site Subsurface Wastewater Treatment Systems by updating definitions and Table 1 Setback Distances to provide consistency between the subdivision rules in Title 17, Chapter 36 and Circular DEQ-4, 2013 edition; amend Title 17, Chapter 38, Subchapter 101(4)(d) to adopt by reference the proposed changes to Title 17, Chapter 36 for Subdivisions, specifically ARM 17.36.320 through 17.36.323 and 17.36.325, and to remove the adoption by reference in ARM 17.36.327; amend Title 17, Chapter 38, Subchapter 106(2)(a), (d), and (e) to provide fee structure consistency for review of public water supply and sewage systems that correspond to the proposed changes to Department Circular DEQ-1, the adopted changes to Department Circular DEQ-4, 2013 edition, and new proposed Department Circular DEQ-10; and to amend Title 17, Chapter 38, Subchapter 106(2) to add a provision (f) for the review of public water supply systems that correspond to proposed Department Circular DEQ-16.

Ms. Kingery said in the last legislative session and previous rulemakings, some rules were identified as needing to be updated. She identified the rules and the changes that were being proposed. She answered questions from board members.

Chairman Shropshire called for a motion to initiate the rulemaking to amend the sewage system requirements, subdivision rules, onsite surface wastewater and public water rules, and to appoint Ms. Orr as the permanent hearing examiner. Ms. Kaiser so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a 6-0 vote.

III.C.1 In the matter of the amendment of the insitu coal operations rule as requested by the Office of Surface Mining (OSM). The change will only be removing the language stating that ARM 17.24.320 (Plans for Disposal of Excess Spoil) is not applicable to insitu coal operations. This was requested by OSM as it made the States rule less stringent then the federal rule.

Mr. Coleman requested the Board adopt the proposed amendment to the rules that implement Montana's Strip and Underground Mine Reclamation Act, and provided details of the proposed amendments.

Chairman Shropshire called for motion to adopt the amendment of ARM 17.24.905 as set forth in the draft notice. Ms. Miles so MOVED. Chairman Shropshire amended the call for motion to adopt the amendment and the 311 Analysis. Ms. Miles concurred

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with the amended motion. Mr. Russell SECONDED the motion. Ms. Kaiser recused herself from taking action on this matter. Ms. Shropshire asked if anyone would like to comment on the matter, and no one responded. The motion CARRIED 5-0.

III.C.2 In the matter of the adoption of New Rule I pertaining to the administrative requirements for limited opencut operations. The Department is proposing New Rule I in order to implement the provisions for limited opencut operations in Section 5 of Senate Bill 332 (2013).

Mr. Cronin addressed the Board and explained the rulemaking. He said New Rule I sets forth administrative procedures necessary to implement Section 5 of Senate Bill 332 and the department believes adopting the rule directly supports the intent of the 2013 Act Revisions.

Chairman Shropshire called for public comment on the rulemaking. There was no response.

Chairman Shropshire called for a motion to adopt New Rule I and incorporate the 311 checklist. Ms. Kaiser so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED 6-0.

III.C.3 In the matter of final adoption of proposed amendments to Title 17, Chapter 30, Subchapter 6, temporary water quality standards for the New World Mining District, as noticed in MAR 17-352.

Mr. Urban said the Board initiated rulemaking to amend the Temporary Water Quality Standards for the New World Mining District on January 21, and that a public hearing was held on February 20. He said the proposed amendments modify the effective time frame for the temporary water quality standards, which are set to expire on June 4, 2014, by extending them to June 4, 2019.

Chairman Shropshire called for public comment on the rulemaking. No one commented.

Chairman Shropshire called for a motion to adopt the proposed amendments, the 521/311 Analyses, and the Hearings Examiner Report. Mr. Mires so MOVED. Mr. Russell SECONDED the motion. The motion CARRIED 6-0.

III.D.1 In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP0513-08 for the Colstrip Steam Electric Station, Colstrip, BER 2013-01 AQ.

Mr. Livers described Rule 41a for the Board.

Mr. Mullen addressed the Board regarding both BER 2013-01 and BER 2013-02. He provided the legal aspects of the cases.

Mr. Klemp provided details of the technical aspects of the settlement. He said the settlements resolve two petitions that were filed with EPA against the two Title V permits that were issued. He responded to questions from the board.

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Ms. Kaiser recused herself from taking action on both cases.

Chairman Shropshire called for a motion to authorize her to sign the order dismissing the matter with prejudice. Ms. Miles so MOVED. Mr. Russell SECONDED the motion. The motion CARRIED 5-0.

III.D.2 In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP2953-07 for the JE Corette Steam Electric Station, Billings, BER 2013-02 AQ.

Chairman Shropshire called for a motion to authorize her to sign the order dismissing the matter with prejudice. Mr. Mires so MOVED. Mr. Russell SECONDED the motion. The motion CARRIED 5-0.

IV. General Public Comment

Chairman Shropshire asked if any member of the audience would like to speak to any matters before the Board. No one responded.

V. Adjournment

Chairman Shropshire called for a motion to adjourn. Mr. Mires so MOVED. Ms. Miles SECONDED the motion. The motion CARRIED 6-0.

The meeting adjourned at 10:58 a.m.

Board of Environmental Review March 21, 2014, minutes approved:

_____
ROBIN SHROPSHIRE
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

_____
DATE

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BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR INITIATION OF RULE AMENDMENT

Agenda # III.A.1.

Agenda Item Summary: The department requests that the board initiate rulemaking to amend the air quality rules to revise the air quality permit application fees, clarify relevant definitions, and make other housekeeping amendments.

List of Affected Rules: This request to initiate rulemaking would amend ARM 17.8.501 and 17.8.504.

Affected Parties Summary: The proposed amendments to the air quality permit application fees would affect any new or modified major source subject to ARM Title 17, chapter 8, subchapters 8, 9, 10, or 12.

Scope of Proposed Proceeding: The department requests that the board initiate rulemaking and conduct a public hearing to consider the proposed amendments to the above stated rules.

Background: The board is required by § 75-2-111(5), MCA, to adopt "by rule ... a schedule of fees required for" air quality "permits, permit applications, and registrations ...." The board has done so by adopting ARM 17.8.504. Section 75-2-112(1), MCA, states that the "department [of environmental quality] is responsible for the administration" of the air quality laws. Under § 75-2-220, MCA, a Montana air quality permit applicant is required to submit to the department a fee sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting requirements, including:

1. Reviewing and acting upon the application
2. Implementing and enforcing the terms and conditions of the permit
3. Preparing generally applicable regulations or guidance
4. Modeling, analysis and demonstrations
5. Providing support to sources under the small business stationary source technical and environmental compliance assistance program

Under the proposed amendments, the application fees for minor and synthetic minor sources would remain unchanged. However, sources seeking new or modified major source permits, i.e., major New Source Review-Prevention of Significant Deterioration (NSR-PSD) and Title V operating permits, would see an application fee increase.

Although the costs of processing and issuing air quality permits have increased, permit application fees have remained the same since 2000. The complexity of processing permit applications for major sources of air pollution subject to NSR-PSD

and/or Title V permitting programs far exceeds the fees currently collected for processing these applications. Further, annual operating fees paid by existing facilities have traditionally subsidized a significant portion of the department's costs of processing permit applications for new facilities, which initially do not pay operating fees. The proposed increase in the application fee for new or modified facilities would more accurately reflect the costs of processing these applications.

Hearing Information: The department recommends that the board appoint a hearing examiner and conduct a public hearing to take comment on the proposed amendments.

Board Options: The board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment;
2. Modify the notice and initiate rulemaking; or
3. Determine that amendment of the rules is not appropriate and deny the department's request to initiate rulemaking.

DEQ Recommendation: The department recommends that the board initiate rulemaking and appoint a hearing examiner to conduct a public hearing, as described in the attached draft Notice of Public Hearing on Proposed Amendment.

Enclosure:

1. Draft Notice of Public Hearing on Proposed Amendment

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.501 and 17.8.504 pertaining to definitions and air quality permit application fees	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On _____, 2014, at __:__ __.m., the Board of Environmental Review will hold a public hearing [in/at address], Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., _____, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.501 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) remains the same.

(2) "Major modification" has the same meaning as in ARM 17.8.801.

~~(2)~~ (3) "Modified ~~source~~ facility" means a facility for which an application to modify, as defined in ARM ~~Title 17, chapter 8, subchapter 7~~ 17.8.740, is submitted to the department.

~~(3)~~ (4) "New ~~source~~ facility" means a ~~source, as defined in ARM Title 17, chapter 8, subchapter 1~~ facility, for which the department has not previously issued a Montana air quality permit.

(5) "New major stationary source" means a major stationary source, as defined in ARM 17.8.801, for which the department has not previously issued a Montana air quality permit.

(4) and (5) remain the same, but are renumbered (6) and (7).

~~(6) "Source type A" means a facility subject to the provisions of ARM Title 17, chapter 8, subchapter 12.~~

~~(7) "Source type B" means a facility subject to the provisions of ARM Title 17, chapter 8, subchapter 7.~~

~~(8) "Source type NSR/PSD" means a facility subject to the provisions of ARM Title 17, chapter 8, subchapters 8, 9, or 10.~~

~~(9) "Source type S/SM" means a facility subject to the provisions of ARM 17.8.1204(3).~~

AUTH: 75-2-111, MCA
IMP: 75-2-211, MCA

REASON: The board is proposing to amend definitions in (2) and (3), renumber them to (3) and (4), and add two definitions as (2) and (5). The board is also proposing to eliminate definitions in (6) through (9). The proposed amendments to (2) and (3) would replace "source" with "facility," which would make the use of those terms consistent throughout the ARM. The proposed new definitions in (2) and (5) would add definitions of "major modification" and "new major stationary source" because those terms would be used in ARM 17.8.504 to define classes of sources for purposes of establishing fees. Those terms are already defined in ARM 17.8.801 and the proposed additions would refer to that rule. The definitions in (6) through (9) are proposed to be eliminated because the proposed amendments to ARM 17.8.504 would eliminate the defined terms from the ARM. Because terms that are not used should not be defined, the board is also proposing to eliminate the definitions in (6) through (9).

17.8.504 AIR QUALITY PERMIT APPLICATION FEES (1) An applicant submitting a Montana air quality permit application~~, as~~ required in ARM Title 17, chapter 8, subchapters 7, 8, 9, or 10, shall submit ~~an~~ the appropriate application fee as ~~provided in (1)(a), (b), and (c)~~ follows:

~~(a) the following table sets forth source types and associated fees:~~

~~Source Type~~	~~New Source~~	~~Modified Source~~
~~NSR/PSD~~	~~$15,000~~	~~$500~~
~~A~~	~~$1,200~~	~~$500~~
~~S/SM~~	~~$1,000~~	~~$500~~
~~B~~	~~$800~~	~~$500~~

~~(b) $500 for an application for a portable facility; and~~
~~(c) $500 for an application to register an oil and gas well facility.~~
(a) for a facility subject to ARM Title 17, chapter 8, subchapters 7 and 8, 9, or 10:
(i) for a new major stationary source - $15,000;
(ii) for a major modification - $3,500;
(b) for a facility subject to ARM Title 17, chapter 8, subchapter 7, and not subject to subchapters 8, 9, or 10, that is:
(i) required by ARM Title 17, chapter 8, subchapter 12 to obtain an operating permit:
(A) for a new facility - $2,000;
(B) for a modified facility - $1,500;
(ii) a new facility that is requesting an exemption under ARM 17.8.1204(3) - $1,000; or
(iii) a modified facility that has received or is requesting an exemption under ARM 17.8.1204(3) - $500;

(c) for a facility subject solely to ARM Title 17, chapter 8, subchapter 7:

(i) for a new facility - $800;

(ii) for a modified facility - $500;

(iii) for a portable facility - $500.

(2) An applicant submitting ~~one or more of the following~~ an air quality operating permit application~~s, as~~ required in ARM Title 17, chapter 8, subchapter 12, shall submit an appropriate application fee, ~~of $500 for each application~~ as follows:

(a) ~~an application~~ for a new ~~air quality operating~~ permit - $6,500;

(b) ~~an application~~ for an ~~air quality operating~~ permit renewal - $2,000; or

(c) ~~an application~~ for a significant modification ~~to~~ of ~~an air quality operating~~ permit - $1,500.

(3) An air quality permit application is incomplete until the ~~proper~~ appropriate application fee is paid to the department.

(4) and (5) remain the same.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA
IMP: 75-2-211, 75-2-220, 75-2-234, MCA

REASON: The board is proposing to amend (1) through (2)(c). In existing (1)(a), a table uses abbreviations of source categories to set application fees. The abbreviations are defined in ARM 17.8.501(6) through (9). The board is proposing to eliminate those definitions and also the table in ARM 17.8.504 that uses those abbreviations. The sources would instead be categorized for fee purposes by the rule subchapter(s) under which the source is regulated. For example, the abbreviation "NSR/PSD" is defined in existing ARM 17.8.501(8) as "a facility subject to the provisions of ARM Title 17, chapter 8, subchapters 8, 9, or 10." Then, existing ARM 17.8.504(1)(a) uses the term "NSR/PSD" to set the fee for that category. A proposed amendment in ARM 17.8.504(1)(a) would substitute the phrase "a facility subject to ARM Title 17, chapter 8, subchapters 7 and 8, 9, or 10" for "NSR/PSD." Similar amendments are proposed for the other categories used in existing ARM 17.8.504(1)(a) to set fees. This is being proposed to make the rule simpler and clearer. The board believes that the abbreviated terms were not easy to understand without reference to the definitions rule and that the proposed amendments would make the rule easier for the public and a regulated facility to understand.

In addition, in (1)(a), the board is proposing to amend the language that establishes fees for permits for new major stationary sources and major modifications by incorporating the definitions of those terms from ARM 17.8.801, which contains definitions used in ARM Title 17, chapter 8, subchapter 8 to regulate Prevention of Significant Deterioration (PSD) permitting in "attainment" areas, where certain contaminants do not exceed national ambient air quality standards (NAAQS). The PSD program is one part of the New Source Review (NSR) program, which also includes permitting in ARM Title 17, chapter 8, subchapters 9 and 10, for major stationary sources or major modifications in areas where the NAAQS are exceeded ("nonattainment areas") or areas with sources that may contribute to exceedances in a nonattainment area. The incorporation of definitions from ARM 17.8.801 is necessary because those terms are already defined in that rule and the terms in the fee rule must be consistent with the definitions and use of those terms in the

regulatory rules in ARM Title 17, chapter 8, subchapters 8, 9, and 10.

The proposed amendments would also increase certain application fees for Montana air quality permits (MAQPs) for facilities that require major New Source Review (NSR) permits or Montana air quality operating permits (Title V). Specifically, the board is proposing the following permit application fee amendments:

ARM 17.8.504(1)(a)(ii) - MAQP for an NSR major modification from $500 to $3,500

ARM 17.8.504(1)(b)(i)(A) - MAQP for a New Title V facility from $1,200 to $2,000

ARM 17.8.504(1)(b)(i)(B) - MAQP for a Modified Title V facility from $500 to $1,500

ARM 17.8.504(2)(a) - New Title V operating permit from $500 to $6,500

ARM 17.8.504(2)(b) - Title V operating permit renewal from $500 to $2,000

ARM 17.8.504(2)(c) - Title V operating permit modification from $500 to $1,500

The board is required by statute to "adopt a schedule of fees required for permits, permit applications, and registrations ... ." Section 75-2-111(5), MCA. While the board is responsible for adopting the fee schedule, an air permit applicant has the responsibility to "submit to the department a fee sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting requirements" of the air quality laws and rules. Section 75-2-220, MCA. Currently, permit applicants subject to the requirements of the department's Title V and NSR Montana air quality permit programs pay permit application fees that do not cover the costs incurred by the department in processing these permit applications. These costs are funded instead by the annual operating fees paid by existing businesses. This creates a situation where existing businesses are subsidizing new businesses. The board is proposing to reduce that subsidy by increasing the application fees for: (a) a facility subject to NSR major modification; (b) a new or modified MAQP for a facility subject to Title V operating permits; and (c) a new Title V operating permit, renewal, or modification.

The proposed levels of fee increases were developed in consultation with stakeholders. Those levels do not totally eliminate the subsidy, but will reduce it by a substantial amount.

In an effort to determine potential monetary impacts on facilities subject to the proposed application fee amendments, the board averaged the number of potentially affected applications received by the department per year over calendar years 2009-2013, which represents the most recent five-year period for which data is available. The following table shows the cumulative increase in air quality permit application fees for the average year within that period:

Application Type	Rule (all in ARM Title 17, chapter 8)	Average Number of Applications/Year	Average Increase From Proposed Rule/Year
MAQP (Montana Air Quality Permit)			
NSR Major Modification	subchapter 7 and 8, 9, or 10	0.2	$600.00
New MAQP for a Facility Requiring an Operating Permit	subchapters 7 and 12	8.2	$6,560.00
MAQP Modification for a Facility Requiring an Operating Permit	subchapter 7 and 12	1.2	$1,200.00
TOTAL			**$8,360.00**
Operating (Title V) Permit			
New	subchapter 12	1	$6,000.00
Renewal	subchapter 12	12	$18,000.00
Modification	subchapter 12	10	$10,000.00
TOTAL			**$34,000.00**

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., _____, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine

reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

_____ BY: _____

JOHN F. NORTH
Rule Reviewer

ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, _____, 2014.

BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM

EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION

Agenda # III.A.2.

Agenda Item Summary: The department requests that the board initiate rulemaking to amend air quality rule provisions in ARM Title 17, chapter 8, subchapter 8 to update requirements for particulate matter less than 2.5 micrometers in diameter (PM-2.5) from sources subject to major source permit rules.

List of Affected Rules: This rulemaking would amend ARM 17.8.818 and 17.8.820.

Affected Parties Summary: The proposed rule amendments would affect all new and modified major stationary sources regulated by the department under the New Source Review - Prevention of Significant Deterioration (NSR-PSD) air quality rules.

Scope of Proposed Proceeding: The department requests that the board initiate rulemaking and conduct a public hearing to consider the proposed amendments to the above-stated rules.

Background: On October 20, 2010, the U.S. Environmental Protection Agency (EPA) published a final rule establishing NSR-PSD increments, significant impact levels (SILs) and significant monitoring concentration (SMC) for PM-2.5 (75 Fed. Reg. 64864). The SILs are screening tools that have been used in NSR-PSD permitting to demonstrate that the proposed source's allowable emissions will not cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS); such a demonstration by an applicant is required to obtain a permit from the department. The SMC has been used to exempt sources from a requirement in the Clean Air Act (CAA), 42 U.S.C. § 7475(e)(2)), that they collect monitoring data for up to one year before submitting a permit application to help determine existing ambient air quality.

The board adopted these federal preconstruction review requirements into ARM Title 17, chapter 8, subchapter 8, on September 23, 2011.

The federal regulations concerning SILs and SMCs were challenged in a federal lawsuit as not complying with the federal Clean Air Act, and a federal appeals court vacated (overturned) portions of the regulations in 2013. *Sierra Club v. EPA*, 705 F.3d 458, 403 U.S. App. D.C. 318 (2013). EPA responded by adopting new regulations in 2013 that reduced the SMC for PM-2.5 to 0 ug/m^3, indicating that there is no air quality impact level below which a reviewing

authority has the discretion to exempt a source from the PM-2.5 monitoring requirements. In the same rulemaking, EPA also eliminated the SILs for PM-2.5, stating that it will initiate new rulemaking to address them in the future. Prevention of Significant Deterioration for PM-2.5 - SILs and SMCs: Removal of Vacated Elements, Final Rule, 78 Fed.Reg. 73698 (December 9, 2013).

The department is recommending that the board initiate rulemaking to remove from ARM 17.8.818 and ARM 17.8.820 the provisions with the same requirements that were eliminated from the EPA regulations just discussed. This would maintain consistency of Montana's rules with federal regulations and ensure Montana's ongoing NSR-PSD program primacy and authority.

Hearing Information: The department recommends the board appoint a hearing officer and conduct a public hearing to take comment on the proposed revisions to the ARM.

Board Options: The board may:

1. Initiate rulemaking and issue the attached Notice of Proposed Amendment of Rules;
2. Modify the Notice and initiate rulemaking; or
3. Determine that the amendment of the rules is not appropriate and deny the department's request to initiate rulemaking.

DEQ Recommendation: The department recommends that the board initiate rulemaking and appoint a hearing examiner to conduct a public hearing. as described in the draft Notice of Public Hearing on Proposed Amendment.

Enclosures:

1. Draft Notice of Public Hearing on Proposed Amendment

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.818 and 17.8.820 pertaining to review of major stationary sources and major modifications--source applicability and exemptions and source impact analysis	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On _____, 2014, at __:__ __.m., the Board of Environmental Review will hold a public hearing [in/at address], Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., _____, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.8.818 REVIEW OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS--SOURCE APPLICABILITY AND EXEMPTIONS (1) through (6) remain the same.

(7) The department may exempt a proposed major stationary source or major modification from the requirements of ARM 17.8.822, with respect to monitoring for a particular pollutant, if:

(a) the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:

(i) and (ii) remain the same.

(iii) PM-2.5: 4 [4 stricken] 0 $\mu g/m^3$, 24-hour average;

(iv) through (c) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.820 SOURCE IMPACT ANALYSIS (1) remains the same.

~~(2) For purposes of PM-2.5, the demonstration required in (1) is made if the emissions increase from the new stationary source alone or from the modification alone would cause in all areas, air quality impacts less than the following amounts:~~

~~Pollutant~~	~~Averaging time~~	~~Class I area~~	~~Class II area~~	~~Class III area~~
~~PM-2.5~~	~~Annual~~	~~0.06 µg/m^3~~	~~0.3 µg/m^3~~	~~0.3 µg/m^3~~
	~~24-hour~~	~~0.07 µg/m^3~~	~~1.2 µg/m^3~~	~~1.2 µg/m^3~~

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

REASON: On December 17, 2010, the Sierra Club petitioned the United States Court of Appeals for the District of Columbia Circuit (Court) to review the 2010 PM-2.5 significant impact levels (SILs) and significant monitoring concentration (SMC) final rule.

On January 22, 2013, the Court granted a request from the U.S. Environmental Protection Agency (EPA) to vacate and remand to the EPA portions of the New Source Review-Prevention of Significant Deterioration (NSR-PSD) regulations (40 CFR 51.166(k)(2) and 52.21(k)(2)) establishing the SILs for PM-2.5 so that the EPA could reconcile the inconsistency between the regulatory text and certain statements in the preamble to the 2010 final rule. The Court further vacated the portions of the NSR-PSD regulations (40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c)) establishing a PM-2.5 SMC, finding that the EPA lacked legal authority to adopt and use the PM-2.5 SMC to exempt permit applicants from the statutory requirement to compile and submit ambient monitoring data. Rather than eliminating, the EPA revised the SMC for PM-2.5 from four micrograms per cubic meter (ug/m^3) to 0 ug/m^3, indicating that there is no air quality impact level below which a reviewing authority has the discretion to exempt a source from the PM-2.5 monitoring requirements.

The board is proposing to amend ARM 17.8.818(7)(a)(iii), which concerns the SMC for particulate matter with a diameter of less than 2.5 microns (PM-2.5) from four ug/m^3 to 0 ug/m^3. In Sierra Club v. EPA, 705 F.3d 458, 403 U.S. App. D.C. 318 (2013), the United States Court of Appeals for the District of Columbia Circuit (Court) vacated the portions of the NSR-PSD regulations establishing a PM-2.5 SMC, finding that the EPA lacked legal authority to adopt and use the PM-2.5 SMC to exempt permit applicants from a statutory requirement to compile and submit ambient monitoring data. In response to that decision, EPA adopted a final rule that did not eliminate SMC completely, but rather revised the SMC for PM-2.5 from 4 ug/m^3 to 0 ug/m^3, indicating that there is no air quality impact level below which a reviewing authority has the discretion to exempt a source from the PM-2.5 monitoring requirements. See Prevention of Significant Deterioration for PM-2.5--SILs and SMCs: Removal of Vacated Elements, Final Rule, 78 Fed.Reg. 73698 (December 9, 2013). The proposed amendment would make the board's rule consistent with and as stringent as the EPA regulation. This would ensure Montana's ongoing NSR-PSD program primacy and authority.

The board is proposing to delete ARM 17.8.820(2), which includes a table. Section (2) concerns PM-2.5 SILs, which are screening tools that have been applied in NSR-PSD permitting to demonstrate that the proposed source's allowable emissions will not cause or contribute to a violation of the National Ambient Air

Quality Standards (NAAQS) or increment. In the Sierra Club v. EPA case cited above, the Court granted a request from EPA to vacate and remand to EPA portions of the NSR-PSD regulations establishing the SILs for PM-2.5 so that the EPA could reconcile the inconsistency between the regulatory text and certain statements in the preamble to the 2010 final rule. To accomplish this, EPA adopted the final rule cited above. The proposed deletion would make the board's rule consistent with and as stringent as the EPA regulation. This would ensure Montana's ongoing NSR-PSD program primacy and authority.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., _____, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

_____ BY: _____

JOHN F. NORTH
Rule Reviewer

ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, _____, 2014.

BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR ACTION ON RULE ADOPTION

Agenda # III.B.1.

Agenda Item Summary: The Department requests that the Board adopt the amendment to ARM 17.8.102, the air quality incorporation by reference (IBR) rule, to adopt more recent editions of federal statutes and regulations and state administrative rules.

List of Affected Rules: ARM 17.8.102.

Affected Parties Summary: The proposed rule amendments would affect sources of air pollution subject to regulation under the air quality rules in ARM Title 17, Chapter 8, that are subject to revisions codified in the July 1, 2013, edition of the Code of Federal Regulations (CFR), revisions codified in the 2012 edition of United States Code (USC), and revisions codified in the June 30, 2013, edition of the Administrative Rules of Montana (ARM).

Scope of Proposed Proceeding: The Board is considering final action on adoption of the amendment to ARM 17.8.102.

Background: Annually, the Department requests that the Board update the rules incorporating by reference federal statutes and regulations and state administrative rules. The IBR updating is accomplished by amending the dates of the editions of the CFR, U.S. Code, and ARM set forth in ARM 17.8.102(1). Failure to adopt the most recent edition of the CFR may result in the loss of state primacy for administering the air program.

Hearing Information: The board's hearing officer, Katherine Orr, presided over a public hearing on March 20, 2014, to take comment on the proposed amendments.

Board Options: The Board may:

1. Adopt the proposed amendments as set forth in the attached draft Notice of Amendment;
2. Adopt the proposed amendments with revisions that the Board finds are appropriate and that are consistent with the scope of the Notice of Public Hearing on Proposed Amendment and the record in this proceeding; or
3. Decide not to adopt the amendments.

DEQ Recommendation: The Department recommends that the Board adopt the rule with the amendments contained in the attached draft Notice of Amendment.

Enclosures:

1. Notice of Public Hearing on Proposed Amendment
2. HB 521 and 311 Analyses
3. Hearing Officer's Report
4. List of CFR Sections Affected
5. Draft Notice of Amendment

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.102 pertaining to incorporation by reference--publication dates	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On March 20, 2014, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 40, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., March 10, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) In this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2010~~ 2013, edition of the Code of Federal Regulations (CFR);

(b) adopted a section of the United States Code (USC) by reference, the reference is to the ~~2006~~ 2012 edition of the USC ~~and Supplement IV (2010)~~ as it exists on December 31, 2013;

(c) adopted ~~another~~ a rule of the ~~department or of another agency of the~~ state of Montana ~~by reference, the reference is to the December 31, 2010, edition~~ from another chapter of the Administrative Rules of Montana (ARM), the reference is to the rule in effect on June 30, 2013.

~~(2) For purposes of this chapter, the following subparts, or portions thereof, of 40 CFR Part 60, are excluded from incorporation by reference:~~

~~(a) 40 CFR 60, Subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for which Construction is Commenced After November 30, 1999, or for which Modification or Reconstruction is Commenced on or After June 1, 2001 (40 CFR 60.2000 through 60.2265, and all associated appendices and tables), as vacated June 8, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit, ruling; and~~

~~(b) 40 CFR Part 60, Subpart HHHH, Emission Guidelines and Compliance Times for Coal-fired Electric Steam Generating Units.~~

~~(3)~~ (2) For purposes of this chapter, the following subparts~~, or portions~~

~~thereof,~~ of 40 CFR Part 63 are excluded from incorporation by reference:

(a) 40 CFR 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing (40 CFR 63.8380 through 63.8515, and all associated appendices and tables)~~, as vacated March 13, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit~~; and

(b) 40 CFR 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing (40 CFR 63.8530 through 63.8665, and all associated appendices and tables)~~, as vacated March 13, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit; and~~

~~(c) 40 CFR 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (40 CFR 63.7480 through 63.7575, and all associated appendices and tables), as vacated June 8, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit~~.

(3) A copy of materials incorporated by reference in this chapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Avenue, P.O. Box 200901, Helena, MT 59620-0901.

(4) Copies of federal materials also may be obtained from:

(a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-5847 or (703) 504-5000; fax: (703) 504-5900; e-mail: orders@ntis.gov; web: http://www.ntis.gov;

(b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8595; e-mail: ncepimal@one.net; web: http://www.epa.gov/ncepihom;

(c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-2104; e-mail: orders@gpo.gov; web: http://www.gpoaccess.gov; and

(d) the EPA regional office libraries listed at http://www.epa.gov/natlibra/libraries.htm.

AUTH: 75-2-111, MCA
IMP: Title 75, chapter 2, MCA

REASON: The board is proposing to amend the air quality rules to adopt the current editions of federal and state statutes, regulations, and rules that are incorporated by reference. The board is proposing to amend ARM 17.8.102(1) to adopt revisions to federal laws and regulations published in the 2012 edition of the U.S. Code, as it exists on December 31, 2013; the July 1, 2013, edition of the Code of Federal Regulations (CFR); and revisions to Montana administrative rules in effect on June 30, 2013. The rules in effect on that date will be contained in the Administrative Rules of Montana (ARM) as updated by the replacement pages dated June 30, 2013. The board is also proposing to amend ARM 17.8.102 to remove exceptions from incorporation by reference of certain subparts of federal regulations that were vacated by the courts and removed from the CFR or amended and readopted. The board adopts and incorporates by reference federal regulations to ensure that Montana's air quality rules are at least as stringent as federal air quality

regulations, to maintain primacy and federal delegation of Montana's air quality program, and to implement federal emission standards pursuant to a federal program of emissions control.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., March 27, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North BY: */s/ Robin Shropshire*
JOHN F. NORTH ROBIN SHROPSHIRE
Rule Reviewer Chairman

Certified to the Secretary of State, February 18, 2014.

Montana Department of
ENVIRONMENTAL QUALITY MEMO

TO: Board of Environmental Review
FROM: Norman J. Mullen, DEQ Staff Attorney NJM
SUBJECT: House Bill 521 (stringency) and House Bill 311 (takings) review of Air Incorporation by Reference (IBR) rulemaking in ARM Notice No. 17-353
DATE: March 18, 2014

HB 521 REVIEW
(Comparing Stringency of State and Local Rules
to Any Comparable Federal Regulations or Guidelines)

Sections 75-2-111 and 207, MCA, codify the air quality provisions of House Bill 521, from the 1995 legislative session, by requiring that the Board of Environmental Review, prior to adopting a rule to implement the Clean Air Act of Montana that is more stringent than a comparable federal regulation or guideline that addresses the same circumstances, make certain written findings after a public hearing and receiving public comment.

In this proceeding, the Board is proposing to amend ARM 17.8.102 by adopting more recent versions of the federal regulations, federal statutes, and rules of other Department programs and other Montana state agencies that are incorporated by reference into the state's air quality rules.

None of the proposed amendments would make the state rules more stringent than comparable federal regulations or guidelines. Rather, the proposed amendments to ARM 17.8.102 would update the Board's air quality rules to make them more consistent with federal air quality regulations and statutes. Therefore, no further House Bill 521 analysis is required.

(over, please)

HB 311 REVIEW
(Assessing Impact on Private Property)

Sections 2-10-101 through 105, MCA, codify House Bill 311, the Private Property Assessment Act, from the 1995 legislative session, by requiring that, prior to taking an action that has taking or damaging implications for private real property, a state agency must prepare a taking or damaging impact assessment. Under Section 2-10-103(1), MCA, "action with taking or damaging implications" means:

> a proposed state agency administrative rule, policy, or permit condition or denial pertaining to land or water management or to some other environmental matter that if adopted and enforced would constitute a deprivation of private property in violation of the United States or Montana constitution.

Section 2-10-104, MCA, requires the Montana Attorney General to develop guidelines, including a checklist, to assist agencies in determining whether an agency action has taking or damaging implications.

I reviewed the guidelines and researched whether the adoptions of the federal regulations being proposed to be incorporated by reference would constitute a deprivation of real property in violation of the federal or state constitution. I determined that they would not, and have completed an Attorney General's Private Property Assessment Act Checklist, which is attached to this memo. No further House Bill 311 assessment is required.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.102 pertaining to Incorporation by reference publication dates	))))	PRESIDING OFFICER REPORT

On March 20, 2014, at 1:30 p.m., the undersigned Presiding Officer presided over and conducted a public hearing held in Room 40 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to take public comment on the above-captioned proposed amendments. The amendments update the air quality rules by adopting more recent versions of federal regulations, federal statutes and state rules incorporated by reference.

1. Notice of the hearing was contained in the Montana Administrative Register (MAR), Notice No. 17-353, published on February 27, 2014, in Issue No. 4 at pages 353 through 355. A copy of the notice is attached to this report. (Attachments are provided in the same order as they are referenced in this report.)

2. A Court Reporter, Laurie Crutcher of Helena, Montana recorded the hearing.

3. There were no members of the public at the hearing who testified at the hearing. The Presiding Officer identified and summarized the MAR notice and read the Notice of Function of Administrative Rule Review Committee as required by Mont. Code Ann. § 2-4-302(7)(a).

SUMMARY OF HEARING

4. Ms. Rebecca Harbage, of the Department of Environmental Quality, testified and submitted a written statement explaining the proposed rule amendment. (The written statement is attached.) No other person testified.

5. A written memorandum was submitted by Department staff attorney, Norman J. Mullen with HB 521 and HB 311 (takings) reviews of the proposed amendments and a Private Property Assessment Act Checklist. (Mr. Mullen's memorandum is attached to this report.)

6. None of the proposed amendments would make the state rules more stringent than comparable federal regulations or guidelines. No further HB 521 analysis is required.

7. With respect to HB 311 (the Private Property Assessment Act, Mont. Code Ann. §§ 2-10-101 through 105), the State is required to assess the taking or damaging implications of a proposed rule or amendments affecting the use of private real property. This rulemaking affects the use of private real property. A Private Property Assessment Act Checklist was prepared, which shows that the proposed amendments do not have taking or damaging implications. Therefore, no further assessment is required.

8. The period to submit comments ended at 5 p.m. on March 27, 2014.

PRESIDING OFFICER COMMENTS

9. The Board has jurisdiction to make the proposed amendments. See Mont. Code Ann. §§ 75-2-111.

10. The conclusions in the memorandum of Mr. Mullen concerning House Bill 521 (1995) and House Bill 311 (1995) are correct.

11. The procedures required by the Montana Administrative Procedure Act, including public notice, hearing, and comment, have been followed.

12. The Board may adopt the proposed rule amendments, reject them, or adopt the rule amendments with revisions not exceeding the scope of the public notice.

13. Under Mont. Code Ann. § 2-4-305(7), for the rulemaking process to be valid, the Board must publish a notice of adoption within six months of the date the Board published the notice of proposed rulemaking in the Montana Administrative Register, or by August 27, 2014.

DATED this 28th day of April, 2014.

KATHERINE J. ORR
Presiding Officer

List of CFR Sections Affected (July 1, 2010 - June 28, 2013)

Year / FR Volume	Section	Specific Change	Federal Register Reference	Summary	ARM Reference	Topic
2013/78	50	50 3, 50.14(c)(2)(vi), Appendix N revised, 50 18 added	3277	Revisions based on review of particulate matter NAAQS revising annual PM2.5 standard to 12 $\mu g/m^3$. Revising the AQI to be consistent with the revised standard. Final rule also includes revisions to the PSD program to reflect the NAAQS revisions	**17.8.202**	PM NAAQS Review
2011/76	50	Appendix C revised	54293	Measurement principle and calibration procedure for the measurement of CO in the atmosphere (Non-dispersive infrared photometry).	**17.8.202**	CO NAAQS Review
2012/77	50, 51	Revised	30160	Implementation of 2008 Ozone NAAQS nonattainment area classification, attainment deadlines. Also revokes 1997 Ozone NAAQS for transportation conformity purposes	**17.8.202**	2008 Ozone NAAQS
2012/77	50, 51, 81	Revised	28423	Final rule implementing 1997 8-hour Ozone NAAQS: Classification of areas initially classified under subpart 1 Deletion of obsolete 1-hour standard provision	**17.8.202**	1997 Ozone NAAQS
7010/75	51	Appendix M amended	55635, 80117	Restructuring of the Stationary Source Audit Program to allow accredited providers to supply audit samples and to require that some sources obtain and use samples from accredited providers rather than from EPA. Removes audit procedures from Appendix M for Methods 204A-F. Adds PM2.5 to Methods 201A and 202.	**17.8.767**	Stationary Source Audits, PM2.5
2011/76	51.165(a)	Stay lifted, revisions, etc	17548	EPA taking interim action to effectuate and extend a stay of the rule titled "PSD and Nonattainment NSR: Reconsideration of Inclusion of Fugitive Emissions" published in 2008. That rule required fugitive emissions be included in determining whether change results in a major modification. Action is to clear up confusion about past stay and extend a stay until EPA completes reconsideration of the rule.	**NA**	Fugitive Emissions
2010/75	51 165(b)(2)	Table revised	64863	PM2 5 added as a NAAQS potentially violated by a major source or modification. Significance levels are 0.3 $\mu g/m^3$ (annual) or 1.2 $\mu g/m^3$ (24 hour)	**NA**	PM2 5
2010/75	51 166	Sections redesignated and other changes	64863	Amended to add requirements for PM2.5 Definition of major and minor source baseline dates, baseline area, limitations on allowable increments of increase over baseline, SILs, and SMC.	**NA**	PM2 5
2011/76	51 166	Subparts revised	17548	"PSD and Nonattainment NSR Reconsideration of Inclusion of Fugitive Emissions"	**NA**	Fugitive Emissions
2012/77	51.166	(b)(49)(i) revised, (b)(49)(vi) removed	65107	Implementation of NSR program for fine particulate - revising the definition of "regulated NSR pollutant"	**NA**	NSR/PSD for PM2 5

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2013/78	51 166	(i)(10) added	3281	Revisions based on review of particulate matter NAAQS revising annual PM2 5 standard to 12 µg/m^3 Revising the AQI to be consistent with the revised standard Final rule also includes revisions to the PSD program to reflect the NAAQS revisions.	**NA**	PM NAAQS Review PSD
2011/76	51, 52, 70	Parts deferred	43489	Deferral for CO2 emissions from bioenergy and other biogenic sources under the PSD and Title V programs Part of the process of granting the petition for reconsideration filed by NAFO related to GHG Tailoring Rule States may opt to adopt the deferral	**NA**	Biogenic Deferral
2010/75	52 21	Amendments	64863	Amends PSD definitions to include a PM2 5 baseline date, etc	**NA**	PM2 5
2011/76	52 21	Sections revised	17548	PSD Stay of some subparts lifted, others revised or stayed.	**NA**	Fugitive Emissions
2012/77	52 21	amended	41051	PSD and Title V GHG Tailoring Rule Step 3 and GHG Plant wide Applicability Limits. Step #3 of the phase-in approach to permitting GHG sources. Also includes revisions for better implementation of the federal program for establishing PALs for GHG emissions	**NA**	GHG Tailoring Rule
2012/77	52 21	(b)(50)(i) revised, (b)(50)(vi) removed	65107	Implementation of NSR program for fine particulate revising the definition of "regulated NSR pollutant"	**NA**	PM2 5
2013/78	53 9	(c) revised	3281	Revisions based on review of particulate matter NAAQS - revising annual PM2 5 standard to 12 µg/m^3 Revising ambient air monitoring reference and equivalent methods related to PM	**17.8.202**	Monitoring Reference and Equivalent Methods
2011/76	53 20 23	Subpart B Revised	54293	Procedures for testing performance characteristics of automated methods for SO2, CO, O3, and NO2 Changes focus on CO monitoring No substantive change in the Federal reference method	**17.8.202**	Monitoring Reference and Equivalent Methods
2010/75	58	Appendices A and D amended	81126	Relates to QA for SLAMS, SPMs, and PSD air monitoring (3 3 4 3 Collocated Sampling) Network Design Criteria related to Ncore sites. Specifically adds Pb for sites with population of 500,000 Revises pollutant-specific criteria for SLAMS	**17.83.202**	Quality Assurance
2010/75	58.10(a)(4)	Revised	81126	Changes requirements for Pb monitoring sites to focus on source-oriented only.	**17.8.202**	Monitoring
2010/75	58 13(a)	Revised	81126	Relates to monitoring network completion for Ncore multi pollutant sites Specifically discusses Pb	**17.8.202**	Monitoring
2011/76	58	58 10(a)(7) added, 58 13(e) added, Appendices D and F amended	54293	Changes are related to review of NAAQS for CO in which EPA retained primary standards and set no secondary standard Requires a plan for establishing CO monitoring sites and sets deadline for submittal of such plan (1/1/2017)	**17.8.202**	Monitoring
2013/78	58	58 1, 58 10 13, 58 16, 58 26, 58 30, appendices A, D, E, G revised	3281-3286	Revisions based on review of particulate matter NAAQS revising annual PM2 5 standard to 12 µg/m^3 Revising ambient air quality surveillance	**17.8.202**	PM NAAQS Review. Surveillance

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2010/75	60 8	(g) added	55635	Relates to standards of performance for new stationary sources - performance tests Requires that performance testing shall include a test method performance audit (PA).	**17.8.302, 767, 802, 902, 1002**	Stationary Source Audits
2011/76	60 30e-39e	Subpart Ce Revised	18407	Emissions guidelines and compliance times for hospital/medical/infectious waste incinerators. EPA's 2009 response to the remanded NSPS and emissions guidelines. Corrects drafting errors and erroneous cross-references, etc	**17.8.302, 767, 802, 902, 1002**	HMIWI
2011/76	60 40-46	Subpart D Revised	3517	NSPS for Fossil-Fuel-Fired Steam Generating Units. Final action to amend testing requirements for operators of units with PM continuous emission monitoring systems Action also amends opacity monitoring requirements	**17.8.302, 767, 802, 902, 1002**	Fossil-Fuel-Fired Steam Generators
2011/76	60.40Da-52Da	Subpart Da Revised	3517	NSPS for Electric Utility Steam Generating Units . Final action to amend testing requirements for operators of units with PM continuous emission monitoring systems Action also amends opacity monitoring requirements.	**17.8.302, 767, 802, 902, 1002**	Electric Utility Steam Generating Units
2013/78	60.40Da-52Da	Subpart Da revised	24073	Reconsideration of MATS NESHAP and Utility NSPS. Originally published at 77 FR 9304, petitioned for reconsideration. Revisions to startup and shutdown provisions related to PM and revisions to definitional and monitoring provisions	**17.8.302, 767, 802, 902, 1002**	MATS NESHAP and Utility NSPS
2011/76	60 40b 49b	Subpart Db Revised	3517	NSPS for Industrial-Commercial-Institutional Units Final action to amend testing requirements for operators of units with PM continuous emission monitoring systems. Action also amends opacity monitoring requirements.	**17.8.302, 767, 802, 902, 1002**	Industrial/Commercial/Institutional Steam Generating Units
2011/76	60 40c 48c	Subpart Dc Revised	3517	NSPS for Small Industrial-Commercial-Institutional Units Final action to amend testing requirements for operators of units with PM continuous emission monitoring systems. Action also amends opacity monitoring requirements	**17.8.302, 767, 802, 902, 1002**	Industrial/Commercial/Institutional Steam Generating Units
2011/76	60 50c-58c	Subpart Ec revised	18407	Revisions to NSPS for large hospital/medical/infectious waste incinerators Corrects EPA's 2009 response to the remanded NSPS and emissions guidelines by fixing drafting errors and erroneous cross-references, etc	**17.8.302, 767, 802, 902, 1002**	HMIWI
2013/78	60 50c-58c	Subpart Ec revised	28066	NSPS revisions and federal plan for Hospital/Medical/Infectious Waste Incinerators. This final action implements national standards promulgated in 2009	**17.8.302, 767, 802, 902, 1002**	Hospital/Medical/Infectious Waste Incinerators

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2010/75	60 60-66	Subpart F revised	55034-7	Updating NESHAP and NSPS for Portland cement. NSPS amendments add or revise emission limits for PM, opacity, NOx, and SO2 for new facilities as of 6/16/2008 Also includes additional testing and monitoring requirements	**17.8.302, 767, 802, 902, 1002**	Portland Cement Plants
2013/78	60.60-66	Subpart F revised	10005	Final action to amend NESHAP for Portland Cement Manufacturing Industry and the Portland Cement NSPS for particulate matter. Amends the stack emission standard for PM under the NESHAP and makes a conforming amendment to the NSPS for PM	**17.8.302, 767, 802, 902, 1002**	Portland Cement Plants
2012/77	60 70a 77a	Subpart Ga added	48445	NSPS review for nitric acid plants (subpart G), adds subpart Ga with new NOx limits specifically for new plants after 10/14/2011	**17.8.302, 767, 802, 902, 1002**	Nitric Acid Plants
2012/77	60 100a 109a	Subpart Ja added	56422	New NSPS for petroleum refineries for those process units constructed or modified after 5/14/2007	**17.8.302, 767, 802, 902, 1002**	Petroleum Refineries
2012/77	60 630-636	Subpart KKK revised	49490	In EPA's review of the oil and natural gas sector, the agency revised the NSPS for VOCs from leaking components at onshore natural gas processing plants.	**17.8.302, 767, 802, 902, 1002**	Onshore natural gas processing plants
2012/77	60.640-648	Subpart LLL revised	49490	In EPA's review of the oil and natural gas sector, the agency revised the NSPS for SO2 emissions from natural gas processing plants.	**17.8.302, 767, 802, 902, 1002**	Natural gas processing plants
2011/76	60 2000-2265	Subpart CCCC revised	15703, 28662	Final rule regarding NSPS for Commercial and Industrial Solid Waste Incineration Units EPA's response to the voluntary remand of the 2001 NSPS and vacatur and remand in 2007 Delay of effective dates.	**17.8.302, 767, 802, 902, 1002**	CISWI
2013/78	60 2000 2265	Subpart CCCC amended	9111	NSPS for Commercial and Industrial Solid Waste Incineration Units. Reconsideration and final amendments to the 2011 final CISWI rule Also issuing final amendments to Non Hazardous Secondary Materials (NHSM) rule, which provides standards and procedures for determining if such materials are solid waste under RCRA when used as fuels in combustion units	**17.8.302, 767, 802, 902, 1002**	CISWI
2011/76	60 2500-2875	Subpart DDDD revised	15703, 28662	Final rule regarding Emissions Guidelines for Commercial and Industrial Solid Waste Incineration Units. EPA's response to the voluntary remand of the 2001 NSPS and vacatur and remand in 2007 Delay of effective dates.	**17.8.302, 767, 802, 902, 1002**	CISWI
2013/78	60 2500 2875	Subpart DDDD amended	9111	Emission Guidelines for CISWI. Also issuing final amendments to Non-Hazardous Secondary Materials (NHSM) rule, which provides standards and procedures for determining if such materials are solid waste under RCRA when used as fuels in combustion units	**17.8.302, 767, 802, 902, 1002**	CISWI

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2012/77	60 4101-4176	Subpart HHHH removed	9303	Action removes 40 CFR part 60 subpart HHHH and adds 40 CFR part 63 subpart UUUUU NESHAP for Coal and Oil Fired EGUs and standards of performance for Fossil-Fuel Fired Electric Utility, Industrial-Commercial Institutional, and Small Industrial Commercial-Institutional EGUs. The main purpose is to address emissions of mercury from this industry Emissions of other toxic metals will also decrease with installation of controls In 2000, EPA originally attempted to regulate the industry under section 112 of the CAA Removed EGUs from source category list in 2005 and established performance standards under CAA section 111 (Clean Air Mercury Rule). 2008 Circuit Court vacated CAMR and 2005 Action - EPA could not remove the source category from 112(c).	**17.8.302, 767, 802, 902, 1002**	Mercury and Air Toxics Standard (MATS)
2011/76	60 4200-4219	Subpart IIII revised	37967-72	NSPS for Stationary Compression Ignition and Spark Ignition Internal Combustion Engines. This final rule requires more stringent standards, revises requirements to more closely align with mobile source marine engines, and provides more flexibility to owners.	**17.8.302, 767, 802, 902, 1002**	Stationary Compression Ignition Internal Combustion Engines
2011/76	60.4230-4248	Subpart JJJJ revised	37953	NSPS for Stationary Compression Ignition and Spark Ignition Internal Combustion Engines. This final rule requires more stringent standards, revises requirements to more closely align with mobile source marine engines, and provides more flexibility to owners	**17.8.302, 767, 802, 902, 1002**	Stationary Spark Ignition Internal Combustion Engines
2013/78	60.4200-4248	Subparts IIII and JJJJ revised	6674	Amendments to the NESHAP for Reciprocating Internal Combustion Engines (RICE) and revisions to the NSPS for stationary engines (Subparts IIII and JJJJ) for consistency with the NESHAP.	**17.8.302, 767, 802, 902, 1002**	Stationary Internal Combustion Engines
2011/76	60 4760 4930	Subpart LLLL Added	15371	NSPS for New Sewage Sludge Incineration Units	**17.8.302, 767, 802, 902, 1002**	Sewage Sludge Incineration Units
2011/76	60.5000-5250	Subpart MMMM Added	15371	Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units	**17.8.302, 767, 802, 902, 1002**	Sewage Sludge Incineration Units
2012/77	60 5360-5430	Subpart OOOO added	49490	EPA established standards for oil and gas operations not covered by existing standards. The new standards regulate VOCs from gas wells, etc.	**17.8.302, 767, 802, 902, 1002**	Crude Oil and Natural Gas Production, Transmission, Distribution
2010/75	60	Appendices A-3 and A-4 amended	55635	Restructuring of the Stationary Source Audit Program Test Method 51 (low level PM emissions from stationary sources) section 7 2 revised. Test Method 6 - 6C, 7 - 7D, and 8 revised.	**17.8.302, 767, 802, 902, 1002**	Stationary Source Audits
2010/75	60	Appendices A-5 and A-6 amended	55635	Restructuring of the Stationary Source Audit Program. Method 15A revised. Methods 16A and 18 revised.	**17.8.302, 767, 802, 902, 1002**	Stationary Source Audits

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2012/77	60	Appendix A-6 revised	44491	Adds Method 16C for determination of total reduced sulfur emissions from stationary sources	**17.8.302, 767, 802, 902, 1002**	Method 16C
2010/75	60	Appendices A 7 and A 8 amended	55635	Restructuring of the Stationary Source Audit Program. Methods 25 and 25C revised Methods 26 and 26A revised.	**17.8.302, 767, 802, 902, 1002**	Stationary Source Audits
2012/77	60	Appendix A-7 amended	2460	Affects Test Method 19 - amendments related to determining sulfur content, moisture content, gross caloric value. Incorporations by reference of standards providing flexibility in the use of alternatives to mercury containing industrial thermometers.	**17.8.302, 767, 802, 902, 1002**	Method 19
2010/75	60	Appendix B amended	54969	Revised performance specification 12A (total vapor phase mercury continuous emission monitoring systems), added 12B (total vapor phase mercury emissions using a sorbent trap monitoring system).	**17.8.302, 767, 802, 902, 1002, 1502**	Hg monitoring performance spec
2010/75	60	Appendix F amended	54969	Quality Assurance Procedures reserved 3 and 4, added 5 - QA requirements for vapor phase Hg continuous emissions monitoring systems and sorbent trap monitoring systems.	**17.8.302, 767, 802, 902, 1002**	Hg monitoring performance spec.
2012/77	60	Appendix F amended	8162	Adds Procedure 3 to Quality Assurance Procedures (Requirements for continuous opacity monitoring systems at stationary sources)	**17.8.302, 767, 802, 902, 1002**	Quality Assurance
2010/75	61 13	(e)(1) added	55635	Restructuring of the Stationary Source Audit Program NESHAPs Emission tests and waivers detailing the performance audit (PA) and accredited audit sample providers (AASP)	**17.8.302, 767, 802, 902, 1002**	Continuous Monitoring
2010/75	61	Appendix B amended	55635	Restructuring of the Stationary Source Audit Program Specific methods revised	**17.8.302, 767, 802, 902, 1002**	Performance Specifications
2010/75	63 7	(c)(2)(iii) revised, (r)(4) removed	55635	Restructuring of the Stationary Source Audit Program. NESHAPs - performance testing requirements	**17.8.302, 1502**	Quality Assurance
2012/77	63 340-348	Subpart N amended	58219	NESHAP: Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks. Finalizes the residual risk and technology review for the two source categories	**17.8.302, 1502**	Chromium Electroplating
2012/77	63.440-459	Subpart S amended	55698	NESHAP Pulp and Paper Industry Residual Risk and Technology review Includes a requirement for 5-year repeat emissions testing for selected process equipment; revisions related to SSM; electronic reporting; additional methanol test methods EPA estimates that of 171 major source pulp and paper mills in the U S , 114 operate subpart S processes affected by this rule	**17.8.302, 1502**	Pulp and Paper

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2011/76	63 480-507	Subpart U revised	22565	NESHAP. Group I Polymers and Resins. Revisions based on risk and technology review. This final action addresses certain sources not previously regulated under NESHAP. Includes finalized provisions regarding SSM	**17.8.302, 1502**	Polymers and Resins
2012/77	63 541 552	Subpart X revised	556	NESHAP from Secondary Lead Smelting. Finalizes residual risk and technology review for the source category. Includes revisions to emissions limits for lead compounds, revisions to standards for fugitive emissions, etc	**17.8.302, 1502**	Secondary Lead Smelting
2013/78	63 640-579	Subpart CC revised	37145	NESHAP for heat exchange systems at petroleum refineries. Amendments address issues raised in a petition for reconsideration regarding MACT for these systems. Amendments do not add any additional cost burden to refining industry and may result in cost savings	**17.8.302, 1502**	Petroleum Refineries
2012/77	63 760-779	Subpart HH amended	49490	NESHAP from Oil and Natural Gas Production Facilities. EPA conducted risk and technology review. Established MACT-based limits on certain currently uncontrolled emission sources	**17.8.302, 1502**	Oil & Gas Production
2011/76	63 781-789	Subpart II revised	72049	National Emission Standards for Shipbuilding and Ship Repair (Surface Coating). Final action on residual risk and technology review	**17.8.302, 1502**	Shipbuilding
2011/76	63 800-819	Subpart JJ revised	72049	National Emission Standards for Wood Furniture Manufacturing Operations. Final action on residual risk and technology review. Finalizes two compliance options: (1) a limit on formaldehyde emissions by limiting its content in coatings to 1% by weight, or (2) a formaldehyde usage limit of 400 pounds per rolling 12-month period. Less than 20 facilities are known to exceed this limit based on 2005 NEI.	**17.8.302, 1502**	Wood Furniture Mfg
2011/76	63 820 39	Subpart KK Revised	22565	Emission Standards for the Printing and Publishing Industry. Revisions based on risk and technology review. Includes finalized provisions regarding SSM	**17.8.302, 1502**	Printing and Publishing Industry
2012/77	63 1155 1174	Subpart CCC amended	58219	NESHAP. Steel Pickling - HCl Process Facilities and Regeneration Plants. Finalizes the residual risk and technology review for the two source categories	**17.8.302, 1502**	Steel Pickling HCl Process Facilities
2011/76	63 1250-61	Subpart GGG Revised	22565	Emission Standards for Pharmaceuticals Production. Revisions based on risk and technology review. Includes finalized provisions regarding SSM.	**17.8.302, 1502**	Pharmaceuticals Production

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2012/77	63 1270-1289	Subpart HHH amended	49490	NESHAP for Natural Gas Transmission and Storage Facilities. EPA completed risk and technology reviews. Established limits for certain currently uncontrolled emission sources reflecting MACT. Revises NESHAP for glycol dehydration unit process vents and leak detection and repair (LDAR)	**17.8.302, 1502**	Natural gas transmission and storage
2010/75	63.1340-1359	Subpart LLL Revised	54969	Updating NESHAP and NSPS for Portland cement. Add or revised limits for Hg, THC, PM at major and area sources and HCl at major sources	**17.8.302, 1502**	Portland Cement Manufacturing
2011/76	63 1340-59	Subpart LLL Revised	2832	NESHAP for Portland Cement Manufacturing Industry. Direct final action on amendments. Clarifies compliance dates, etc.	**17.8.302, 1502**	Portland Cement Manufacturing
2013/78	63 1340 1359	Subpart LLL amended	10005	Final action to amend NESHAP for Portland Cement Manufacturing Industry and the Portland Cement Plant NSPS for particulate matter. Amends the stack emission standard for PM under the NESHAP and makes a conforming amendment to the NSPS for PM	**17.8.302, 1502**	Portland Cement Manufacturing
2011/76	63 1541-1551	Subpart TTT Revised	70833	NESHAP for primary lead smelting. Final action on residual risk and technology review. Includes revisions to applicability provision, stack emission limits, dust minimization, monitoring notification and recordkeeping. Also finalizes SSM revisions	**17.8.302, 1502**	Primary Lead Smelting
2010/75	63.6580-6675	Subpart ZZZZ Revised	51569	Promulgation of NESHAP for existing stationary spark ignition reciprocating internal combustion engines	**17.8.302, 1502**	Reciprocating Internal Combustion Engines
2011/76	63 6580-6675	Subpart ZZZZ Revised	12863	NESHAP for Stationary Reciprocating Internal Combustion Engines. Direct final action to promulgate amendments to final rule. Clarifies compliance requirements related to continuous parameter monitoring systems.	**17.8.302, 1502**	Reciprocating Internal Combustion Engines
2013/78	63 6580-6675	Subpart ZZZZ revised	6674	Final amendments to NESHAP for stationary reciprocating internal combustion engines. Amendments include alternative testing options for certain large spark ignition engines, management practices for a subset of existing spark ignition engines, and alternative monitoring and compliance options. Also includes limits on the hours that stationary emergency engines can be used for emergency demand response	**17.8.302, 1502**	Reciprocating Internal Combustion Engines

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2011/76	63.7480-7575	Subpart DDDDD revised	15607, 28662	NESHAP for Industrial, Commercial, Industrial Boilers and Process Heaters. Subpart was vacated in 2007. Amended rule due to remand. EPA is now establishing new emission standards. Was to be effective on 5/20/2011 until FR 28664 delayed that date indefinitely. 28662 postpones the Major Source Boiler MACT and CISWI Rule until judicial review is complete	**17.8.302, 1502**	Industrial, Commercial, Industrial Boilers Major Source
2013/78	63 7480-7575	Subpart DDDDD revised	7162	NESHAP for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters. Reconsideration of certain issues in emission standards for new and existing sources. Revising certain MACT standards established in 2011	**17.8.302, 1502**	Industrial, Commercial, Industrial Boilers Major Source
2012/77	63 9980-10042	Subpart UUUUU added	9303	Action removes 40 CFR part 60 subpart HHHH and adds 40 CFR part 63 subpart UUUUU. NESHAP for Coal- and Oil-Fired EGUs and standards of performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional EGUs. The main purpose is to address emissions of mercury from this industry. Emissions of other toxic metals will also decrease with installation of controls. In 2000, EPA originally attempted to regulate the industry under section 112 of the CAA. Removed EGUs from source category list in 2005 and established performance standards under CAA section 111 (Clean Air Mercury Rule). 2008 Circuit Court vacated CAMR and 2005 Action - EPA could not remove the source category from 112(c).	**17.8.302, 1502**	Mercury and Air Toxics Standard (MATS)
2013/78	63 9980-10042	Subpart UUUUU revised	24073	Reconsideration of MATS NESHAP and Utility NSPS. Originally published at 77 FR 9304, petitioned for reconsideration. Revisions to new source numerical standards and requirements applicable during periods of startup and shutdown. Affects 1700 existing facilities and an estimated additional 1844 new units in the next three years	**17.8.302, 1502**	MATS NESHAP and Utility NSPS
2011/76	63 11080-100	Subpart BBBBBB revised	4155	NESHAP for Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities. Publishes amendments clarifying certain definitions and applicability provisions in response to issues raised in petitions	**17.8.302, 1502**	Gasoline Distribution Bulk Sources and Pipeline Facilities
2011/76	63 11110 32	Subpart CCCCCC revised	4155	NESHAP for Gasoline Dispensing Facilities. Publishes amendments clarifying certain definitions and applicability provisions in response to issues raised in petitions.	**17.8.302, 1502**	Gasoline Dispensing Facilities

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2012/77	63.11140-11145 63.11860-12005	Subpart DDDDDD revised, Subpart HHHHHHH added	22848	NESHAP for polyvinyl chloride and copolymers production area sources. Final rules establish that standards apply at all times, including SSM, for major and area sources. Includes monitoring provisions and recordkeeping and reporting requirements.	**17.8.302, 1502**	Polyvinyl Chloride and Copolymers (PVC) Production
2011/76	63.11193-237	Subpart JJJJJJ Added	15554	NESHAP for Industrial, Commercial, and Institutional Boilers Area Sources	**17.8.302, 1502**	Industrial, Commercial, and Institutional Boilers (Area)
2013/78	63.11193-11237	Subpart JJJJJJ revised	7488	NESHAP for Area Sources: Industrial, Commercial, and Institutional Boilers. Amending certain compliance dates and making technical corrections	**17.8.302, 1502**	Industrial, Commercial, and Institutional Boilers (Area)
2012/77	63.11494-11503	Subpart VVVVVV revised	75739	NESHAP for Chemical Manufacturing Area Sources, originally issued in 2009. Revisions lift the stay on title V permitting and requires some chemical mfg. synthetic area sources to obtain title V permits. Revisions also improve clarity of rule and provide greater flexibility to facilities. No additional costs since 2009 rule.	**17.8.302, 1502**	Chemical Manufacturing Area Sources
2011/76	63.11504-13	Subpart WWWWWW Revised	35744	NESHAP area source standards for plating and polishing operations. Direct final action to amend the 2008 NESHAP. Action clarifies that the emission control requirements of the NESHAP do not apply to bench-scale activities.	**17.8.302, 1502**	Plating and Polishing
2011/76	63.11504-11513	Subpart WWWWWW withdrawn and revised	57913	NESHAP for plating and polishing area source category. EPA is withdrawing June 20, 2011, amendments due to adverse comment. Clarification that emission control requirements do not apply to bench-scale activities	**17.8.302, 1502**	Plating and Polishing
2011/76	63.11619-11627	Subpart DDDDDDD revised	80261	NESHAP for prepared feeds manufacturing area source category. Revisions addressing generally available control technology (GACT). EPA states that the amendments are not expected to impose costs beyond those described in the original 2010 rule	**17.8.302, 1502**	Prepared Feeds Mfg
2011/76	63.11640-53	Subpart EEEEEEE Added	9449	NESHAP for Gold Mine Ore Processing and Production Area Source	**17.8.302, 1502**	Gold Mine Ore Processing and Production
2010/75	63	Appendix A amended	51569, 54969, 55635	Test methods. Method 323 for measuring formaldehyde emissions from natural gas-fired stationary sources (acetyl acetone derivitization method) added. Method 321 (measurement of gaseous hydrogen chloride at Portland cement kilns by FTIR) amended. Methods 306, 306A, 308 amended	**17.8.302, 1502**	Method 323 Method 321 Method 306 Method 306A Method 308

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2012/77	63	Appendix A revised	58252	Method 306B. Surface Tension Measurement for Tanks Used at Decorative Chromium Electroplating and Chromium Anodizing Facilities	**17.8.302, 1502**	Method 306B
2011/76	72 13	Revised	17287	Amendments to incorporation by reference in the Acid Rain Program General Provisions	**17.8.1202**	Acid Rain Program
2011/76	75	Sections revised	17287	Continuous Emission Monitoring. Finalizes revisions modifying requirements for sources affected by federally administered emission trading programs. Amendments to the Protocol Gas Verification Program and Minimum Competency Requirements for Air Emission Testing	**17.8.1202, 1502**	Continuous Monitoring
2011/76	81 327	Table added	72097	Added table showing whole of Montana designated as Unclassifiable/Attainment for the 2008 Lead NAAQS	**17.8.302, 802, 902, 1002**	2008 Lead NAAQS
2012/77	81 327	Table added	9566	Table added for the 2010 1 hour NO2 NAAQS designating all counties as unclassifiable/attainment	**17.8.302, 802, 902, 1002**	2010 NO2 NAAQS
2012/77	81 327	Table added	30132	Table added for the 2008 8-Hour Ozone NAAQS	**17.8.302, 802, 902, 1002**	2008 Ozone NAAQS
2012/77	93	Subpart A Amended	14979	Restructuring amendments for the transportation conformity rule. Amendments to finalize provisions proposed on 8/13/2010. This restructures several sections so they apply to new and revised NAAQS.	**17.8.1302**	Transportation Conformity

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.102 pertaining to incorporation by reference--publication dates	)))	NOTICE OF AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On February 27, 2014, the Board of Environmental Review published MAR Notice No. 17-353 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 353, 2014 Montana Administrative Register, Issue Number 4.

2. The board has amended the rule as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) through (2)(b) remain as proposed.

~~(3) A copy of materials incorporated by reference in this chapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Avenue, P.O. Box 200901, Helena, MT 59620-0901.~~

~~(4) Copies of federal materials also may be obtained from:~~

~~(a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-5847 or (703) 504-5000; fax: (703) 504-5900; e-mail: orders@ntis.gov; web: http://www.ntis.gov;~~

~~(b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8595; e-mail: ncepimal@one.net; web: http://www.epa.gov/ncepihom;~~

~~(c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-2104; e-mail: orders@gpo.gov; web: http://www.gpoaccess.gov; and~~

~~(d) the EPA regional office libraries listed at http://www.epa.gov/natlibra/libraries.htm.~~

3. The following comment was received and appears with the board's response:

COMMENT NO. 1: The department commented that proposed (3) and (4), which would state where the public may find and review materials incorporated by reference in Title 17, chapter 8, is redundant. Each subchapter in chapter 8 in which regulatory provisions are incorporated by reference already contains a statement as to where the incorporated materials may be reviewed and copied or obtained.

RESPONSE: ARM 17.8.102 has been amended as shown above in response to the comment.

4. No other comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

_____ By: _____

JOHN F. NORTH
Rule Reviewer

ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, _____, 2014.

Montana Department of
ENVIRONMENTAL QUALITY

MEMO

TO: Katherine Orr, Hearing Examiner
Board of Environmental Review

FROM: Joyce Wittenberg, Board Secretary
Board of Environmental Review
P.O. Box 200901
Helena, MT 59620-0901

DATE: April 4, 2014

SUBJECT: Board of Environmental Review Case No. BER 2014-01 WQ

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: THE NOTICE OF APPEAL AND REQUEST FOR HEARING BY YELLOWSTONE ENERGY LIMITED PARTNERSHIP (YELP) REGARDING DEQ'S ISSUANCE OF MPDES PERMIT NO. MT0030180 ISSUED FOR YELP'S FACILITY IN BILLINGS, MT.	Case No. BER 2014-01 WQ

The BER has received the attached request for hearing. Also attached is DEQ's administrative document(s) relating to this request.

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

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

Bob Habeck, Acting Bureau Chief
Water Protection Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments
c: Frank Crowley, Doney Crowley P.C. (for Appellant)

Frank C. Crowley
Jacqueline R. Papez
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Email: fcrowley@doneylaw.com
jpapez@doneylaw.com

Attorneys for Yellowstone Energy Limited Partnership

Filed with the
MONTANA BOARD OF
ENVIRONMENTAL REVIEW
This 5 day of [illegible]
at 11:15 o'clock a.m.
By: [illegible]

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

YELLOWSTONE ENERGY LIMITED PARTNERSHIP MPDES PERMIT NO. MT0030180	BER 2014- 01 AQ **NOTICE OF APPEAL & REQUEST FOR HEARING**

COMES NOW Applicant Yellowstone Energy Limited Partnership ("YELP"), by and through its undersigned counsel of record, and appeals the Department of Environmental Quality ("DEQ") Permit No. MT0030180, pursuant to Mont. Code Ann. §§ 75-5-403 and 611, as well as Mont. Admin. R. § 17.30.109, as follows:

INTRODUCTION

YELP's facility is a pollution control facility for the ExxonMobil refinery in Billings, Montana. Located adjacent to the refinery, the YELP facility uses a circulating fluidized bed ("CFB") process to remove a substantial portion of sulfur dioxide emissions from the refinery. The YELP facility is also a qualified facility ("QF") under the Federal Public Utility Regulatory Policies Act ("PURPA"), 16 U.S.C. §824a-3(a), and, as such, also operates a 65-megawatt

fluidized bed boiler/steam turbine plant that generates steam and electricity. YELP's plant consists of two 330,000 lbs/hr fluidized bed boilers, a single condensing steam turbine generator with three uncontrolled extractions, and an air-cooled condenser. The facility utilizes intake water provided by both the ExxonMobil Refinery and the Lockwood Water and Sewer District. The facility discharges wastewater from a point source into the ExxonMobil Storm Water Ditch, which in turn discharges into the Coulson Ditch.

On March 5, 2014, DEQ issued an *Authorization to Discharge Under the Montana Pollution Discharge Elimination System* ("MPDES Permit") for YELP's facility. For the reasons set forth below, YELP hereby appeals the terms and inclusions of the MPDES Permit.

POSITION OF APPEALING PARTY

YELP files the instant appeal regarding the following specific permit conditions:

- The Final Effluent Limits for copper from Table 1 in Section I.B. on page 3.
- The Background Monitoring and Reporting Requirements for copper included in Section I.C on page 4.
- The Whole Effluent Toxicity (WET) requirements included in Section I.E. on pages 6 - 7.
- The Special Conditions included in Section I.F. on pages 7 - 8.
- The Compliance Schedule denial included in Section I.G. on page 8.

BASIS FOR APPEAL AND ALLEGED ERRORS OF FACT OR LAW

YELP asserts the following bases for its appeal of the MPDES Permit issued for YELP's facility by DEQ:

1. The receiving water from Outfall 001 is the ExxonMobil Storm Water Ditch. At the request of the DEQ during February of 2014, YELP analyzed the receiving water for copper, zinc, and hardness (as $CaCO_3$). The background concentrations for these

parameters were provided to the DEQ and were the basis for developing the Final Numeric Effluent Limitations for copper and zinc. The Average Monthly Limit for copper is more restrictive than the background concentrations measured in the receiving water during February, 2014. The Final Numeric Effluent Limitations from Table 1 in Section I.B. may violate MCA 75-5-306 which provides that effluent need not be treated to achieve concentrations lower than those present in the receiving water.

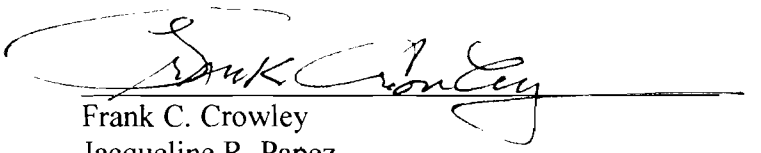
2. The Zinc and Copper standards from Circular DEQ-7 Montana Numeric Water Quality Standards are expressed as a function of total hardness (mg/L as $CaCO_3$). The DEQ used a single sampling event from February 2014 to characterize the receiving water. YELP contends that a single sampling event is not adequate to characterize the receiving water and the resultant Final Numeric Effluent Limitations. Additional data are now available that can be used to better characterize the receiving water. As a result of this additional data, the effluent limit calculations should be revisited.
3. The Final Numeric Effluent limits did not consider net contributions from the plant intake waters. The available data indicate a wide range of influent water quality for metals concentrations and turbidity that are outside of YELP's control. The influent water quality should be considered by the DEQ when establishing the numeric effluent limitations included in Table 1 from Section I.B.
4. The final permit did not consider utilizing a compliance schedule in order to allow YELP to develop procedures in order to consistently meet all permit requirements, particularly the new limits for copper. The DEQ should reconsider a compliance schedule that results in attainable permit conditions for YELP. A compliance schedule or additional time to

evaluate compliance options is essential for YELP to assure achievement of compliance with the MPDES Permit conditions.

5. The Background Monitoring and Reporting Requirements included in Section I.C for the receiving water (the ExxonMobil Storm water Ditch) need to be revisited because the intended monitoring location is on private property not controlled by YELP.
6. During the previous permit cycle, from 2008 – 2013, YELP was required to conduct Whole Effluent Toxicity (WET) Testing. YELP successfully passed 11 of the 12 required tests during the 2008-2013 permit term. The Fact Sheet for the MPDES Permit determined that continued WET testing is required for the current permit term on a quarterly basis per the MPDES Permit issued on March 5, 2014. YELP contends that continued WET testing is not warranted considering the previous WET testing results. On this basis, the WET testing conditions included in Section I.E and the related Toxicity Identification Evaluation/Toxicity Reduction Evaluation included in the Special Conditions from Section I.F. should be removed from the MPDES Permit.
7. YELP has not been able to duplicate the calculations in the draft permit fact sheet that were used to establish the Final Effluent limits from Table 1 in Section I.B. The effluent limitations calculations should be re-evaluated by DEQ, particularly as more monitoring data become available.
8. The receiving water is classified as C-3 as per Mont. Admin. R. § 17.30.611 and the classification is used in the Fact Sheet for the MPDES Permit. This may not be an appropriate classification for the ExxonMobil storm water ditch considering its engineered purpose and industrial use. If the receiving water is classified incorrectly, it may affect the Final Effluent Limits from Table 1 in Section I.B.

DATED this 3rd day of April, 2014.

DONEY CROWLEY P.C.



Frank C. Crowley
Jacqueline R. Papez
Attorneys for Yellowstone Energy Limited Partnership

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Notice of Appeal / Request for Hearing* was served on this 3 day of April, 2014, by first class United States mail, postage prepaid, upon the following:

Robert Habek, Chief
Water Protection Bureau
Montana Department of Environmental Quality
Lee Metcalf Building, Main Office
P.O. Box 200901
Helena, MT 59620-0901

Jeri L. Hoffman, ACP
Paralegal to Frank C. Crowley

Permit No.: MT0030180

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

AUTHORIZATION TO DISCHARGE UNDER THE
MONTANA POLLUTION 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.*,

Yellowstone Energy Limited Partnership

is authorized to discharge from the **Yellowstone Energy Limited Partnership Facility**; located at 2215 Frontage Road in Billings, Yellowstone County; to receiving waters, the **ExxonMobil Storm Water Ditch,**

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. The numeric effluent limits, water quality standards, and special conditions specified herein support the protection of the affected receiving water.

This permit shall become effective: **May 1, 2014.**

This permit and the authorization to discharge shall expire at midnight, **April 30, 2019.**

FOR THE MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

Bob Habeck

Bob Habeck, Chief
Water Protection Bureau
Permitting and Compliance Division

Issue Date: 3/5/14

TABLE OF CONTENTS

I. EFFLUENT LIMITS, MONITORING REQUIREMENTS & OTHER CONDITIONS

A. Description of Discharge Point and Mixing Zone

The authorization to discharge provided under this permit is limited to the outfall specially designated below as discharge location. Discharges at any location not authorized under an MPDES permit is a violation of the Montana Water Quality Act and may 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:** Outfall 001 is located at 45°48'48'' North Latitude and -108°26'25" West Longitude, Yellowstone County, at the end of the pipe discharging into the ExxonMobil Storm Water Ditch. **Mixing Zone:** No mixing zone is granted. **Treatment Works:** Settling and pH adjustment.

B. Final Effluent Limits

Beginning on the effective date of the permit and lasting through the term of the permit, the quality of the effluent discharged by the facility at Outfall 001 must, as a minimum, meet the limits set forth below in Table 1.

Table 1. Final Numeric Effluent Limitations—Outfall 001

Parameter	Units	Maximum Daily Limit[1]	Average Monthly Limit[1]
Total Suspended Solids	mg/L	100	30
Oil & Grease	mg/L	10	-
Total Residual Chlorine	mg/L	0.011[2]	0.0085[2]
Copper, Total Recoverable	µg/L	13.92	9.53
Zinc, Total Recoverable	µg/L	178	116

Footnotes:
(1) See definitions in Part V of the permit.
(2) Values reported that are equal to or less than the Department's Required Reporting Value (RRV) of 0.1 mg/L are considered to be in compliance with this limit.

The pH of all discharges shall be within the range of 6.0-9.0 s.u.

There shall be no discharge of polychlorinated biphenyl compounds (PCBs) such as those commonly used for transformer fluid.

There shall be no discharge which causes visible oil sheen in the receiving water.

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

There shall be no acute toxicity in the effluent from Outfall 001. Acute toxicity occurs when, during an acute toxicity test, 50% mortality is observed for any tested species at any effluent concentration (i.e., $LC_{50} \leq$ 100% effluent). Acute toxicity tests to determine the LC_{50} of the effluent from Outfall 001 shall be conducted in accordance with the requirements of Part I.E. of this permit.

C. Background Monitoring and Reporting Requirements

The background water quality must be monitored at the frequency and with the type of measurement indicated. Samples representative of the background water quality must be individually collected upstream of the discharge. The permittee must report the monitoring data to the Department at the frequency respectively listed in Table 2 for each parameter. Each sample must include, but is not limited to, the respective parameters listed in Table 2.

Table 2: Background Monitoring and Reporting Requirements—ExxonMobil Storm Water Ditch

Parameter	Monitoring Location	Units	Sample Type[1][2]	Minimum Sampling Frequency	Reporting Requirements[1][3]	Reporting Frequency	RRV[4]
Flow Rate	Upstream of Discharge	gpd	Instantaneous	1/Quarter	Quarterly Average	Quarterly	-
pH	Upstream of Discharge	s.u.	Instantaneous	1/Quarter	Quarterly Average	Quarterly	-
Hardness (as $CaCO_3$)	Upstream of Discharge	mg/L	Grab	1/Quarter	Quarterly Average	Quarterly	-
Phosphorus, Total (as P)	Upstream of Discharge	mg/L	Grab	1/Quarter	Quarterly Average	Quarterly	0.001
Copper, Total Recoverable	Upstream of Discharge	µg/L	Grab	1/Quarter	Quarterly Average	Quarterly	2
Zinc, Total Recoverable	Upstream of Discharge	µg/L	Grab	1/Quarter	Quarterly Average	Quarterly	8

Footnotes:
(1) See definitions in Part V of the permit.
(2) Grab sample will represent concentration for a 24 hour period.
(3) Daily Maximum: report the highest measured daily value for the reporting period on Discharge Monitoring Report (DMR) forms.
(4) When listed, the RRV is the detection level that must be achieved in reporting effluent monitoring or compliance data to the Department. The RRV is the Department's best determination of a level of analysis that is achievable by the majority of the commercial, university, or governmental laboratories using EPA approved methods or methods approved by the Department. Practical Quantification Limits (PQLs) are not acceptable substitutions for RRV.

Analytical methods must be 40 CFR 136 approved methods unless otherwise specified or approved by the Department. Analysis must meet the RRV listed in Circular DEQ-7. PQLs are not acceptable substitutions for the RRVs.

D. Effluent Monitoring and Reporting Requirements

The effluent discharged from the treatment system must be monitored at the frequency and with the type of measurement indicated. Samples or measurements must be representative of the volume and nature of the monitored discharge. Samples representative of the effluent quality at the outfall must be individually collected from the last point of control prior to discharge. The permittee must report the monitoring data to the Department at the frequency respectively listed below in Table 3 for each parameter. Discharge Monitoring Report Forms (DMRs) will be required regardless of the operational status of the facility. If no discharge occurs during the entire monitoring period, it shall be stated on the DMR that no discharge or overflow occurred. Each sample must include, but is not limited to, the respective parameters listed below in Table 3.

Table 3: Effluent Monitoring and Reporting Requirements – Outfall 001

Parameter	Monitoring Location	Units	Sample Type[1][2]	Minimum Sampling Frequency	Reporting Requirements[1][3]	Reporting Frequency	RRV[4]
Effluent Flow Rate	Discharge from Settling Tank	mgd	Instantaneous	Continuous	Daily Maximum and Monthly Average	Monthly	-
pH, maximum	Wastewater Sample Tap	s.u.	Instantaneous	1/Week	Daily Maximum and Monthly Average	Monthly	-
pH, minimum	Wastewater Sample Tap	s.u.	Instantaneous	1/Week	Daily Minimum and Monthly Average	Monthly	-
Total Suspended Solids	Wastewater Sample Tap	mg/L	Composite	1/Week	Daily Maximum and Monthly Average	Monthly	-
Total Residual Chlorine[5]	Wastewater Sample Tap	mg/L	Grab	1/Week	Daily Maximum and Monthly Average	Monthly	0.1
Oil & Grease	Wastewater Sample Tap	mg/L	Grab	1/Month	Daily Maximum and Monthly Average	Monthly	-
Total Dissolved Solids	Wastewater Sample Tap	mg/L	Grab	1/Month	Monthly Average	Monthly	-
Copper, Total Recoverable	Wastewater Sample Tap	µg/L	Grab	1/Week	Daily Maximum and Monthly Average	Monthly	2
Zinc, Total Recoverable	Wastewater Sample Tap	µg/L	Grab	1/Week	Daily Maximum and Monthly Average	Monthly	8
Phosphorus, Total (as P)	Wastewater Sample Tap	mg/L	Grab	1/Quarter	Quarterly Average	Quarterly	0.001
Whole Effluent Toxicity, Acute	Wastewater Sample Tap	% Effluent	Grab	1/Quarter	Pass/Fail[6]	Quarterly	-

Footnotes:
(1) See definitions in Part V of the permit.
(2) Grab sample will represent concentration for a 24 hour period.
(3) Daily Maximum: report the highest measured daily value for the reporting period on the DMR forms.
(4) When listed, the RRV is the detection level that must be achieved in reporting effluent monitoring or compliance data to the Department. The RRV is the Department's best determination of a level of analysis that is achievable by the majority of the commercial, university, or governmental laboratories using EPA approved methods or methods approved by the Department. PQLs are not acceptable substitutions for the RRV.
(5) Values reported that are equal to or less than the Department's RRV of 0.1 mg/L are considered to be in compliance with the permit.
(6) A result of $LC_{50} > 100\%$ effluent (i.e., less than 50% mortality in 100% effluent) shall be reported as "pass." A result of $LC_{50} \leq 100\%$ effluent shall be reported as "fail."

Analytical methods must be 40 CFR 136 approved methods unless otherwise specified or approved by the Department. Analysis must meet the RRV listed in Circular DEQ-7. PQLs are not acceptable substitutions for the RRVs.

For the individual parameter Total Residual Chlorine (mg/L): values reported that are equal to or less than DEQ's RRV of 0.1 mg/L are considered to be in compliance with the permit.

E. Whole Effluent Toxicity (WET)

Starting in the first calendar quarter following the effective date of this permit, the permittee shall, at least once each quarter, conduct acute static replacement WET tests on a grab sample of the effluent. Testing will employ two species per quarter and will consist of five (5) effluent concentrations (100, 50, 25, 12.5, and 6.25 percent effluent) and a control. Dilution water and the control shall consist of water from the ExxonMobil Storm Water Ditch upstream of the discharge from Outfall 001. If water from the ExxonMobil Storm Water Ditch is shown to be toxic or dry, moderately hard reconstituted laboratory water may be substituted. Samples shall be collected on a two day progression; i.e., if the first quarterly sample is on a Monday, the second quarterly sample shall be collected on a Wednesday, etc. Saturdays, Sundays and Holidays will be skipped in the progression.

The static renewal WET 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."* The permittee shall conduct acute 48-hour static renewal WET tests using *Ceriodaphnia dubia* and acute 96-hour static renewal WET tests using fathead minnows (*Pimephales promelas*). The control of pH in the WET test utilizing CO_2 enriched atmospheres is allowed to prevent rising pH drift. The target pH selected must represent the pH value of the ExxonMobil Storm Water Ditch at the time of sample collection.

Acute toxicity occurs when 50 percent or more mortality is observed for either test 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 (a resample test) shall be conducted within 14 days of the date the permittee is informed of the toxicity. If acute toxicity occurs in the resample test, then the permittee is required to:

1. Increase the WET testing frequency from quarterly to monthly until further notified by the Department; and

2. Undertake a Toxicity Identification Evaluation (TIE)/Toxicity Reduction Evaluation (TRE).

In all cases, the results of all WET tests must be submitted to the Department in accordance with Part II of this permit.

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

If the results for four consecutive quarters of WET testing indicate no acute toxicity, the permittee may request a reduction to quarterly acute WET testing on only one species at a time on an alternating basis. 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.

F. Special Conditions

Toxicity Identification Evaluation/Toxicity Reduction Evaluation

If the acute toxicity is confirmed as persistent by the required resample test, then the permittee is required to perform a Toxicity Identification Evaluation (TIE) / Toxicity Reduction Evaluation (TRE) in order to establish the cause(s) of the toxicity, to locate the source(s) of the toxicity, and to develop a method for the control of, or treatment for, the toxicity. The failure to initiate or conduct an adequate TIE/TRE, or delays in conducting such tests, is not a justification for noncompliance with the WET limits contained in Part I.B. of this permit.

The permittee shall initiate a TRE using as guidance the EPA manual "*Toxicity Reduction Evaluation Guidance for Municipal Wastewater Treatment Plants*" (EPA/833/B-99/002) or the EPA manual "*Generalized Methodology for Conducting Industrial Toxicity Reduction Evaluations*" (EPA/600/2-88/070). A TRE plan shall be submitted to the Department within 45 days after the date the permittee is informed of the confirmation of the continuance of the effluent toxicity.

If the TRE/TIE establishes that the toxicity cannot be eliminated, the permittee shall submit a proposed compliance plan to the Department. The plan shall

include the proposed approach to control toxicity and a proposed compliance schedule for the implementation of the proposed approach. If the approach and schedule are acceptable to the Department, this permit may be reopened and modified.

If the TRE/TIE shows that the toxicity is caused by pollutant(s) that may be controlled with specific numerical limitations, the permittee may:

a. Submit an alternative control program for compliance with the numerical requirements; or

b. If necessary, provide a modified whole effluent testing protocol which compensates for the pollutant(s) being controlled numerically.

If acceptable to the Department, this permit may be reopened and modified to incorporate any additional numerical limitations, a modified compliance schedule if judged necessary by the Department, and/or a modified whole effluent testing protocol.

The failure to conduct an adequate TRE/TIE, the failure to submit a plan or program as described above, or the submittal of a plan or program judged inadequate by the Department, shall not excuse the permittee from meeting the limits contained in Part I.B. of this permit.

G. Compliance Schedule
There is not a compliance schedule associated with the issuance of this permit.

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

A. Representative Sampling
Samples taken in compliance with the monitoring requirements established under Part I of this 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 the 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 $25,000, or by imprisonment for not more than six months, or by both.

D. Reporting of Monitoring Results

Self-monitoring results shall be submitted to the Department. Monitoring results obtained during the previous monitoring period shall be summarized and reported on a Discharge Monitoring Report Form (EPA No. 3320-1) and postmarked no later than the 28th day of the month following the completed reporting period. If no discharge occurs during the reporting period, then "No Discharge" shall be reported on the report form. Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with the "Signatory Requirements" (see Part IV.G. of this permit), and submitted to the Department at the following address:

Montana Department of Environmental Quality
Water Protection Bureau
PO Box 200901
Helena, Montana 59620-0901
Phone: (406) 444-3080

E. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any Compliance Schedule of this permit shall be submitted no later than 14 days following each schedule date unless otherwise specified in this permit.

F. Additional Monitoring by the Permittee

If the permittee monitors any additional pollutant or 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 analysis 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 the 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 affecting the environment 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) 444-3080 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; or

   b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part III.G. of this permit, "Bypass of Treatment Facilities").

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

   c. 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, at (406) 444-3080.

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, 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 Montana Water Quality 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 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 $25,000 per day or one year in prison, or both, for the first conviction, and $50,000 per day

of violation or by imprisonment for not more than two years, or both, for subsequent convictions. MCA 75-5-611(9)(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 Part III.G. of this permit, "Bypass of Treatment Facilities," 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, sludge, 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.

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:

1. 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; or

2. There are any planned substantial changes to the existing sewage sludge management practices of storage and disposal. The permittee shall give the

Department notice of any planned changes at least 180 days prior to their implementation.

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 revoked, modified 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 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; or

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 specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters (a duly authorized representative may thus be either a named individual or an individual occupying a named position).

3. Changes to authorization. If an authorization under Part IV.G.2. of this permit is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part IV.G.2. of this permit must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. Certification. Any person signing a document under this section shall make the following certification:

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

H. Penalties for Falsification of Reports

The Montana Water Quality Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than $25,000 per violation, or by imprisonment for not more than six months per violation, or by both.

I. Availability of Reports

All reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department and the EPA. Permit applications, permits and effluent data shall not be considered confidential and shall also be available for public inspection.

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 or Water Rights

The issuance of this permit does not convey any property or water rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

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 the 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 additional fee assessment(s) computed at the rates 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; or

2. Water Quality Standards are Exceeded: If it is found that water quality standards or trigger values, excluding mixing zones designated by ARM 17.30.501-518, for parameters included in the permit or others, the department may modify the effluent limits or water management plan.

V. DEFINITIONS

1. **"30-day (and Monthly) Average"** other than for *E. coli* bacteria, means the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. Geometric means shall be calculated for *E. coli* bacteria. The calendar month shall be used for purposes of reporting self-monitoring data.

2. **"90-day (and Quarterly) Average"** other than for *E. coli* bacteria, means the arithmetic average of all samples collected during a consecutive 90-day period or calendar quarter, whichever is applicable. Geometric means shall be calculated for *E. coli* bacteria. The calendar month shall be used for purposes of reporting self-monitoring data.

3. **"180-day (and Six-Month or Semi-Annual) Average"** other than for *E. coli* bacteria, means the arithmetic average of all samples collected during a consecutive 180-day period or calendar half-year, whichever is applicable. Geometric means shall be calculated for *E. coli* bacteria. The calendar month shall be used for purposes of reporting self-monitoring data.

4. **"Annual Average Load"** means the arithmetic mean of all 30-day or monthly average loads reported during the calendar year for a monitored parameter.

5. **"Annual Maximum Limit"** means the maximum allowable discharge of a pollutant during a calendar year.

6. **"Average Monthly Limit"** means the maximum allowable discharge of a pollutant during a calendar month. Expressed as units of mass, the monthly discharge is cumulative mass discharged over the calendar month. Expressed as a concentration, it is the arithmetic average of all measurements taken that month.

7. **"BOD_5"** means the five-day measure of pollutant parameter biochemical oxygen demand.

8. **"Bypass"** means the intentional diversion of waste streams from any portion of a treatment facility.

9. **"Composite Sample"** means a sample composed of two 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.

10. **"Continuous"** means the measurement of effluent flow which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance process changes, or other similar activities.

11. **"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.

12. **"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.

13. **"Department"** means the Montana Department of Environmental Quality.

14. **"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.

15. **"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.

16. **"Instantaneous"** measurement, for monitoring requirements, means a single reading, observation, or measurement.

17. **"Load Limits"** are mass-based discharge limits expressed in units such as lbs/day

18. **"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.

19. **"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.

20. **"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.

21. **"TDS"** means the pollutant parameter total dissolved solids.

22. **"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.

23. **"TSS"** means the pollutant parameter total suspended solids.

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Permitting and Compliance Division
Water Protection Bureau
P.O. Box 200901, Helena, MT 59620-0901

Permit Fact Sheet
Montana Pollutant Discharge Elimination System (MPDES)

Permittee:	Yellowstone Energy Limited Partnership
Permit Number:	MT0030180
Receiving Water:	ExxonMobil Storm Water Ditch
Facility Name:	Yellowstone Energy Limited Partnership
Facility Location:	Northeast ¼ of Section 25, Township 1 North, Range 26 East, Yellowstone County
Facility Address:	2215 North Frontage Road Billings, MT 59101
Facility Type:	Privately-Owned Treatment Works, Minor
Facility Contact:	Bruce Stevenson, Plant Engineer 2215 North Frontage Road Billings, MT 59101 (406) 256-5296
Number of Outfalls:	1 (for fee determination only)
Outfall – Type:	001 – Process Wastewater, Filter Backwash

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1 BACKGROUND

This fact sheet identifies the principal facts and the significant factual, legal, methodological, and policy issues considered in preparing a draft permit in accordance with Administrative Rules of Montana (ARM) 17.30.1371. A fact sheet is prepared for any draft permit that establishes new or amended effluent limitations or standards, schedules of compliance, variances, nonsignificance determinations under ARM 17.30.706, denial or granting of mixing zones under ARM 17.30.515, or other significant requirements.

The permit has been prepared under a standardized format that accommodates a broad range of discharge requirements for facilities other than Publicly-Owned Treatment Works (POTWs). This category includes facilities that discharge process and non-process wastewater, sewage, storm water and other wastes from non-POTWs. Only those sections or subsections of the permit that are specifically identified as "Not Applicable" have been determined not to apply to this permittee. Sections or subsections of this permit not specifically identified as "Not Applicable" are fully applicable to this permittee.

Yellowstone Energy Limited Partnership (hereinafter permittee) is the owner of the Yellowstone Energy Limited Partnership Facility (hereinafter facility), a steam and electric generating plant. The facility is operated by Rosebud Operating Services, Inc.

For the purposes of this permit and fact sheet, references to the "discharger" or "permittee" in applicable federal and state laws, regulations, policy, plans, or implementation procedures are held to be equivalent to references to the permittee in the permit and fact sheet.

1.1 Permit and Application Information

The permittee is currently regulated by MPDES permit number MT0030180. This permit became effective on September 1, 2008, and expires on August 31, 2013. The permittee submitted a renewal application on March 5, 2013, and supplemental information on March 25, 2013. The application was deemed complete on April 2, 2013.

1.2 Description of the Facility and the Discharge Point

This section describes the facility and the discharge point (outfall) as described in the permit application. As defined in ARM 17.30.1304, a facility or activity is any point source, including land appurtenances thereto, that are subject to regulation under the MPDES regulations. For the purposes of this permit, an outfall designates the location at which the facility or activity is authorized to discharge pollutants to state waters.

1.2.1 Description and Location of Facility

The facility is a 54 megawatt fluidized bed boiler/steam turbine plant that generates steam and electricity. The plant consists of two 300,000 lbs/hour fluidized bed boilers, a single condensing steam turbine generator with three uncontrolled extractions, and an air-cooled condenser. The facility's cooling system is designed to use air instead of water as the cooling media for the transfer of process waste heat from the condenser to the atmosphere, eliminating a potential wastewater

source. The facility uses petroleum coke, the majority of which is supplied by the neighboring ExxonMobil Refinery, as a fuel source. The facility does not use coal as a fuel source. The steam generated by the facility is either returned to the ExxonMobil Refinery or used in the facility's steam turbine to generate electricity. The electricity produced by the facility is sold to NorthWestern Energy.

The primary source of water for the facility is provided by the ExxonMobil Refinery. The facility may also use water from the Lockwood Water and Sewer District (Public Water Supply ID MT0000156) during periods of high demand or if a sufficient quantity of water is not available from the ExxonMobil Refinery. The facility dechlorinates the Lockwood water with sodium bisulfate prior to use by the facility since chlorinated water is corrosive and would result in damage to the facility's piping and boiler system. However, the Lockwood water is not dechlorinated prior to use when used to cool the ash vacuum blower. The ExxonMobil Refinery sends the facility a minimum of 250 gallons per minute (gpm) and a maximum of 425 gpm of pre-treated water sourced from the Yellowstone River. The water from the Yellowstone River is pre-treated in a lime scrubber and zeolite softener such that the pH of the water is about 9.0 s.u. The dissolved solids generated by the scrubbing and water softening processes are disposed of by the ExxonMobil Refinery. On a daily basis, the facility generates between 40,000-140,000 pounds of steam per hour and between 20-50 gpm of de-mineralized water.

Based on the information provided by the permittee in Form 2C Part II.B, the sources of wastewater contributing to the outfall and their corresponding average flows, in gallons per day (gpd), are summarized in Table 1.

Table 1. Sources of Wastewater Contributing to Each Outfall

Outfall	Description	Average Flow	Intermittent (Yes/No)
001	Service water cooling	53,400 gpd	No
	Mixed bed regeneration	14,400 gpd	No
	Multiple media filtration backwash	3,000 gpd	No
	Boiler water sample discharge	8,000 gpd	No
	Lockwood water softener backwash	9,021 gpd	No
	Ash vacuum blower cooling	14,800 gpd	No
	Reverse osmosis backwash	15,000 gpd	No

The facility does not have any cooling water intake structures. The water used by the facility is provided by the ExxonMobil Refinery and, if necessary, the Lockwood Water and Sewer District.

1.2.2 Wastewater Treatment or Controls

The treatment for the wastewater generated by the facility is summarized in the table below.

Table 2. Treatment Process by Outfall

Outfall	Source of Pollutants	Treatment Processes
001	Process Wastewater, Filter Backwash	Settling, pH Adjustment

The facility does not generate sludge from any ongoing wastewater processes. The wastewater tank is drained periodically (every 1-3 years). Any solids that have settled out are removed from the wastewater tank are used by the facility as a fuel source since these solids are predominately composed of coke.

1.2.3 Discharge Point

The facility discharges wastewater from the point source outfall described in Section 1.2 above to state waters at the location identified in the table below. This location was identified in the permittee's MPDES permit application and previously described as: the four-inch overhead PVC pipe that discharges four feet above the center of the ExxonMobil storm water ditch. The water from the ExxonMobil Storm Water Ditch discharges into the Coulson Ditch, a tributary of the Yellowstone River. The beneficial use classifications and applicable water quality standards for the receiving water are defined in Section 2 of this fact sheet.

Table 3. Discharge Location and Receiving Water

Outfall	Latitude	Longitude	Receiving Water	Receiving Water Classification
001	45°48'48''N	108°26'25W	ExxonMobil Storm Water Ditch	C-3

1.2.4 Permit Fee Determination

The Montana Water Quality Act (MWQA) requires that permit fees be assessed that are sufficient to cover the cost administering the permit program (75-5-516, Montana Code Annotated (MCA)). Permit fees are based on the type of waste (e.g. sewage, process wastewater, storm water, noncontact cooling water, etc.) and receiving water or stream segment. This analysis is based on ARM 17.30.201(6)(a) which states an application and annual fee for multiple outfalls is not required unless the discharges are to different receiving waters resulting in multiple or variable effluent limits. The table below identifies, individually or by group, the type of wastewater and receiving water by outfall for which effluent limits will be required.

Table 4. Summary Outfall Categories for Fee Purposes

Group	Effluent Description	Receiving Water	Outfall
A	Process Wastewater, Filter Backwash	ExxonMobil Storm Water Ditch	001

1.2.5 Effluent Characteristics

ARM 17.30.1371 requires that the permit fact sheet provide a description of the significant effluent characteristics of the wastes to be discharged. This information must be provided in the permit application as required by ARM 17.30.1322 and Title 40 of the Code of Federal Regulations (CFR) Part 122.21. This data must be collected over the previous 3-5 years and must reflect the current operation of the facility. Sample and analytical procedures must be in accordance with methods given at 40 CFR 136. If no analytical method is approved in 40 CFR 136, the applicant may use any suitable method but must provide a description of the method employed.

The effluent characteristics are given in Appendix 3 and are based on information provided by the permittee in application Form 2C. In addition to the requirements of ARM 17.30.1371, these effluent characteristics provide a basis for the water quality-based effluent limitations (WQBELs) developed in Section 2.2.8. In addition to chemical-specific characteristics, existing dischargers may be may be required to submit whole effluent toxicity (WET) data. The WET data for this facility is summarized in Section 1.3.
The results of the compliance monitoring and the effluent limitations contained in the 2008-issued permit are summarized in Section 1.3.

1.2.6 Planned Changes—Not Applicable

1.2.7 Other Information—Not Applicable

1.3 Compliance Summary

Compliance monitoring requirements from the 2008-issued permit for the discharge from Outfall 001 is summarized in the following table.

Table 5. Summary of Existing Limitations and Monitoring Data—Outfall 001

Parameter	Units	Effluent Limitation		Monitoring Data (From 9/1/2008 – To 1/31/2013)	
		Average Monthly	Maximum Daily	Highest Reported Average Monthly Discharge	Highest Reported Daily Discharge
Total Suspended Solids (TSS)	mg/L	30	100	29.4	68
Oil & Grease	mg/L	-	10	-	ND
Total Residual Chlorine (TRC)	mg/L	0.011	0.019	0.1[(1)]	0.1[(1)]
Effluent Flow Rate	gpd	-	-	162,367	262,900
pH	s.u.	-	6.0 - 9.0	-	6.4/9.0[(2)]
Total Dissolved Solids (TDS)	mg/L	-	-	3,720	7,706
Total Phosphorus	mg/L	-	-	-	19.2
Copper, Total Recoverable	mg/L	-	-	-	0.06
Zinc, Total Recoverable	mg/L	-	-	-	0.12
Polychlorinated Biphenyls (PCBs)	µg/L	-	-	-	0

Footnotes:
ND = Not Detected
(1) For the parameter TRC, values reported as 0.1 mg/L or less are considered to be in compliance with the permit TRC limits.
(2) The parameter pH is reported as both a minimum and maximum value. The values in the table above reflect to smallest minimum value(s) and the largest maximum value(s) as reported by the permittee on the DMR forms.

WHOLE EFFLUENT TOXICITY

The 2008-issued permit included an acute whole effluent toxicity (WET) monitoring requirement but did not include an acute toxicity limitation. The WET data is summarized in the table below.

Table 6. Acute Toxicity Data—Outfall 001

Test Species	Number Passed	Number Failed	Minimum Value		Maximum Value	
			LC_{50}	TU_A	LC_{50}	TU_A
Ceriodaphnia dubia	5	1	-	-	100	1.0
Pimephales promelas	6	0	-	-	-	-

WET limitations for this permit are evaluated in Section 2.2.

1.3.1 Compliance History

Data submitted to or collected by DEQ does not indicate any incidences of non-compliance with existing effluent limitations or other existing permit requirements.

1.3.2 Inspection Results

DEQ performed a Compliance Evaluation Inspection (CEI) of the facility on February 28, 2011, and sent a letter to the permittee documenting the findings on April 13, 2011. The findings were as follows:

- The facility is reporting pH values where the maximum laboratory holding time was exceeded; and
- DMR forms were not being signed by a duly authorized representative.

The facility has addressed and corrected the items noted in the CEI.

2 RATIONALE FOR EFLUENT LIMITATIONS

The Montana Water Quality Act (MWQA) requires that DEQ clearly specify in the permit any limitations imposed on the volume, strength, and other significant characteristics of the waste(s) discharged. The control of pollutants discharged is established through effluent limitations and other requirements in the permit. There are two principal bases for effluent limitations: technology-based effluent limitations (TBELs) that specify the minimum level of treatment or control for conventional, non-conventional, and toxic pollutants; and water quality-based effluent limitations (WQBELs) that attain and maintain applicable numeric and narrative water quality standards.

2.1 Technology-Based Effluent Limitations

Clean Water Act (CWA) Section 402(a)(1) (33 U.S.C. 1342(a)(1)) and the federal regulations at 40 CFR 125.3(a) require that permits issued under Section 402, including those issued by state programs, contain TBELs that implement the technology-based treatment requirements specified in the CWA. These technology-based requirements may be national technology standards for existing sources or new sources established by the U.S. Environmental Protection Agency (EPA) pursuant to Section 304 of the CWA, or, in some cases, standards established by the permit writer on a case-by-case basis.

2.1.1 Scope and Authority

EPA promulgates effluent guidelines under the authority of Sections 301, 304, 306, 307, 308, 402, and 501 of the CWA (33 U.S.C. 1311, 1314, 1316, 1318, 1342, and 1361). The Board of Environmental Review (Board) pursuant to 75-5-304(1), MCA, has adopted effluent limitations and standards in Title 17, Chapter 30, Subchapter 12 based on the applicable federal regulation. EPA has promulgated national technology-based standards of performance for existing sources at 40 CFR Subchapter N for dischargers other than POTWs.

Effluent guidelines establish the following standards for direct discharges from facilities other than POTWs:

- Best practicable treatment control technology (BPT) represents the average of the best performance by plants within an industrial category or subcategory. BPT standards apply to toxic, conventional, and non-conventional pollutants discharged by an existing discharge or new discharge that is not a new source.
- Best available technology economically achievable (BAT) represents the best existing performance of treatment technologies that are economically achievable within an industrial point source category. BAT standards apply to toxic and non-conventional pollutants discharged by an existing discharge or new discharge that is not a new source.
- Best conventional pollutant control technology (BCT) represents the control of conventional pollutants including biochemical oxygen demand, TSS, fecal coliform, pH, and oil & grease in an existing discharge or from a new discharge that is not a new source. The BCT standard is established after considering the "cost reasonableness" of the relationship between the cost of attaining a reduction in effluent discharge and the benefits that would result, and also the cost effectiveness of additional industrial treatment beyond BPT.

- New source performance standards (NSPS) represent the best available demonstrated control technology standards. The intent of NSPS guidelines is to set limitations that represent state-of-the-art treatment technology for new sources. A source is a new source if it meets the definition of new source in ARM 17.30.1304 and 1340(1) and a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger (ARM 17.30.1340(2)). A source is an existing source if it is not a new source or a new discharger. For purposes of applying effluent guidelines, the existing sources standards (BPT, BCT, and BAT) apply to existing sources and new dischargers. NSPS apply to new sources.

Pursuant to Section 402(a)(2) of the federal CWA (33 U.S.C. 1342(a)(2)), where EPA has not established effluent guidelines that are applicable to a particular class or category of industrial discharger or to a specific discharge, the permit writer establishes applicable technology-based treatment requirements on a case-by-case basis using best professional judgment (BPJ). Regulations for establishing these case-by-case requirements using BPJ are given in 40 CFR 125.3 and ARM 17.30.1203.

Finally, ARM 17.30.1345(1) requires that permit limitations, standards and prohibitions must be established for each outfall or discharge point of the permitted facility, except that best management practices may be imposed under 40 CFR 122.44(k) to control or abate pollutions, including:

- As authorized under Section 304(e) of the federal CWA for the control of toxic pollutants or hazardous wastes;
- As authorized under Section 402(p) of the federal CWA for the control of storm water dischargers;
- When numeric effluent limitation are infeasible; or
- When the practices are reasonably necessary to achieve effluent limitation or standards or to carry out the purposes and intent of the CWA.

Compliance with TBELs must be measured prior to dilution with the receiving water.

2.1.2 Applicable Technology Standards

The technology standards applicable to the facility are described below.

EFFLUENT LIMITATION GUIDELINES

EPA has promulgated effluent limitation guidelines (ELGs) in 40 CFR Part 423 for facilities in the Steam Electric Power Generating Point Source category. These ELGs are found at 40 CFR 423.10 through 423.17. The guidelines that address the processes employed or other activities conducted at the facility are:

- 40 CFR 423.12 – BPT ELGs; and
- 40 CFR 423.13 – BAT ELGs

Applicable Effluent Limitation Guidelines—Outfall 001

Processes and activities conducted at the facility contributing to the discharge from Outfall 001 that are addressed by the applicable ELGs are:

- Low Volume Wastes;
- Fly Ash and Bottom Ash Transport Water; and
- Metal Cleaning Wastes

DEQ has determined that, based on the information given in the discharger's permit application summarized in Section 1 of this fact sheet, the discharge from Outfall 001 does not meet the definition of a new source; the NSPS are not applicable.

40 CFR 423.12 specifies the following prohibitions, based on BPT, applicable to the discharges from the facility:

- The pH of all discharges, except once through cooling water, shall be within the range of 6.0-9.0 (40 CFR 423.12(b)(1));
- There shall be no discharge of polychlorinated biphenyl compounds such as those commonly used for transformer fluid (40 CFR 423.12(b)(2));
- At the permitting authority's discretion, the quantity of pollutant allowed to be discharged may be expressed as a concentration limitation instead of mass-based limitations (40 CFR 423.12(b)(11)); and
- In the event that waste streams from various sources are combined for treatment or discharge, the quantity of each pollutant or pollutant property attributable to each controlled waste source shall not exceed the specified limitations for that waste source (40 CFR 423.12(b)(12)).

40 CFR 423.13 specifies the following prohibitions, based on BAT, applicable to the discharges from the facility:

- There shall be no discharge of polychlorinated biphenyl compounds such as those commonly used for transformer fluid (40 CFR 423.13(a)(1));
- At the permitting authority's discretion, the quantity of pollutant allowed to be discharged may be expressed as a concentration limitation instead of mass based limitations (40 CFR 423.12(g)); and
- In the event that waste streams from various sources are combined for treatment or discharge, the quantity of each pollutant or pollutant property attributable to each controlled waste source shall not exceed the specified limitations for that waste source (40 CFR 423.12(h)).

Additional ELGs specified in 40 CFR 423 applicable to the discharge from the facility are summarized in Table 7, Table 8, and Table 9 below.

Table 7. 40 CFR 423.12(b)(3)—Low Volume Wastes				
Parameter	**Performance Standard**	**Units**	**Daily Maximum Limitation**	**30-day Average Limitation**
TSS	BPT	mg/L	100.0	30.0
Oil & Grease	BPT	mg/L	20.0	15.0

Table 8. 40 CFR 423.12(b)(4)—Fly Ash and Bottom Ash Transport Water				
Parameter	**Performance Standard**	**Units**	**Daily Maximum Limitation**	**30-day Average Limitation**
TSS	BPT	mg/L	100.0	30.0
Oil & Grease	BPT	mg/L	20.0	15.0

Table 9. 40 CFR 423.12(b)(5) and 40 CFR 423.13(e)—Metal Cleaning Wastes				
Parameter	**Performance Standard**	**Units**	**Daily Maximum Limitation**	**30-day Average Limitation**
TSS	BPT	mg/L	100.0	30.0
Oil & Grease	BPT	mg/L	20.0	15.0
Copper, Total Recoverable	BPT	mg/L	1.0	1.0
	BAT	mg/L	1.0	1.0
Iron, Total Recoverable	BPT	mg/L	1.0	1.0
	BAT	mg/L	1.0	1.0

The BPT ELGs for once through cooling water at 40 CFR 423.12(b)(6) are not applicable to the discharge from the facility since the facility uses air instead of water to cool the main condenser.

Both the BPT ELGs at 40 CFR 423.12(b)(7) and the BAT ELGs at 40 CFR 423.13(d)(1) for cooling tower blowdown are not applicable to the discharge from the facility since the facility falls under the definition of a "recirculating house service water systems" at 40 CFR 423.11(b).

The BPT ELGs for coal pile runoff at 40 CFR 423.12(b)(9) are not applicable to the discharge from the facility since the facility stores coal (coke) inside a building where it is not exposed to precipitation events.

2.1.3 TBEL Calculations

State and federal regulations include specific requirements on the calculation of TBELs for industrial facilities from the appropriate standards:

- ARM 17.30.1345(2) requires that any permit limitations, standards, or other prohibitions which are based on units of production (or other measure of operation) be based on a reasonable measure of actual production of the facility and not on the designed production

capacity. The permit may include a condition establishing alternative permit limitation, standards, or prohibitions based upon anticipated increased or decreased production levels, however, these alternate limits may not exceed maximum production capacity. In calculating alternative permit limitation, the permit must satisfy the requirement of ARM 17.30.1345(4).

- All permit effluent limitations, standards or prohibitions for a metal must be expressed as *total recoverable metal* as defined in 40 CFR 136 unless: the applicable effluent standard or limitation has been expressed in another form; in establishing permit limits on a case-by-case basis under 40 CFR 125.3 (ARM 17.30.1203); or the approved method for the metal only measures the dissolved form (e.g. hexavalent chromium) (ARM 17.30.1345(5)).
- For continuous discharges, all permit effluent limitations, standards, and prohibitions must, unless impracticable, be stated as maximum daily and average monthly discharge limitations (ARM 17.30.1345(6)).
- Dischargers that are not continuous must be particularly described and limited, considering, as appropriate, frequency, total mass, maximum rate of discharge of pollutants during the discharge, and prohibition or limitations of specified pollutants by mass, concentration, or other appropriate measure (ARM 17.30.1345(7)).
- All pollutants limited in permits must have limitations, standards, or prohibitions expressed in terms of mass except for: pH, temperature, radiation, or other pollutants that cannot be appropriately expressed by mass; when applicable standards and limitations are expressed in terms of other units of measurement; or if in establishing limitations on a case-by-case basis, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (ARM 17.30.1345(8)).

PRODUCTION DATA FOR APPLICATION OF EFFLUENT GUIDELINES—Not Applicable

FINAL TBELS—OUTFALL 001

The table below summarizes the numeric TBELs for the facility.

Table 10. Technology-Based Effluent Limitations—Outfall 001

Parameter	Units	Daily Maximum Limitation	Average Monthly Limitation
TSS	mg/L	100.0	30.0
Oil & Grease	mg/L	20.0	15.0
Copper, Total Recoverable	mg/L	1.0	1.0
Iron, Total Recoverable	mg/L	1.0	1.0

The narrative TBELs applicable to the discharge from the facility are summarized below:

- The pH of all discharges shall be within the range of 6.0-9.0; and
- There shall be no discharge of polychlorinated biphenyl compounds (PCBs) such as those commonly used for transformer fluid

2.2 Water Quality-Based Effluent Limitations

Section 301(b) of the CWA and 40 CFR 122.44(d), incorporated into ARM 17.30.1344(2)(b) by reference, require that permits include limitations more stringent than the applicable federal technology-based requirements when necessary to achieve the applicable water quality standards. ARM 17.30.635 requires that the degree of waste treatment required to restore and maintain the quality of state water shall be based on the surface water quality standards, and: 1) the state's policy of nondegradation of existing water quality in 75-5-303, MCA; 2) the present and anticipated (designated) uses of the receiving water; 3) the quality and nature of flow of the receiving water; 4) the quantity and quality of sewage, industrial, or other wastes to be treated; and 5) the presence or absence of other sources of pollution in the watershed.

2.2.1 Scope and Authority

The MWQA at 75-5-401(2), MCA states that a permit may only be issued if DEQ finds that the issuance or continuance of the permit will not result in the pollution of any state waters. By definition, state waters means any body of water, irrigation system or drainage system, either surface or underground. Ponds, lagoons, or other waste impoundments used solely for treating, impounding, or transporting wastes are not state waters. Discharge to state waters is prohibited unless expressly authorized in the facility's discharge permit. Montana water quality standards at ARM 17.30.637(2) require that no wastes may be discharged such that the waste either alone or in combination with other wastes will violate or can reasonably be expected to violate any standard. ARM 17.30.1344(1) adopts by reference 40 CFR 122.44 which states that MPDES permits shall include limits on all pollutants which will cause, or have a reasonable potential to cause an excursion of any water quality standard, including narrative standards.

The MWQA, Title 75, Part 3 requires the Board to establish the classification of all state waters in accordance with their present and future most beneficial uses; to formulate and adopt standards of water quality, giving consideration to the economics of waste treatment and prevention; to adopt rules implementing the state's nondegradation policy; and to adopt rules governing mixing zones. The Montana Surface Water Quality Standards and Procedures are found in ARM 17.30.601 *et seq.*, which also includes, by reference, Circular DEQ-7—Montana Numeric Water Quality Standards. Montana's regulations on Nondegradation of Water Quality are in ARM 17.30.701 *et seq.* and regulations on Mixing Zones in Surface and Ground Water are in ARM 17.30.501 *et seq.*

ARM 17.30.603 states that the standards in this subchapter are adopted to establish the maximum allowable change in surface water quality and to establish a basis for limiting the discharge of pollutants. ARM 17.30.620 states that the specific water quality standards along with the general provisions of ARM 17.30.635 through 637, ARM 17.30.645, and ARM 17.30.646 protect the beneficial uses set for the in the water-use classifications.

2.2.2 Applicable Water Quality Standards

Water quality-based effluent limitations (WQBELs) are evaluated for all parameters of concern based on the water quality standards that are applicable to the receiving water at the point of discharge. The water use classification and water quality standards that apply to the receiving water body for each regulated outfall are summarized below.

Water Use Classification and Standards—Outfall 001

Outfall 001 discharges directly into the ExxonMobil Storm Water Ditch. The ExxonMobil Storm Water Ditch is located within the Upper Yellowstone - Pompeys Pillar watershed, U.S. Geological Survey (USGS) Hydrological Unit Code (HUC) 10070007. A Montana stream segment does not exist for the ExxonMobil Storm Water Ditch. The designated water-use classification for the drainage as determined in the 2008 statement of basis is summarized below.

Table 11. Receiving Water Classification and Use—Outfall 001

Classification	Beneficial Uses
C-3	Bathing, swimming, and recreation Growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl, and furbearers Quality of water is naturally marginally suitable for drinking, culinary and food processing purposes, agriculture, and industrial water supply.

The general provisions of ARM 17.30.637(1) apply to all categories of state surface water. These provisions require that state waters must be free from substances which will: (a) settle to form objectionable sludge deposits or emulsions beneath the surface of the water or upon adjoining shorelines; (b) create floating debris, scum, a visible oil film (or be present in concentrations at or in excess of 10 milligrams per liter) or globules of grease or other floating materials; (c) produce odors, colors or other conditions as to which create a nuisance or render undesirable tastes to fish flesh or make fish inedible; (d) create concentrations or combinations of materials which are toxic or harmful to human, animal, plant or aquatic life; and (e) create conditions which produce undesirable aquatic life.

In addition to these general provisions, DEQ has determined that the specific water quality standards identified in ARM 17.30.629 are applicable to the receiving water. The specific numeric water quality standards applicable to the discharge from Outfall 001 are summarized in Appendix 1. The water quality standards are used to develop applicable effluent limitations based on the design conditions; this is further discussed in Section 2.2.7 of this permit fact sheet. The magnitudes of some numeric standards are dependent on the characteristics of the receiving water, such as hardness, pH, and/or temperature, and are summarized below. The characteristics of the receiving water are further discussed in Appendix 2.

Table 12. Basis for Certain Numeric Water Quality Standards—Outfall 001

Dependent Parameter	Measured Parameter	Statistic Applied to Measured Parameter
Copper	Hardness (as $CaCO_3$)	25th Percentile

2.2.3 Impaired Waters

The MWQA at 75-5-702, MCA, requires that DEQ monitor state waters and assess the quality of those waters in order to identify surface water bodies or segments of water bodies whose designated uses are threatened or impaired. Section 75-5-703, MCA requires that DEQ complete a TMDL (Total Maximum Daily Load) for those water bodies that are identified as threatened or impaired. These requirements satisfy Sections 303(d) and 305(b) of the federal Clean Water Act.

2012 303(d) List
The ExxonMobil Storm Water Ditch is not listed as impaired on Montana's 2012 Clean Water Act 303(d) list.

1996 303(d) List
The ExxonMobil Storm Water Ditch was not listed as impaired on Montana's 1996 Clean Water Act 303(d).

2.2.4 Pollutants and Parameters of Concern
WQBEL are only assessed for those pollutants or parameters of concern (POC) based on the effluent characteristics and the water quality objectives for the affected receiving water(s). DEQ has identified the POC listed below for purposes of assessing WQBELs.

Table 13. Pollutants and Parameters of Concern—Outfall 001

Parameter	Basis for Identifying as a Pollutant of Concern
TSS, Oil & Grease, Copper (Total Recoverable), Iron (Total Recoverable), and PCBs	Applicable TBELs
Oil & Grease, Total Residual Chlorine, and WET	Existing WQBELs
Zinc (Total Recoverable),	Existing Source: any parameter in the discharge that exceeds any applicable water quality standard

2.2.5 Nondegradation Analysis
The MWQA includes a nondegradation policy at 75-5-303, MCA that protects existing water quality from undue degradation. This policy applies to any new or increased activity which results in a change in existing water quality; DEQ has determined that the facility is an existing source. For existing sources not subject to review under the nondegradation policy, the WQBELs in Section 2.2.8 are derived from and comply with the state's water quality standards and, therefore, ensure the level of water quality necessary to attain and maintain existing and anticipated uses.

2.2.6 Mixing Zones
A mixing zone is an area where the effluent mixes with the receiving water and certain numeric water quality standards may be exceeded (ARM 17.30.502(6)). The Board has adopted rules governing the granting of mixing zones in surface and ground water at ARM 17.30.501 *et seq.* These rules require DEQ to determine the applicability of any currently granted mixing zones in the permit renewal process (ARM 17.30.505(1)). Mixing zones allowed under a permit issued prior to April 29, 1993, will remain in effect unless there is evidence that the previously allowed mixing zones will impair existing or anticipated uses (ARM 17.30.505(1)(c)). Discharges that do not conform to the criteria of ARM 17.30.501 *et seq.* are deemed to be causing impairment and are subject to review and modification.

A mixing zone is necessary for any parameter that has a reasonable potential to exceed either a water quality standard or a nondegradation criterion at the point of discharge. A discharger may request a standard or source specific mixing zone during the permit application process and must provide the necessary information. DEQ must then determine the appropriateness of the requested mixing zone

and will either grant the requested mixing zone, deny the requested mixing zone, or grant an alternative or modified mixing zone (ARM 17.30.515). A mixing zone is not assumed for any parameter unless specifically identified and granted in the MPDES permit and permit fact sheet.

The discharge must also comply with the general prohibitions listed in ARM 17.30.637(1), which requires that state waters, including mixing zones, be free from certain substances. A mixing zone may not be granted for any parameter subject to a technology-based effluent limitation or standard as described in Section 2.1 of this fact sheet or in ARM 17.30.1201 *et seq.*

Acute Mixing Zones

In accordance with ARM 17.30.517(1)(b), acute water quality standards for aquatic life may not be exceeded in any portion of the mixing zone unless DEQ finds that allowing minimal initial dilution will not threaten or impair existing uses. An acute mixing zone (zone of initial dilution) is not granted for any toxic or persistent substances unless the discharger demonstrates complete and rapid mixing (ARM 17.30.506(2)(d)). Complete and rapid mixing is demonstrated through the use of an effective effluent diffuser (ARM 17.30.516(3)(d)). To prevent acute lethality in the mixing zone, no more than 10% of the chronic mixing zone may be allowed for acute mixing. No acute mixing zone may be granted for acute whole effluent toxicity.

Chronic and Human Health Mixing Zone

DEQ may grant a mixing zone for numeric chronic aquatic life, human health, and/or other narrative water quality standards given in DEQ Circular DEQ-7 and the nondegradation criteria given in ARM 17.30.715. A mixing zone may also be granted for chronic whole effluent toxicity (WET). Chronic mixing zones are based on the critical flow of the receiving water specified in ARM 17.30.635 and Section 2.2.7 of this fact sheet. The design condition for discharges to flowing rivers and streams is the seven-day, 10-year low flow (7Q10).

For the purposes of water quality-based permitting calculations, the mixing zone provided is generally equated with a dilution allowance (i.e., a percentage of critical low flow) or a dilution ratio (D). ARM 17.30.516(3) defines the dilution ratio as the 7Q10 of the stream segment without the discharge divided by the flow of the discharge. The length of the mixing zone is the distance from the point of discharge to the end of the mixing zone and must be specified in the permit. The length of the mixing zone and dilution ratio must be smallest practicable size and have minimal effect on beneficial uses. All applicable water quality standards must be met at the end of the mixing zone.

Mixing Zone Determination

Outfall 001

The permittee has not requested a standard or source specific mixing zone. DEQ did not authorize a mixing zone in the 2008-issued permit. A mixing zone is not authorized for any pollutants in the discharge from the facility.

Water Quality Assessment

DEQ does not authorize a mixing zone for any pollutants in the discharge from the facility; a water quality assessment is not required.

2.2.7 Reasonable Potential Analysis and Design Conditions

The water quality standards at ARM 17.30.637(2) state that no wastes may be discharged, either alone or in combination with other wastes, or activities, that will violate or can reasonably be expected to violate any of the standards. Federal regulations at 40 CFR 122.44(d), which are incorporated into ARM 17.30.1344 by reference, require that all effluents be assessed by the permitting authority in order to determine the need for WQBELs in the permit. Specifically, 40 CFR 122.44(d)(1)(i) states that limitations must be established in permits to control all pollutants or pollutant parameters that are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any state water quality standard. A "reasonable potential analysis" (RPA) is used to determine whether a discharge, alone or in combination with other sources of pollutants to a water body could lead to an excursion above an applicable water quality standard.

40 CFR 122.44(d) requires that the procedures used by the permitting authority account for: the existing controls on point and nonpoint sources of pollution; the variability of the pollutant or pollutant parameter; the sensitivity of the species to toxicity testing (WET); and, where appropriate, the dilution of the effluent in the receiving water. For purposes of developing water quality-based effluent limitations and in the RPA, DEQ uses a mass-balance equation, which is a simple, steady-state model. The mass-balance equation is used to determine the concentration of a pollutant of concern after accounting for other sources of pollution in the receiving water and for any dilution provided by a mixing zone. The simple mass-balance equation applied to a river or stream is as follows:

$$Q_rC_r = Q_sC_s + Q_dC_d \quad \textit{(Equation 1)}$$

Where:

Q_s	=	critical stream flow above point of discharge
C_s	=	critical upstream receiving water pollutant concentration
Q_d	=	critical effluent flow
C_d	=	critical effluent pollutant concentration
Q_r	=	resultant in-stream flow after discharge ($Q_r = Q_s + Q_d$)
C_r	=	resultant in-stream pollutant concentration (after available dilution)

The values used to establish the maximum allowable change in surface water quality are based on the design conditions specified in the specific water quality standards in ARM 17.30.620-629 and 635 and are referred to as the critical conditions. The critical conditions that determine the values for the variables (Q_s, C_s, Q_d, and C_d) in Equation 1 are discussed below. These critical conditions are incorporated into the mixing zone regulations and nondegradation regulations by reference.

The amount of pollutant in the discharge that the receiving water is able assimilate and not exceed the applicable water quality standard is referred to as the wasteload allocation (WLA). The procedures for developing WLA follow federal guidance for developing wasteload allocations (*Handbook: Stream Sampling for Waste Load Allocation Applications*, EPA/625/6-86/013, September 1986; *Technical Guidance Manual for Performing Waste Load Allocations, Book VII:*

Permit Averaging Period, EPA, September 1984); and *Technical Support Document for Water Quality-based Toxics Control (TSD)*, EPA/505/2-90-001.

CRITICAL STREAM FLOW (Q_s)

Critical stream flow is based on the applicable provisions of ARM 17.30.620-629, which requires that discharge permits not cause receiving water concentrations to exceed applicable standards when the stream flow equals or exceeds the critical flow specified in ARM 17.30.635. ARM 17.30.635(2) states that the receiving water critical flow for point source discharges must be based on the 7Q10. If there are insufficient data to establish a 7Q10, DEQ must establish an acceptable stream flow.

DEQ does not authorize a mixing zone for any parameter present in the discharge from the facility. Therefore, Q_s is equal to zero. The RPA and the determination of WQBELs are based on the effluent meeting the applicable water quality standard at the end-of-pipe (no receiving water dilution).

CRITICAL BACKGROUND RECEIVING WATER POLLUTANT CONCENTRATION (C_s)

The critical pollutant concentration is the average concentration in the receiving water during the critical stream flow. The chronic standards for aquatic life are based on the 96-hour average concentration in the receiving water; the acute standards are based on the one hour average concentration in the receiving water (DEQ Circular DEQ-7). Since the baseline data is collected as single grab samples over time it does not represent the average concentration for either averaging period; therefore the background concentration must be determined using other methods.

For purposes of the reasonable potential analysis and determining assimilative capacity, the critical background concentration (C_s) is defined as the 75th percentile or upper bound estimate of the data. In some cases, including application of the nondegradation criteria in ARM 17.30.715(1), changes in existing water quality or the water quality standard are expressed relative to the background concentration in the receiving water. In these situations the WQBEL is based on the lower bound estimate of the interquartile range (25th percentile value) to maintain the existing water quality of the receiving water.
Data used for this analysis must be collected within the previous 3-5 years and a minimum of 10 samples collected over a range of hydrological conditions are necessary. If fewer than 10 samples are available, the background concentration cannot be determined. See Appendix 2 for a more detailed description of the procedures estimated value of C_s for the applicable receiving waters.

The background receiving water characteristics have not been collected and/or reported for this facility. Therefore, C_s is undetermined and the RPA and the determination of WQBELs are based on meeting the applicable water quality standard at the end-of-pipe (no receiving water dilution).

CRITICAL EFFLUENT FLOW (Q_d)

Effluent flow is a measure of the average daily flow expected to occur over either the next 5-year permit cycle or the effective life of the regulated facility or activity. The critical flow is based on the maximum 30-day (monthly) average from the previous permit cycle for existing facilities.
The Q_d for this facility is 162,367 gpd. This is the maximum 30-day (monthly) average value as reported by the permittee on DMRs during the period from January 2007 to April 2013.

CRITICAL EFFLUENT POLLUTANT CONCENTRATION (C_d)

The critical effluent concentration is based on the 95th percentile of the expected effluent concentration observed or predicted in the discharge. Due to the low frequency (percentage) of samples and the non-normal distribution of most effluents, DEQ follows the estimation procedures described in EPA's *Technical Support Document for Water Quality Based Toxic Control* (EPA, 1991) to estimate the 95th percentile of the daily values.

The values for C_d for this facility were calculated based on the DMRs submitted by the permittee for the period from January 2007 through April 2013. The critical effluent pollutant concentrations for Outfall 001 and the estimation procedures are given in Appendix 3.

REASONABLE POTENTIAL ANALYSIS (RPA)

The mass-balance equation (Equation 1) may be expressed in terms of the dilution ratio at the edge of the approved mixing zone. The dilution ratio is the volume of receiving water at the edge of the mixing zone to the volume of effluent at the edge of the mixing zone. Equation 2 below is the mass-balance equation arranged to solve for the receiving water concentration of a pollutant of concern:

$$C_r = (C_d + C_sD) / (1 + D) \quad (\textit{Equation 2})$$

Where:

D = dilution ratio (Q_s/Q_d)

Effluent data (C_d) and receiving water data (C_s) are based on the critical conditions as discussed in the previous section and in the analyses presented in Appendix 3 and Appendix 2 respectively.

Where the projected receiving water concentration (C_r) exceeds any applicable numeric standard for the parameters of concern, there is reasonable potential (RP) and a WQBEL must be calculated for that parameter. Appendix 4 of this permit fact sheet provides a complete description of the RPA for this facility. A summary of this analysis is provided below.

Table 14. Summary of the RPA—Outfall 001

Parameters	RP Determination (Yes/No/Undetermined)	Rationale/Comments
Copper, Zinc, and TRC	Yes	$C_r > S$
PCBs and Oil & Grease	No	$C_r < S$
Iron	Undetermined	C_d undetermined

The facility would cause an exceedance of the water quality standards for TRC if the facility discharges TRC up to the concentrations allowed under the applicable TBELs; a WQBEL for TRC is required.

The effluent limits for copper and zinc are hardness-based; a finding of RP for copper and zinc and is based on a standard hardness value of 25 mg/L as $CaCO_3$, per Circular DEQ-7, since the hardness of the receiving water has not been characterized. WQBELs for copper and zinc are required.

The RPA for iron is undetermined since effluent data for this parameter has not been collected. However, the facility would cause an exceedance of the water quality standard for iron if the facility discharges iron up to the concentrations allowed under the applicable TBEL; a WQBEL for iron is required.

REASONABLE POTENTIAL ANALYSIS—WHOLE EFFLUENT TOXICITY

In addition to specific chemical parameters, the federal regulations at 40 CFR 122.44(d)(1) specify that the discharge permit must contain effluent limitations to control toxicity when DEQ determines that the discharge has a reasonable potential to violate either a numeric or a narrative criterion prohibiting toxicity. The Montana water quality standards at ARM 17.30.635 prohibit the discharge of substances that will create concentrations or combinations of materials which are toxic or harmful to human, animal, plant, or aquatic life. ARM 17.30.646 requires the use of bioassay or whole effluent toxicity (WET) tests using the most sensitive local or economically important species to implement aquatic life prohibition of toxicity in state waters. The following endpoints define acute and chronic toxicity for implementing these regulations:

- Acute toxicity occurs when, during an acute toxicity test, 50% mortality is observed for any tested species at any effluent concentration (i.e., $LC_{50} \leq 100\%$ effluent); and
- Chronic toxicity occurs when, during a chronic toxicity test, the 25% inhibition concentration (IC_{25}) for any tested species is less than or equal to the percent effluent represented by the effluent concentration in the receiving water after accounting for any allowable mixing zone.

In order to account for the variability of the effluent and sensitivity of the species to the toxicity of the effluent, toxicity results are expressed in terms of toxicity units (TU). The toxicity unit acute (TU_A) is the reciprocal of the effluent concentration that causes 50% mortality of the test organisms by the end of the acute exposure period and is expressed as follows:

$$TU_A = (LC_{50})^{-1} * 100$$

The toxicity unit chronic (TU_C) is the reciprocal of the effluent concentration that causes no observable effect on the test organisms by the end of the chronic exposure period and is expressed as follows:

$$TU_C = (IC_{25})^{-1} * 100$$

An effluent limit for acute toxicity is necessary if the projected TU_A is greater than 1.0; a chronic toxicity effluent limit is required if the projected TU_C is greater than 0.3.

WET testing is required for industrial discharges that DEQ determines may contain toxic pollutants or where the effluent has not been fully characterized for the presence of toxic pollutants. The 2008-issued permit for the facility required acute WET monitoring. The permittee submitted the results of

six paired acute WET tests; this data is summarized in Section 1.3. A RPA is necessary in order to determine if a WET permit limit is necessary.

Procedures for determining reasonable potential for WET follow those published in EPA's *Technical Support Document for Water Quality-based Toxics Control (TSD)*, EPA/505/2-90-001. DEQ uses the same steady state model as given in Equation 2 for chemical-specific RPA. Critical design conditions for receiving water and effluent flow are as previously discussed and any applicable dilution ratio (D) for chronic WET in Section 2.2.7 is applied. Receiving water toxicity (C_s) is assumed to be zero unless toxicity is demonstrated in receiving water (see the receiving water characteristics in Appendix 2). The maximum effluent concentrations ($C_{d\text{-}max}$) in terms of toxicity units is calculated as follows:

$$C_{d\text{-}max} = TU_{max} * RPM$$

Where:

TU_{max} = Maximum observed TU_A or TU_C; Section 1.3
RPM = RP Multiplication factor; TSD Table 3-1 (99% confidence level)

Based on a sample size of six (6) with a coefficient of variation (CV) of 0.6, the TSD value for RPM is 3.8. For this facility, toxicity has not been demonstrated in the receiving water and the dilution ratio (D) is equal to zero. Setting C_s and D both equal to zero, the mass-balance equation (Equation 2) simplifies to the following:

$$C_r = C_{d\text{-}max}$$

Where:

C_r = Resulting instream toxicity; in terms of either TU_A or TU_C
$C_{d\text{-}max}$ = Projected effluent toxicity; in terms of either TU_A or TU_C

The result of the RPA for acute WET is summarized in the table below.

Table 15. Summary of the WET RPA—Outfall 001

Condition	TU_{max}	RPM	$C_{d\text{-}max}$	D	C_r	RP Determination (Yes/No/Undetermined)
Acute Toxicity	1.0	3.8	3.8	0	3.8	Yes

A finding of reasonable potential is supported since value of C_r exceeds 1.0 TU_A. Therefore, the permit must include a WQBEL prohibiting acute toxicity along with WET monitoring requirements.

2.2.8 Water Quality-Based Effluent Limitations

DEQ establishes WQBELs for an existing discharger by first calculating the WLAs from the numeric water quality standards (acute aquatic life, chronic aquatic life, and human health). These

WLAs are then translated into maximum daily limitations (MDLs) and average monthly limitations (AMLs) to reflect the respective averaging times given in the surface water quality standards (ARM 17.30.635) and DEQ Circular DEQ-7.

The mass-balance equation (Equation 1) given in the previous section is arranged in order to calculate the WLA (C_{WLA}) such that the discharge does not cause or contribute to an exceedance of the applicable water quality standard under critical conditions:

$$C_{WLA} = S + D(S - C_s)$$

By arranging the equation in this manner, it is applicable to any effluent and receiving water where the dilution ratio is known. Where an existing discharge is to a water body that is not meeting a concentration-based numeric standard in the water column, the WLAs for that pollutant of concern are set equal to the applicable numeric water quality standards. WLAs are then translated into MDLs and AMLs using the procedures outlined in Appendix 5.

FINAL WQBELS —OUTFALL 001

The calculated WQBELs based on the applicable water quality standards are presented in the table below.

Table 16. WQBELs—Outfall 001

Parameter	Units	Maximum Daily Limitation (MDL)	Average Monthly Limitation (AML)	Basis for WQBEL
Copper, Total Recoverable	µg/L	2.85	1.95	Chronic Standard
Iron, Total Recoverable	µg/L	998	684	Chronic Standard
Zinc, Total Recoverable	µg/L	37	24	Acute Standard
TRC	µg/L	11	8.5	Acute Standard
Oil & Grease	mg/L	10	-	ARM 17.30.637(1)(b)

2.2.9 Whole Effluent Toxicity Limitations

Based on the RPA for WET as discussed in Section 2.2.7 above, the permit includes acute WET limitations.

Due to the nature of acute WET testing, even requiring an LC_{50} of "> 100% effluent" allows for some degree of toxicity until the effluent sufficiently mixes with the receiving water in order to reduce the lethality of the effluent and receiving water mixture to an acceptable level. Consequently, no additional mixing zone is permitted for acute WET limitations which are expressed in the permit as follows:

> *There shall be no acute toxicity in the effluent from Outfall 001. Acute toxicity occurs when, during an acute toxicity test, 50% mortality is observed for any tested species at any effluent concentration (i.e., $LC_{50} \leq$ 100% effluent). Acute toxicity tests to determine the LC_{50} of the effluent from Outfall 001 shall be conducted in accordance with the requirements in Section 3.1.2 (Whole Effluent Toxicity Testing) below. A projected LC_{50} >*

100% effluent (i.e., less than 50% mortality in 100% effluent) shall be reported as "pass." A result of $LC_{50} \leq$ 100% effluent shall be reported as "fail."

2.3 Final Effluent Limitations

The final effluent limitations in the permit are based on the more stringent of the calculated TBELs and WQBELs for each parameter, subject to an anti-backsliding analysis. The final WQBELs must be compared to the TBELs calculated for the same parameter in order to determine the most protective limitations that meet the requirements of both the technology-based standards and the water quality-based standards. After determining the most protective of the calculated limitations, DEQ considers the need for an anti-backsliding analysis before determining the final effluent limitations to include in the MPDES permit.

2.3.1 Anti-backsliding Analysis

Section 402(o) of the Clean Water Act and 40 CFR 122.44(l) require, with some exceptions, that effluent limitations or conditions in reissued permits be at least as stringent as those in the existing permit. All effluent limitations in this permit are at least as stringent as the effluent limitations in the 2008-issued permit.

2.3.2 Stringency Analysis

The permit contains both technology-based and water quality-based numeric effluent limitations for individual pollutants. The technology-based effluent limitations consist of restrictions on TSS, Oil & Grease, Total Recoverable Copper, and Total Recoverable Iron. This permit's technology-based pollutant restrictions implement the minimum, applicable federal technology-based requirements. In addition, the permit contains effluent limitations more stringent than the minimum, federal technology-based requirements that are necessary to meet water quality standards.

FINAL EFFLUENT LIMITS—OUTFALL 001

The table below provides a summary of the final effluent limitations for Outfall 001.

Table 17. Final Numeric Effluent Limitations—Outfall 001

Parameter	Units	Effluent Limitations		Basis for Limitations
		Maximum Daily (MDL)	Average Monthly (AML)	
TSS	mg/L	100	30	ELG
Oil & Grease	mg/L	10	-	WQBEL
TRC	µg/L	11	8.5	WQBEL
Copper, Total Recoverable	µg/L	2.85	1.95	WQBEL
Iron, Total Recoverable	µg/L	998	684	WQBEL
Zinc, Total Recoverable	µg/L	37	24	WQBEL

Based on the RPA for WET as discussed in Section 2.2.7 above, the permit must include a WQBEL prohibiting acute toxicity in the discharge from the facility; the WET monitoring requirements are discussed below in Section 3.1.2 of this fact sheet.

2.3.3 Additional Effluent Limitations and Conditions

The permittee is required to comply with the additional effluent limitations and conditions described below.

2.3.4 Narrative Prohibitions—Outfall 001

The general prohibitions of ARM 17.30.637(1) contain the general provisions applicable to all state waters, including mixing zones, and are referred to as "free from" standards. These general prohibitions represent the minimum level of protection that applies to all state waters, including within the mixing zone and to ephemeral waters or drainages not subject the specific standards of ARM 17.30.621 to 629 and 650 to 658.

ARM 17.30.637(1)(d) is implemented through the application of the numeric standards and the whole effluent toxicity requirements, as discussed above. With few exceptions, facilities that are subject to the minimum treatment requirements and that are in compliance with those limitations fulfill the requirements of ARM 17.30.637(1)(a-c) and ARM 17.30.637(1)(e); however, where a discharge would cause, have the reasonable potential to cause, or contribute to an excursion of a narrative standard, effluent limitations implementing that narrative standard must be included in the permit. The permit includes the following effluent limitations implementing these narrative standards:

- The pH of all discharges shall be within the range of 6.0-9.0;
- There shall be no discharge of polychlorinated biphenyl compounds (PCBs) such as those commonly used for transformer fluid;
- There shall be no discharge which causes visible oil sheen in the receiving water; and
- There shall be no discharge of floating solids or visible foam in other than trace amounts.

2.4 Interim Effluent Limitations—Not Applicable

2.5 Compliance Schedules—Not Applicable

3 RATIONALE FOR MONITORING AND REPORTING REQUIREMENTS

Regulations requiring the establishment of monitoring and reporting conditions in MPDES permits are found at 40 CFR 122.44(i), 40 CFR122.48, and ARM 17.30.1351. In addition to the specific monitoring requirements presented in this section, Part 4 of the permit contains, as standard conditions, the monitoring, records requirements, and standard reporting requirements.

The effluent must be measured and sampled prior to dilution with any receiving waters for compliance with the effluent limitations given in the discharge permit. Except for parameters measured on an instantaneous basis, all monitoring requirements, including flow, are based on the daily discharge. Daily discharge, as defined in ARM 17.30.1304, means the discharge of pollutants measured during a calendar day. For pollutants with limitation expressed in terms of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day by multiplying the concentration of a sample by the daily flow. For pollutants with effluent limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

ARM 17.30.1351 (40 CFR 122.48) requires that monitoring requirements in MPDES permits must specify the monitoring type, interval, and frequency sufficient to yield data representative of the monitored activity. This includes, when appropriate, continuous monitoring. All effluent and ambient monitoring must conducted in accordance with test procedures approved under 40 CFR 136, unless another method is specified in 40 CFR Subchapters N or O. Analytical methods must achieve the required reporting value (RRV) specified in DEQ Circular DEQ-7 unless otherwise specified in the permit. The permittee may use any approved analytical method capable of achieving the RRV specified in the permit. All permit effluent limitations must be expressed in terms of total recoverable metal unless the conditions of ARM 17.30.1345(5) are satisfied.

Except for storm water, continuous flow monitoring and totalizing is required when permit effluent limitations are expressed in terms of mass (load) other than for facilities with treatment systems having a detention time greater than 30 days. These facilities must report flow in million gallons per day (mgd) except for facilities with design flow or average daily flow of less than 0.1 mgd which should report flow in gallons per day (gpd). Any discharge or increase in volume of a discharge caused by precipitation must comply with the storm water monitoring requirements in Section 3.1.1.

The minimum sample frequency for parameters with effluent limitations expressed in terms of average monthly (mass or concentration) is weekly except where the measured maximum daily value divided by the 30-day average values is less than 1.5.

3.1 Monitoring Locations and Frequency

3.1.1 Outfall 001

The monitoring location for Outfall 001 is the sample tap in the wastewater tank storage room. Samples must be collected prior discharge into the ExxonMobil Storm Water Ditch and must be representative of the volume and nature of the wastes discharged by the facility. Monitoring frequencies and sample types are provided in the table below.

Table 18. Effluent Monitoring Requirements—Outfall 001

Parameter	Units	Minimum Monitoring Frequency	Sample Type	Basis
Flow Rate	mgd	Continuous	Instantaneous	Effluent Characterization
pH, maximum	s.u.	1/Week	Instantaneous	Permit Compliance
pH, minimum	s.u.	1/Week	Instantaneous	Permit Compliance
TSS	mg/L	1/Week	Composite	Permit Compliance
TRC	mg/L	1/Week	Grab	Permit Compliance
Oil & Grease	mg/L	1/Month	Grab	Permit Compliance
TDS	mg/L	1/Month	Grab	2008-Issued Permit Requirement
Copper, Total Recoverable	µg/L	1/Week	Grab	Permit Compliance
Iron, Total Recoverable	µg/L	1/Week	Grab	Permit Compliance
Zinc, Total Recoverable	µg/L	1/Week	Grab	Permit Compliance
Phosphorus, Total (as P)	mg/L	1/Quarter	Grab	2008-Issued Permit Requirement
WET, acute	Pass/Fail	1/Quarter	Grab	Permit Compliance
PCBs	µg/L	1/Semi-annual	Grab	Permit Compliance

3.1.2 ExxonMobil Storm Water Ditch

The monitoring location for the ExxonMobil Storm Water Ditch is upstream of the discharge from Outfall 001. Samples must be representative of the quality of the receiving water prior to the introduction of wastewater from the facility. Monitoring frequencies and sample types are provided in the Table 19 below.

Table 19. Upstream Monitoring Requirements—ExxonMobil Storm Water Ditch

Parameter	Units	Minimum Monitoring Frequency	Sample Type	Basis
Flow Rate	gpd	1/Month	Instantaneous	Receiving Water Characterization
pH	s.u.	1/Month	Instantaneous	Receiving Water Characterization
Hardness (as $CaCO_3$)	mg/L	1/Quarter	Grab	Receiving Water Characterization
Phosphorus, Total (as P)	mg/L	1/Quarter	Grab	Receiving Water Characterization
Copper, Total Recoverable	µg/L	1/Quarter	Grab	Receiving Water Characterization
Iron, Total Recoverable	µg/L	1/Quarter	Grab	Receiving Water Characterization
Zinc, Total Recoverable	µg/L	1/Quarter	Grab	Receiving Water Characterization

3.1.3 Storm Water Monitoring Requirements—Not Applicable

3.1.4 Whole Effluent Toxicity Testing

The facility must perform semiannual acute static renewal WET testing during the permit cycle using two species (*Ceriodaphnia dubia* and *Pimephales promelas*) per test. The acute toxicity tests must follow the procedures set out in the most recent version (as of the issuance date of this permit) of Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, EPA-600/4-90/027 and the Region VIII EPA NPDES Acute Test Conditions - Static Renewal Whole Effluent Toxicity Test testing protocols. A standard dilution series will be used (100, 50, 25, 12.5, and 6.25).

The permittee must conduct an acute 48-hour static renewal toxicity test using *Ceriodaphnia dubia* and an acute 96-hour static renewal toxicity test using fathead minnows (*Pimephales promelas*). WET testing guidance recommends the use of ambient water as the dilution water. The ExxonMobil Storm Water Ditch will be used as the source of the ambient water. If the ExxonMobil Storm Water Ditch is shown to be either toxic or dry, then moderately hard reconstituted laboratory water may be substituted as the dilution water. The control of pH in the toxicity test utilizing CO_2 enriched atmospheres is allowed in order to prevent rising pH drift. The target pH selected must represent the pH value of the ExxonMobil Storm Water Ditch at the time of sample collection.

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

Acute toxicity observed in a routine test is a violation of the permit; a retest must be conducted within two weeks of the date when the permittee is informed of the toxicity. If acute toxicity occurs in the retest, the facility is required to increase the frequency of WET testing to monthly until further notified by DEQ.

If the effluent exceeds the acute toxicity limitation in a routine test and is confirmed as persistent by the retest, then a Toxicity Identification Evaluation (TIE)-Toxicity Reduction Evaluation (TRE) must be undertaken by the permittee. The TIE-TRE is required in order to establish the cause(s) of the toxicity, to locate the source(s) of the toxicity, and to develop a method for the control of, or treatment for, the toxicity. The failure to initiate or conduct an adequate TIE-TRE, or delays in the conduct of such tests, is not a justification for noncompliance with the WET limits contained in 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 semiannual WET test results from the laboratory must be reported along with the DMR form no later than the 28th day of the month following the completed reporting period. 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 must include all chemical and physical data as specified.

3.1.5 Reporting Requirements

The permit permittee must comply with reporting requirements as specified in ARM 17.30.1342.

4 RATIONALE FOR SPECIAL CONDITIONS

The following provides the rationale for the special conditions included in the permit.

4.1 Additional Monitoring and Special Studies

This permit renewal requires the permittee to perform additional monitoring as discussed in Section 4.1.1 below.

4.1.1 Ambient Monitoring

The permittee is required to characterize the quality of the receiving water in order to provide the data necessary to adjust hardness-dependent limits and to provide the data necessary to perform a RPA during the next permit cycle.

4.1.2 Supplemental Effluent Monitoring—Not Applicable

4.1.3 Ground Water Monitoring—Not Applicable

4.2 Best Management Practices and Pollution Prevention—Not Applicable

4.2.1 Land Application—Not Applicable

4.2.2 Storm Water Management—Not Applicable

The discharge of storm water by the facility is covered under the Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity, MPDES permit number MTR000634.

4.3 Reopener Provisions

DEQ may reopen the permit to modify permit conditions and requirements. ARM 17.30.1361 address causes for modifying an MPDES permit based on information obtained after permit issuance. The permit also lists specific causes for which it may be reopened and modified. These reopener provisions include the following:

- New water quality standards (when requested by the permittee) (ARM 17.30.1361(2)(c));
- Water quality standards exceeded in the receiving water (ARM 17.30.1361(2)(b));
- The development and approval of either a TMDL or wasteload allocation applicable to the facility (ARM 17.30.1361(2)(b));
- A revision to the water quality management plan that calls for effluent limitations other than those specified in the permit;
- The establishment of a toxic prohibition or standard under Clean Water Act Section 307(a) that is more stringent than limitations for the toxic pollutant in the permit (ARM 17.30.1361(2)(f) and (g); ARM 17.30.1344(2)); or
- Changes in the whole effluent protocol or any other conditions related to the control of toxicants that have occurred or are needed (ARM 17.30.1361(b)).

As noted, the specific reopener provisions included in the permit are consistent with the various provisions of ARM 17.30.1361.

5 STANDARD CONDITIONS

Standard conditions, which apply to all MPDES permits in accordance with ARM 17.30.1342 and additional conditions applicable to specified categories of permits in accordance with ARM 17.30.1343, are included in Part 4 of the permit. The permittee must comply with all standard conditions under ARM 17.30.1342 and the additional conditions that are applicable to the permittee under ARM 17.30.1343.

40 CFR 123.25(a)(12) allows the state to omit or modify conditions to impose more stringent requirements. In accordance with 40 CFR 123.25, this permit omits federal conditions that address enforcement authority specified in 40 CFR 122.41(j)(5) and (k)(2) since the enforcement authority under the ARM is more stringent. In lieu of these conditions, the permit incorporates by reference 75-5-633, MCA.

6 NONSIGNIFICANT DETERMINATION

The Montana Water Quality Act states that it is unlawful to cause degradation of state waters without authorization (75-5-303, MCA; 75-5-605(1)(d), MCA). ARM 17.30.706(2) states that DEQ will determine whether a proposed activity may cause degradation for all activities which are permitted, approved licensed or otherwise authorized by DEQ, such as issuance of a discharge permit. A nondegradation analysis was conducted in Section 2.2.5 of this permit fact sheet for the proposed discharges and activities regulated by this permit. Based on this analysis DEQ has made the following determination:

The outfall regulated by this permit is not new or increased source as defined by ARM 17.30.702 and is therefore not subject to the nondegradation requirements.

7 OTHER INFORMATION

On September 21, 2000, a U.S. District Judge issued an order stating that until all necessary total maximum daily loads (TMDLs) under Section 303(d) of the Clean Water Act are established for a particular water quality limited segment, the state may not issue any new permits or increase permitted discharges under the MPDES program. The order was issued under the lawsuit Friends of the Wild Swan vs. US EPA, *et al.*, CV 97-35-M-DWM, District of Montana, Missoula Division.

The renewal of the permit does not conflict with the judge's order since the permit includes effluent limits that prohibit any increases above previously allowed authorized amounts.

8 PUBLIC PARTICIPATION

In accordance with ARM 17.30.1372, DEQ issued Public Notice No. MT-13-19 dated July 22, 2013. The public notice states that a tentative decision has been made to issue an MPDES permit for the Yellowstone Energy Limited Partnership Facility and that a draft permit, a fact sheet, and an environmental assessment (EA) have been prepared. Public comments are invited any time prior to the close of the business August 22, 2013. Comments may be directed to:

DEQ Permitting and Compliance Division
Water Protection Bureau
PO Box 200901
Helena, MT 59620

or WPBPublicNotices@mt.gov

All comments received or postmarked prior to the close of the public comment period will be considered in the formulation of the final permit. DEQ will respond to all substantive comments and issue a final decision within sixty days of the close of the public comment period or as soon as possible thereafter.

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that DEQ's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under ARM 17.30.1372.

8.1 Notification of Interested Parties

Copies of the public notice were mailed to the Discharger, state and federal agencies and interested persons who have expressed in interest in being notified of permit actions. A copy of the distribution list is available in the administrative record for this permit. In addition to mailing the public notice, a copy of the notice and applicable draft permit, fact sheet and EA were posted on DEQ website for 30 days.

Any person interested in being placed on the mailing list for information regarding this MPDES Permit contact DEQ, reference this facility, and provide a name, address, and phone number.

8.2 Public Hearing Written Comments

During the public comment period provided by the notice, DEQ will accept requests for a public hearing. A request for a public hearing must be in writing and must state the nature of the issue proposed to be raised in the hearing (ARM 17.30.1373).

8.3 Permit Appeal

After the close of the public comment period DEQ will issue a final permit decision. A final permit decision means a final decision to issue, deny, modify, revoke and reissue, or, terminate a permit. A permit decision is effective 30 days after the date of issuance unless a later date is specified in the

decision, a stay is granted pursuant to ARM 17.30.1379, or the applicant files an appeal pursuant to 75-5-403, MCA.

The Applicant may file an appeal within 30 days of DEQ's action to the following address:

Secretary, Board of Environmental Review
Department of Environmental Quality
1520 East Sixth Avenue
PO Box 200901
Helena, Montana 59620-0901

8.4 Additional Information

Requests for additional information or questions regarding this permit should be directed to: Tommy Griffeth at (406) 444-1454 or TGriffeth@mt.gov.

MASTER LIST OF APPENDICES

Appendix and Table Number	Description	Applicability	Status
1. Water Quality Standards and Nondegradation Criteria			
1.A	Applicable Water Quality Standards and Nondegradation Criteria	ExxonMobil Storm Water Ditch	Required
2. Receiving Water Characteristics			
2.A.1	Receiving Water Characteristics— Conventional and Nonconventional Pollutants and Parameters	ExxonMobil Storm Water Ditch	Required
2.A.2	Receiving Water Characteristics— Toxic Priority Pollutants	ExxonMobil Storm Water Ditch	Required Based on Pollutants of Concern
3. Effluent Characteristics			
3.A.1	Effluent Characteristics— Conventional and Nonconventional Pollutants and Parameters	Outfall 001	Required
3.A.2	Effluent Characteristics— Toxic Priority Pollutants	Outfall 001	Required Based on Pollutants of Concern
4. Reasonable Potential Analysis—Individual Parameters			
4.A	Reasonable Potential Analysis— Existing Sources Under Nondegradation Rules	Outfall 001 Discharging to ExxonMobil Storm Water Ditch	Required
5. WQBELs—Individual Parameters			
5.A	WQBELs— Existing Sources Under Nondegradation Rules	Outfall 001 Discharging to ExxonMobil Storm Water Ditch	Required

APPENDIX 1—WATER QUALITY STANDARDS AND NONDEGRADATION CRITERIA

Table 1.A. Numeric Water Quality Standards—ExxonMobil Storm Water Ditch

Parameter	Units	Acute Water Quality Standard (S_a)	Chronic Water Quality Standard (S_c)	Human Health Water Quality Standard (S_{hh})	Nondegradation Category	Nondegradation Criterion (S_{ND}) or Not Applicable (NA)
Conventional and Nonconventional Pollutants						
Biochemical Oxygen Demand	mg/L	-	-	-	Narrative	NA
Chemical Oxygen Demand	mg/L	-	-	-	Narrative	NA
Total Organic Carbon	mg/L	-	-	-	Narrative	NA
Total Suspended Solids	mg/L	See ARM 17.30.629(2)(f)			Harmful	NA
Ammonia	mg/L	(1)	(1)	-	Toxic	NA
Flow	mgd or gpd	-	-	-	Flow	NA
Temperature, maximum	°F	See ARM 17.30.629(2)(e)			Harmful	NA
Temperature, minimum	°F	See ARM 17.30.629(2)(e)			Harmful	NA
pH, maximum	s.u.	9.0			Harmful	NA
pH, minimum	s.u.	6.0			Harmful	NA
Chlorine, Total Residual	mg/L	0.019	0.011	4,000	Toxic	NA
Fecal Coliform	#/100 ml	-			-	NA
E. Coli bacteria, summer	#/100 ml	126/252			Harmful	NA
E. Coli bacteria, winter	#/100 ml	630/1,260			Harmful	NA
Nitrate+ Nitrite	mg/L	-	-	10	Toxic	NA
Total Nitrogen	mg/L	-	-	-	Narrative	NA
Oil & Grease	mg/L	-	-	10	Narrative	NA
Total Phosphorus	mg/L	-	-	-	Narrative	NA
Dissolved Oxygen	mg/L	See ARM 17.30.629(2)(b)			Toxic	NA
Turbidity	NTU	-	-	-	Harmful	NA
Total Dissolved Solids	mg/L	See ARM 17.30.629(2)(f)			Narrative	NA
Hardness, Total, as $CaCO_3$	mg/L	-	-	-	Narrative	NA

Footnotes:
(1) The permittee was not required to collect ambient pH or temperature data; this standard is undetermined.

Parameter	Units	Acute Water Quality Standard (S_a)	Chronic Water Quality Standard (S_c)	Human Health Water Quality Standard (S_{hh})	Nondegradation Category	Nondegradation Criterion (S_{ND}) or Not Applicable (NA)
Metals, Cyanide, Total Phenol, and Dioxin						
Antimony, Total	µg/L	-	-	5.6	Toxic	NA
Arsenic, Total	µg/L	340	150	10	Carcinogen	NA
Beryllium, Total	µg/L	-	-	4	Carcinogen	NA
Cadmium, Total[(1)]	µg/L	0.52	0.97	5	Toxic	NA
Chromium, Total	µg/L	-	-	100	Toxic	NA
Copper, Total[(1)]	µg/L	3.79	2.85	1,300	Toxic	NA
Iron, Total	µg/L	-	1,000	-	Harmful	NA
Lead, Total[(1)]	µg/L	13.98	0.545	15	Toxic	NA
Mercury, Total	µg/L	1.7	0.91	0.05	Toxic w/BCF > 300	NA
Nickel, Total[(1)]	µg/L	145	16.1	100	Toxic	NA
Selenium, Total	µg/L	20	5	50	Toxic	NA
Silver, Total[(1)]	µg/L	0.374	-	100	Toxic	NA
Thallium, Total	µg/L	-	-	0.24	Toxic	NA
Zinc, Total	µg/L	37	37	2,000	Toxic	NA
Cyanide	µg/L	22	5.2	140	Toxic	NA
Phenol, Total	µg/L	-	-	300	Harmful	NA
Dioxin (2,3,7,8-TCDD)	µg/L	-	-	5×10^{-9}	Carcinogen	NA
Other Toxic Priority Pollutants						
Polychlorinated Biphenyls (PCBs)	µg/L	-	0.014	6.4×10^{-4}	Carcinogen	NA

Footnotes:
(1) The permittee was not required to collect ambient hardness data; the water quality standard listed is based on a hardness of 25 mg/L (as $CaCO_3$).

APPENDIX 2—RECEIVING WATER CHARACTERISTICS

Where receiving water quality data is available it may be used in the development of water quality-based effluent limitations (WQBEL) for the parameters of concern (POC). For new or increased sources subject to nondegradation review, existing water quality, as defined in ARM 17.30.702, is necessary for all POC present in the discharge. Criteria for establishing POCs are discussed in Section 2.2.4 of this permit fact sheet. Appendix 2 describes the process used to determine the receiving water concentration or value for purposes of developing WQBELs.

Receiving water quality should be based on samples collected during the period of critical stream flow (Q_s), as described in Section 2.2.7. Since Q_s is an infrequent event and data is not typically available, the background concentration (C_s) must be estimated based on water quality data that is collected outside of this flow condition. To account for the uncertainties in estimating background data, DEQ uses the upper and lower quartiles of the sample data. The upper quartile is defined as the 75th percentile of the measured or observed data and the lower quartile is the 25th percentile of the same data set. A minimum of 10 data points or measurements must be available and representative of the range of hydrologic conditions in the receiving water. Data used in this analysis must be collected upstream of the point of discharge for flowing water bodies or outside of the influent of the discharge for non-flowing water bodies.

For most constituents, the critical background concentration is defined to be the upper quartile of the sample data for purposes of a reasonable potential analysis and determining assimilative capacity. In some cases, including application of the nondegradation criteria in ARM 17.30.715(1), changes in existing water quality or the water quality standard in expressed relative to the background concentration in the receiving water. In these situations the WQBEL is based on the lower bound estimate of the interquartile range (25th percentile value) to maintain the existing water quality of the receiving water. Additional details on developing WQBELs based on these estimates are given in Appendix 5.

Critical Background Receiving Water Pollutant Concentration (C_s)
For the purposes of the Reasonable Potential Analysis (RPA) in Appendix 4 and development of the Waste Load Allocation (WLA) and the WQBELs in Appendix 5, the final critical background receiving water pollutant concentration (Cs) is determined as follows:

1. Reject data which has not achieved the applicable RRV, ML, or other QA/QC objectives
2. Determines whether there are 10 or more data points available
3. Determines the 25th percentile value ($C_{.25}$) of the data set (if $\geq$ 10 data points)
4. Determines the 75th percentile value ($C_{.75}$) of the data set (if $\geq$ 10 data points)

When there are less than 10 data points available, C_s is undetermined and reported as ("U"). In this case, the RPA and the WLA/WQBEL are based on meeting the applicable water quality standard at the end of pipe (no receiving water dilution).

Where there are 10 or more data points, for pollutants with a numeric water quality standard expressed as an *absolute value* (e.g. numeric standard):

1. If $C_{.75}$ is a quantified value (i.e. not reported as less than detect), then the background concentration (C_s) is estimated by $C_{.75}$.
2. If $C_{.75}$ is a non-quantified value (i.e. reported as less than detect), and if the water quality standard is less than the RRV, then DEQ will set C_s equal to the water quality standard (no assimilative capacity).
3. If $C_{.75}$ is a non-quantified value and if RRV less than the water quality standard, then DEQ will set C_s equal to the RRV.

For pollutants with a water quality standard expressed as a *relative value* (e.g. increase above background) based on background concentration and when there are 10 or more data points are available:

1. If $C_{.25}$ is a quantified value, then $C_s = C_{.25}$.
2. If $C_{.25}$ is a non-quantified value, then C_s = RRV.

Data characterizing the water quality of the ExxonMobil Storm Water Ditch does not exist. The RPA and the WLAs/WQBELs are based on meeting the applicable water quality standard at the end of pipe (no receiving water dilution).

APPENDIX 3—EFFLUENT CHARACTERISTICS

The fact sheet must include a description of the type and quantity of wastes (pollutants) to be discharged. This information is used to determine if additional effluent limitations are necessary. Effluent monitoring and characterization is based on the daily discharge of pollutants and summarized as monthly average and daily maximum values as defined in ARM 17.30.1304. The 30-day average maximum daily values and samples size reported by the permittee are given in the following tables. This data must be based on the previous 3-5 years and represent the current operation of the facility or be estimated by the permittee.

For purposes for determining reasonable potential and assessing the need for a WQBEL, DEQ calculates a reasonable measure of the maximum daily effluent concentration. This procedure is referred to as a reasonable potential analysis (RPA) and is discussed in Section 2.2.7 and Appendix 4. Due to the non-normal distribution of most effluents and low sample frequency (small sample size), DEQ estimates the effluent concentration based on the 95th percentile of the expected effluent concentration following procedure described in EPA's *Technical Support Document for Water Quality Based Toxic Control*, EPA/505/2-90-001, March 1991. The critical effluent pollutant concentration (C_d) is based on the estimated 95th percentile value and used in the RPA to assess the need for WQBEL.

There are two methods for determining C_d. The method used depends on whether all or some of the reported measurements are quantified values (reported above the reporting level) or no measurement is reported as a quantified value.

1. Determining C_d where *some or all measurements are quantified* *(based on EPA TSD, pp. 51-53)*

$$C_{d(critical)} = C_{95\text{-}TSD} = C_{d(max)} * \frac{EXP[z_{0.95} * (\ln(1+CV^2))^{0.5} - 0.5 * \ln(1+CV^2)]}{EXP[z_{(1-0.95)^{(1/n)}} * (\ln(1+CV^2))^{0.5} - 0.5 * \ln(1+CV^2)]}$$

Where:

$C_{d(max)}$	=	maximum measured and quantified effluent pollutant concentration
n	=	number of effluent pollutant concentration measurements in the data set
z_x	=	the z-statistic for the *x* percentile

If n < 10 and some measurements are non-quantified then the CV = 0.6

If n ≥ 10 and all measurements are quantified then the CV = standard deviation / mean

If n ≥ 10 and there are both quantified and non-quantified measurements then the CV = 0.6

2. Determining $C_{d(critical)}$ when *no measurement are reported as a quantified value*

If the total number of measurements in the data set is ≥ 30:

Estimate C_d as: C_d = "< highest reporting limit achieved"

If the total number of measurements in the summary data set < 30:

Estimate C_d as:

$$C_d = C_{d(max)} * \frac{EXP[\ z_{0.95} * (\ln(1 + CV^2))^{0.5} - 0.5 * \ln(1 + CV^2)]}{EXP[\ z_{(1-0.95)^{(1/n)}} * (\ln(1 + CV^2))^{0.5} - 0.5 * \ln(1 + CV^2)]}$$

Where $C_{d(max)}$ is set equal to the highest reporting level achieved

The critical effluent concentration (C_d) calculated by DEQ based on the coefficient of variation (CV) and multiplying factor are also given in the following tables.

The effluent characteristics of the facility are presented in Table 3.A.1 and Table 3.A.2. The effluent characteristics are based on data submitted by the permittee on DMRs from January 2007 through April 2013.

Table 3.A.1. Conventional and Nonconventional Pollutants—Outfall 001

Parameter	Units	Maximum 30-day Average	Maximum Daily	Number of Samples (n)	Coefficient of Variation (CV)	Multiplying Factor 95% Confidence Level	Critical Effluent Concentration (C_d)
TSS	mg/L	63.3	88.0	76	0.56	0.93	81.8
Flow	gpd	162,367	262,900	76	0.28	0.56	147,224
pH, maximum	s.u.	8.15	9.00	76	0.06	0.99	8.91
pH, minimum	s.u.	7.17	6.40	76	0.05	0.99	6.34
TRC	mg/L	0.1	0.1	49	0.43	1.03	0.103
Oil & Grease	mg/L	0	0	19	0	1	0
Total Phosphorus	mg/L	19.2	19.2	11	1.12	2.30	44.1
TDS	mg/L	7,706	7,830	76	0.65	0.92	7,204

Table 3.A.2. Toxic Priority Pollutants—Outfall 001

Parameter	Units	Maximum 30-day Average	Maximum Daily	Number of Samples (n)	Coefficient of Variation (CV)	Multiplying Factor 95% Confidence Level	Critical Effluent Concentration (C_d)
Copper, Total Recoverable	mg/L	0.06	0.06	6	0.6	2.13	0.128
Zinc, Total Recoverable	mg/L	0.12	0.12	11	0.73	1.83	0.219
PCBs	µg/L	0	0	6	0.6	2.13	0

APPENDIX 4—REASONABLE POTENTIAL ANALYSIS (RPA)

Following 40 CFR 122.44(d), an effluent limit must be established in the permit if there is reasonable potential (RP) that any parameter of concern (POC) in the discharge causes or contributes to an excursion of a numeric or narrative water quality standard. POCs are identified in Section 2.2.4 of this permit fact sheet. For new sources, DEQ considers the nondegradation criteria of ARM 17.30.715 as narrative standards and these criteria are incorporated into this analysis as applicable water quality standards for new sources. The applicability of the nondegradation criteria to the discharge(s) are discussed in Section 2.2.5 of this permit fact sheet. The resultant receiving water concentration (C_r) for the POC is calculated from the modified steady state mass-balance equation (*Equation 1*) expressed in terms of the dilution ratio (D) provided by a mixing zone:

$$C_r = \frac{C_d + (D * C_s)}{(1 + D)} \qquad \textit{Equation 2}$$

Where:

$D_{a/c}$	=	the acute dilution ratio (D_a) or the chronic dilution ratio (D_c); Section 2.2.7
C_s	=	the critical receiving water pollutant concentration; Appendix 2
C_d	=	the critical effluent pollutant concentration; Appendix 3
C_r	=	the resultant receiving water pollutant concentration

When the calculated value of C_r exceeds any applicable water quality standard (S) or any nondegradation criterion (S_{ND}), there is a finding of RP and a WQBEL is required for that parameter. WQBELs are discussed in Section 2.2.8 and calculated for these pollutant(s) in Appendix 5 of this permit fact sheet.

Two values of C_r are calculated since the resulting receiving water concentration is a function of the dilution ratio. $C_{r\text{-}a}$ is the receiving water concentration based on the acute dilution ratio (D_a); $C_{r\text{-}c}$, is the receiving water concentration based on numeric chronic dilution ratio (D_c), granted for chronic aquatic life, human health or other narrative criterion. RP is demonstrated for any applicable acute aquatic life standard (S_a) if:

$$C_{r\text{-}a} \geq S_a$$

Where $C_{r\text{-}a}$ is calculated as follows:

$$C_{r\text{-}a} = \frac{C_d + (D_a * C_s)}{(1 + D_a)}$$

For a chronic aquatic life standard (S_c) or human health standard (S_{hh}), RP is demonstrated if:

$$C_{r\text{-}c} \geq [S_c \text{ or } S_{hh}]$$

Where $C_{r\text{-}c}$ is calculated as follows:

$$C_{r\text{-}c} = \frac{C_d + (D_c * C_s)}{(1 + D_c)}$$

Table 4.A summarizes the acute and chronic RPA based on the steady state model, Equation 2, for existing discharges not subject to nondegradation requirements.

Input values for the RPA are given in previous sections of this permit fact sheet for this discharger, and summarized as follows:

Parameter	Description	Source of Information
S_a, S_c, S_{hh}	Applicable Water Quality Standards	Section 2.2.2; Appendix 1
S_{ND}	Applicable Nondegradation Criterion	Section 2.2.5; Appendix 1
C_d	Critical Effluent Pollutant Concentration	Section 2.2.7; Appendix 3
C_s	Critical Receiving Water Pollutant Concentration	Section 2.2.7; Appendix 2
D_a, D_c	Applicable Dilution Ratio	Section 2.2.6

Table 4.A. Reasonable Potential Analysis—Outfall 001

Parameter	Units	Acute Standard S_a	Chronic Standard S_c	Human Health Standard S_{hh}	Critical Effluent Concentration C_d	Critical Background Receiving Water Concentration C_s	Acute Dilution Factor D_a	Chronic Dilution Factor D_c	Projected Receiving Water Concentration, Acute C_{r-a}	Projected Receiving Water Concentration, Chronic C_{r-c}	Reasonable Potential (Yes/No/Undetermined)
Copper	µg/L	3.79	2.85	1,300	128	NA	NA	NA	128	128	Yes
Iron	µg/L	NA	1,000	NA	NA	NA	NA	NA	NA	NA	Undetermined
Zinc	µg/L	37	37	2,000	219	NA	NA	NA	219	219	Yes
PCBs	µg/L	NA	0.014	0.00064	0	NA	NA	NA	NA	0	No
TRC	µg/L	19	11	4,000	103	NA	NA	NA	103	103	Yes
Oil & Grease	mg/L	NA	NA	10	0	NA	NA	NA	NA	NA	No

APPENDIX 5—WLA AND WQBEL DEVELOPMENT

In accordance with 40 CFR 122.44(d) the permit must contain an effluent limit for any parameter which DEQ determines has a reasonable potential to cause or contribute to a violation of water quality standards, including nondegradation-based standards. This determination was completed in Appendix 4 and discussed in Section 2.2.7 of the fact sheet. WQBELs are derived from a wasteload allocation (WLA) which is calculated based on the applicable numeric water quality standard and background pollutant concentration in the receiving water during the critical conditions described in Section 2.2.7. For existing discharges, WLAs are based on acute aquatic life, chronic aquatic life, and human health standards. For new discharges, WLAs are the same as existing discharges with an additional WLA from the applicable nondegradation criteria (see Section 2.2.5.). These WLAs are then translated into maximum daily limitations (MDLs) and average monthly limitations (AMLs) to reflect the respective averaging times given in the surface water quality standards (ARM 17.30.635), DEQ Circular DEQ-7, and MPDES requirements at ARM 17.30.1345.

As defined in ARM 17.30.702, existing water quality is defined as the quality of the receiving water immediately prior to commencement of the activity or that which can adequately be demonstrated to have existed on or after July 1, 1971, whichever is the highest.

For existing sources where the background concentration (Cs) exceeds the applicable water quality standard (S), the WLA is set at the standard (WLA = S) unless DEQ has determined through a Total Maximum Daily Load (TMDL) that the background pollutant is due to natural sources. The MWQA at 75-5-306, MCA, does not require treatment of wastes to purer than natural conditions provided all minimum treatment (TBELs) requirements have been applied.

Following selection of the appropriate instream target and background condition, the WLA is calculated from the steady state mass-balanced model following:

$$C_{WLA} = S + D(S - C_s) \quad \textit{Equation 3}$$

Where:

C_{WLA}	=	wasteload allocation, calculated
S	=	numeric water quality standard
D	=	dilution ratio (see Section 2.2.7 of permit fact sheet)
C_s	=	critical receiving water pollutant concentration prior to discharge

Acute, chronic, and human health WLAs based on Equation 3 are given in Table 5.A for the parameters of concern.

The applicable WLA are converted to effluent limitations following the procedures given in EPA's TSD (pp. 93-114) and based on the averaging period and frequency given in Montana Surface Water Quality Standards and Procedures, ARM 17.30.601 – 670, and DEQ Circular DEQ-7.

Aquatic Life Effluent Limitations: In most cases, there are at least two aquatic life WLAs, namely a WLA based on the acute aquatic life standard (WLA_a) and at least one WLA based on the chronic aquatic life standard (WLA_c or $WLA_{30\text{-day c}}$ for ammonia). For each of these WLAs, there is a

corresponding long-term average effluent concentration (LTA) calculated by multiplying the WLA by a factor (WLA multiplier). This multiplier is a statistically-based factor derived from the ratio of the WLA, set at a specific percentile value, to the LTA. The value of the multiplier varies depending on the coefficient of variation (CV) of the data set (see Table 5.A below), the percentile value for the WLA (e.g., 99th percentile), and whether the WLA is based on an acute (1-hour average) or chronic (typically, 4-day average), or 30-day chronic (for ammonia) water quality standard. DEQ sets the WLA at the 99th percentile on the lognormal distribution. The equations for the WLA multipliers (WLA multiplier$_{acute99}$, WLA multiplier$_{chronic99}$, WLA multiplier$_{30\text{-day chronic99}}$) and the corresponding LTAs are shown below:

$$\text{WLA multiplier}_{acute99} = EXP\ (0.5\sigma^2 - z\sigma)$$
$$\text{WLA multiplier}_{chronic99} = EXP\ (0.5\sigma_4{}^2 - z\sigma_4)$$
$$\text{WLA multiplier}_{30\text{-day chronic99}} = EXP\ (0.5\sigma_{30}{}^2 - z\sigma_{30})$$

$$LTA_a = WLA_a * \text{WLA multiplier}_{acute99}$$
$$LTA_c = WLA_c * \text{WLA multiplier}_{chronic99}$$
$$LTA_{30\text{-day c}} = WLA_{30\text{-day c}} * \text{WLA multiplier}_{30\text{-day chronic99}}$$

Where:

σ	=	$[ln(CV^2 + 1)]^{0.5}$
σ^2	=	$ln(CV^2 + 1)$
σ_4	=	$[ln((CV^2/4) + 1)]^{0.5}$
$\sigma_4{}^2$	=	$ln((CV^2/4) + 1)$
σ_{30}	=	$[ln((CV^2/30) + 1)]^{0.5}$
$\sigma_{30}{}^2$	=	$ln((CV^2/30) + 1)$
z	=	2.326 for 99th percentile probability basis

Since the calculated LTAs do not have different averaging periods, they are directly comparable in order to select the most protective aquatic life LTA (i.e., the LTA that ensures that both aquatic life WLAs are met). This WLA is the basis for calculating effluent limitations that protect aquatic life from both acute and chronic effects. Calculated acute and chronic LTAs are given in Table 5.A.

The two aquatic life LTAs represent the two performance levels that the facility would need to maintain, one that will protect against acute toxic effects and one that will protect against chronic toxic effects. By comparing the two LTAs and selecting the minimum LTA as the basis for the aquatic life WQBELs applicable to the facility, the procedure ensures that the calculated AML and MDL are based on a single performance level that will protect against both acute and chronic toxic effects.

$$LTA = \text{Minimum of the } LTA_a \text{ and the } LTA_c \text{ (and } LTA_{30\text{-day c}} \text{ for ammonia)}$$

Effluent limitations for protection of aquatic life are calculated by multiplying the most protective aquatic life LTA by multipliers based on the lognormal distribution. Each multiplier is a statistically-

based factor that reflects the relationship between the LTA and the effluent limitations. The value of the multiplier for each effluent limitation varies depending on:

- The probability basis of the effluent limitation (i.e., the percentile value on the lognormal distribution of effluent pollutant concentrations where the limitation will be set, such as 95th percentile or 99th percentile);
- The CV of the data set; and
- The number of samples (for the AML) averaged in order to measure compliance with the effluent limitation.

The AML and MDL multipliers are based on the following:

- Setting the AML at a 95th percentile occurrence probability and the MDL at a 99th percentile occurrence probability; these probability bases are consistent with EPA's recommendations in the TSD and consistent with the probability bases EPA uses to derive technology-based requirements in the effluent guidelines;
- The CV used in the reasonable potential determination (i.e., a calculated CV if there are at least 10 data points available or a default CV of 0.6 if a CV cannot be calculated); and
- The actual monthly sampling frequency that will be required in the permit, unless the planned sampling frequency is one time per month or less; if the sampling frequency that will be specified in the permit is one time per month or less, DEQ uses a value for sampling frequency (n) in the formula for calculating the AML that is greater than one. This procedure assumes a sampling frequency of two to four times per month in order to ensure that the AML will not exceed any of the calculated WLAs, as recommended in EPA's TSD (pp. 107-108).

The formulae for calculating the AML and the MDL from the most protective aquatic life LTA are shown below:

$$AML_{aquatic\ life} = LTA * AML_{multiplier95}$$
$$MDL_{aquatic\ life} = LTA * MDL_{multiplier99}$$

The AML multiplier is calculated as:

$$AML_{multiplier95} = e^{\wedge}(z\sigma_n - 0.5\sigma_n^2)$$

Where:

σ_n	=	$[ln((CV^2/n)+ 1)]^{0.5}$
σ_n^2	=	$ln((CV^2/n)+ 1)$
z	=	1.645 for 95th percentile probability basis
n	=	number of samples per month that will be required in the permit

The MDL multiplier is calculated as:

$$MDL_{multiplier99} = e^{\wedge}(z\sigma - 0.5\sigma^2)$$

Where:

σ_n = $[ln(CV^2 + 1)]^{0.5}$
σ_n^2 = $ln(CV^2 + 1)$
z = 2.326 for 99th percentile probability basis

For parameters whose chronic aquatic life water quality standard is expressed as a single numeric value, there will be only a single corresponding WLA. The following procedure applies:

- Consider the single WLA as the WLA_c;
- Using the CV determined in the reasonable potential analysis, calculate an LTA that will allow the effluent to meet WLA_c using the equations for the chronic WLA above; and
- Derive an AML and a MDL based on the LTA and CV using the equations above.

Human Health Effluent Limitations: Montana's numeric human health numeric standards are expressed as values not to be exceeded in any surface or ground water sample. Due to this requirement, it is necessary to set human health effluent limitations that meet a given wasteload allocation (WLA_{hh}) every day. Effluent limitations for protection of human health are based on the following procedure:

- Set the MDL for human health equal to the WLA_{hh}; and
- Calculate the AML for human health by multiplying the MDL by the AML:MDL ratio derived from the lognormal distribution and the relationships between the LTA, MDL, and AML.

$$MDL = WLA_{hh}$$
$$AML = MDL * AML{:}MDL \text{ multiplier}$$

The AML:MDL multiplier, based on the CV and the number of samples, is calculated as:

$$AML:MDL \text{ multiplier} = \frac{\exp[z_a\sigma - 0.5\sigma_n^2]}{\exp[z_m\sigma - 0.5\sigma^2]}$$

Where:

$\sigma_n^2 = [ln(CV^2/n + 1)]$
$\sigma^2 = ln(CV^2+1)$
CV = the coefficient of variation
n = number of samples per month that will be required in the permit
z_m = 2.326 (i.e., value of z for the 99th percentile probability basis)
z_a = 1.645 (i.e., value of z for the 95th percentile probability basis)

For **discharges not subject to nondegradation criteria**, the final WQBELs for a given parameter are determined by comparing the AML and MDL calculated from the aquatic life standards to the AML and MDL calculated from human health standards. The lowest AML and the lowest MDL are the final WQBELs because the lowest of each of these limitations will assure attainment of both the aquatic life and human health standards.

Table 5.A. WLAs and WQBELs for Existing Discharges—Outfall 001

Parameter	Units	Acute Wasteload Allocation WLA_a	Chronic Wasteload Allocation WLA_c	Human Health Wasteload Allocation WLA_{hh}	Coefficient of Variation CV	Acute Long Term Average LTA_a	Chronic Long Term Average LTA_c	Minimum Long Term Average LTA_m	Aquatic Life AML	Aquatic Life MDL	Human Health AML	Human Health MDL	Final Water Quality-Based Effluent Limitations	
													MDL	AML
Copper	µg/L	3.79	2.85	1,300	0.6	2	0.91	0.91	1.95	2.85	890	1,300	**2.85**	**1.95**
Iron	µg/L	NA	1,000	NA	0.6	NA	321	321	684	998	NA	NA	**998**	**684**
Zinc	µg/L	37	37	2,000	0.73	10.4	17.8	10.4	24	37	1,299	2,000	**37**	**24**
TRC	µg/L	19	11	4,000	0.43	4.84	12.22	4.84	8.5	11	3,077	4,000	**11**	**8.5**

Response to Comments
Yellowstone Energy Limited Partnership
Montana Pollutant Discharge Elimination System Permit # MT0030180

On July 22, 2013, the Department of Environmental Quality (DEQ) issued Public Notice MT-13-19, stating the DEQ's intent to issue a Montana Pollutant Discharge Elimination System (MPDES) wastewater discharge permit to the Yellowstone Energy Limited Partnership (YELP) for the YELP Facility. The notice stated DEQ had prepared a draft permit, fact sheet, and an environmental assessment.

The public notice required all substantive comments must be received or postmarked by August 22, 2013, in order to be considered in formulation of the final determination and issuance of the permit. DEQ has received and considered the following comments in preparation of the final permit and decision.

The table below identifies individual(s) supplying written or oral comments on the issuance of MPDES permit MT0030180.

List of Individual(s) Submitting Comments on Draft MPDES Permit MT0030180

Number	Commenter
1	Grant Rodway, Bison Engineering on behalf of the Yellowstone Energy Limited Partnership.

Comments on Draft MPDES Permit MT0030180

Commenter 1: Grant Rodway, Bison Engineering

Comment 1: "A correction should be made to the water balance diagram that was supplied in the permit renewal application."

Response 1: DEQ notes the updated water balance information.

Comment 2: "In the Permit Fact Sheet, page 11, the YELP facility appears to be classified as one that uses water to transport fly ash, bottom ash, and boiler tube slag from the boilers. All of the ash from the facility is transported pneumatically, and there is no waste water generated from the transport of fly ash or bottom ash. Slag that is periodically scrapped from the boiler tubes is also transported pneumatically (via a vacuum truck) and there is no waste water generated from this activity either."

Response 2: Based on the information provided, the Effluent Limitation Guideline (ELG) for fly ash and bottom ash wastewater generation has been removed from Table 1 in Part I.B. of the permit.

Comment 3: "In the Permit Fact Sheet, page 5, paragraph 1, the third sentence should be corrected."

Response 3: DEQ notes that page 5, paragraph 1, third sentence should be corrected to read as:

"The steam generated from the facility is used in the facility's steam turbine to generate electricity and a portion of the steam is extracted from the turbine and supplied to the ExxonMobil Refinery."

Comment 4: "In the Permit Fact Sheet, page 5, paragraph 2, the last sentence should be corrected."

Response 4: DEQ notes that page 5, paragraph 2, final sentence should be corrected to read as:

"On a daily basis, each boiler generates between 300,000 and 330,000 pounds of steam per hour and the facility supplies the ExxonMobil Refinery between 40,000 and 140,000 pounds of steam per hour and between 20 and 50 gpm of demineralized water."

Comment 5: "In the Draft Permit, page 4, Section C specifies background monitoring requirements for the storm water ditch at the ExxonMobil refinery. YELP does not have any control over the disposition of the storm water ditch, nor does YELP have authorization from the ExxonMobil refinery to sample materials on their property. It is a storm water ditch that collects storm water runoff from various other plant sites besides the YELP facility. Because YELP does not have authorization to sample the water, nor any control over the storm water ditch, YELP requests that all of the background water monitoring requirements be removed from the final permit."

Response 5: The ExxonMobil Storm Water Ditch, identified in the 2008-issued permit as a spring-fed perennial water body, is the receiving water for the discharge from the facility. Per 75-5-602, Montana Code Annotated, the monitoring of the ExxonMobil Storm Water Ditch is required. The monitoring of the assimilative capacity and hardness of the receiving water is required for the adjustment and/or application of permit effluent limits in the future.

Comment 6: "In the Draft Permit, page 6, Section D, Table 3 appears to specify sampling and testing requirements for waste water generated from the use of transport water for metal cleaning, fly ash, and bottom ash. This includes effluent monitoring and reporting requirements for copper and iron. Because none of these activities are conduction at the YELP facility, the corresponding requirements, including the effluent limitations for copper and iron, should be removed from the permit."

Response 6: The ELGs and their associated Technology-Based Effluent Limitations (TBELs) for each of these parameters will be removed; see Table 1 in Part I.B. of the permit.

Comment 7: "The Reasonable Potential Analysis (RPA) included on page 20 of the permit fact sheet determined that YELP has the potential to exceed the water quality standards included in DEQ-7 for copper, zinc, and TRC. It also determined that YELP has the potential to exceed the limitation for iron, although no iron sampling or water hardness data from YELP was used in the RPA. The Department's determination was based on the reasoning that if YELP discharger iron up to the concentrations allowed under the Technology Based Effluent Limitations (TBL), it would exceed the standard.

As discussed in comment 6 above, YELP does not discharge metal cleaning wastes, which have effluent limitations for iron and copper, as per 40 CFR Part 423. On this basis, the effluent limitations for these metals are unwarranted and should be removed from the permit.

Further, we seek clarification on the Circular DEQ-7 Numeric Water Quality Standards (DEQ-7) units of measure for copper, zinc, and TRC as presented in Table 4.A on page 45 of the Permit Fact Sheet. A review of DEQ-7 indicates that the standards may be in units of mg/l as $CaCO_3$ as seen on pages 22, and 73 of DEQ-7. If the standards are in units of mg/l $CaCO_3$, then YELP would not have a reasonable potential to exceed the DEQ-7 limits. On that basis, the new effluent limitations for YELP regarding copper and zinc would have been derived incorrectly because the facility does not exceed these standards.

Because the RPA determined that YELP has the potential to exceed the limits of copper, zinc, and iron, we request that the Department confirm the micrograms/liter standards presented in Table 4.A of the Permit Fact Sheet, and update the RPA accordingly. If the updated RPA determines that YELP does not have the potential to exceed the water quality standards for these pollutants, we request that all corresponding numeric limitations and monitoring requirements be removed from the permit.

If, however, the RPA as presented in the Fact Sheet is correct, YELP still requests that the numeric limitations and monitoring requirements for copper and iron be removed from the permit on the basis that YELP does not discharge any waste water from metal cleaning wastes as defined in 40 CFR Part 423 and because it was undetermined if YELP could exceed the iron standard given that no iron or water hardness data from YELP was used in the RPA."

Response 7: The effluent limits and monitoring requirements for iron will be removed from the permit (see Response 6 above). The effluent sampling data collected and submitted by YELP during the 2008-issued permit cycle indicates that copper and zinc are present in the effluent discharged by the YELP facility (see Response 6 above). The Water Quality-Based Effluent Limitations (WQBELs) developed for these parameters are more stringent than any of the TBELs found in 40 CFR 423 for these parameters.

Per page 7 of DEQ-7 (October 2012), all Montana water quality standards are presented as micrograms per liter (µg/L) unless otherwise noted. The water quality standards for copper and zinc in DEQ-7 are presented as µg/L; hardness is reported in milligrams per liter (mg/L). The water quality standards for the parameters copper and zinc (both in µg/L) are adjusted based on the hardness of the receiving water (in mg/L) using the methodology presented in footnote 12 of DEQ-7.

Based on the supplemental water quality data provided by the permittee that characterizes the hardness of the ExxonMobil Storm Water Ditch at 160 mg/L, DEQ adjusted the effluent limits for the parameters copper and zinc using the methodology outlined in footnote 12 of DEQ-7. For copper, this adjustment results in a Maximum Daily Limit (MDL) of 13.92 µg/L and an Average Monthly Limit (AML) of 9.53 µg/L. For zinc, this adjustment results in a MDL of 178 µg/L and

AML of 116 µg/L. Table 1 in Part I.B. of the permit has been modified to reflect the updated effluent limits for copper and zinc.

Comment 8: "In the Draft Permit, page 6, Section E specifies Whole Effluent Toxicity (WET) testing each quarter for the full term of the permit. YELP previously complied with the WET testing requirements for the first three years of the current permit and demonstrated that the waste water is not toxic. As the Department is aware, WET testing is very difficult to conduct and is very much dependent on the physical conditions of the test species supplied (the initial health of the fleas and minnows) for testing. Because YELP has previously demonstrated that the waste water discharged from the plant is not toxic, we request that the frequency of the WET testing be changed to an annual basis, and limit the WET testing requirements to the first three years of the permit term, should the test continue to demonstrate that YELP's waste water is not toxic."

Response 8: The facility failed one of the six paired acute WET tests performed during the 2008-issued permit cycle; continued monitoring for WET is applicable. The WET monitoring requirements found in the permit are consistent with EPA guidance; the WET requirements in the permit remain unchanged.

Comment 9: "The YELP facility does not have any electrical transformers that contain oils with PCBs. No oils containing PCBs are used at the facility in any capacity. YELP request that the testing requirement for PCBs be deleted from the Draft Permit."

Response 9: Based on the information provided, the monitoring requirement for PCBs in Table 3 of Part I.D. of the permit has been removed. The ELG prohibiting the discharge of PCBs by the facility, per 40 CFR 423, will remain in the permit.

End of Comments

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: THE NOTICE OF APPEAL AND REQUEST FOR HEARING BY YELLOWSTONE ENERGY LIMITED PARTNERSHIP (YELP) REGARDING DEQ'S ISSUANCE OF MPDES PERMIT NO. MT0030180 ISSUED FOR YELP'S FACILITY IN BILLINGS, MT	**CASE NO. BER 2014-01 WQ**

FIRST PREHEARING ORDER

Counsel for Yellowstone Energy Limited Partnership (Appellant), has filed a "Notice of Appeal and Request for Hearing" regarding the Department of Environmental Quality's (Department) MPDES Permit No. MT0030180, dated March 5, 2014, issued for Appellant's facility in Billings, Montana. The following guidelines and rules are provided to assist the parties in an orderly resolution of this contested case.

1. REFERENCES: This matter is governed by the Montana Administrative Procedure Act, Contested Cases, Mont. Code Ann. Tit. 2, ch. 4, pt. 6, and Mont. Admin. R. 17.4.101, by which the Board of Environmental Review (Board) has adopted the Attorney General's Model Rules for contested cases, Mont. Admin. R. 1.3.211 through 1.3.225, and by Mont. Code Ann. Tit. 75, Ch. 5, pts. 6.

2. FILING: Except for discovery requests and responses (which are not routinely filed), **original** documents shall be sent for filing with the Board, addressed as follows:

MS. JOYCE WITTENBERG
Secretary, Board of Environmental Review
Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901

One **copy** of each document that is filed should be sent to the Interim Hearing Examiner addressed as follows:

KATHERINE J. ORR
Interim Hearing Examiner
Agency Legal Services Bureau
1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440

Although discovery documents are not normally filed, when a motion or brief is filed making reference to discovery documents, the party filing the motion or brief should also attach the relevant discovery documents.

3. SERVICE Copies of all documents filed with the Board and provided to the Hearing Examiner, including correspondence, must be served upon the opposing party. A certificate of service should be provided.

4. EX PARTE COMMUNICATIONS: The Montana Administrative Procedure Act in Mont. Code Ann. § 2-4-613, and the Attorney General's Model Rule 18 in Mont. Admin. R. 1.3.222, prohibit *ex parte* communications with a hearing examiner concerning any issue of fact or law in a contested case. In addition to observing this rule, please contact the opposing party before you communicate with the undersigned Interim Hearing Examiner, even on purely procedural matters such as the need for a continuance.

5. SCHEDULING: The parties are requested to consult with each other and propose to the undersigned a schedule upon which they agree by **May 1, 2014**. The schedule should include the following dates:

(a) for joinder/intervention of additional parties;

(b) for disclosure by each party to the other parties of: (1) the name and address of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses; and, (2) a copy of, or a description by category and location of, all documents and tangible things that are in

the possession, custody, or control of the disclosing party and that the disclosing party may use to support its claims or defenses;

(c) for completion of discovery (if any party wishes to conduct discovery);

(d) for exchange of lists of witnesses and copies of documents that each party intends to offer at the hearing;

(e) for submitting any motions and briefs in support;

(f) for a prehearing conference to hear argument on any motions and resolve other prehearing matters; and,

(g) for the contested case hearing, as well as the place of hearing.

DATED this 16th day of April, 2014.

KATHERINE J. ORR
Interim Hearing Examiner
Agency Legal Services Bureau
1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing First Prehearing Order to be mailed to:

Joyce Wittenberg
Secretary, Board of Environmental Review
Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901
(original)

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

Bob Habeck, Acting Bureau Chief
Water Protection Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Frank C. Crowley
Jacqueline R. Papez
Doney Crowley P.C.
Diamond Block, Suite 200
44 West 6th Avenue
P.O. Box 1185
Helena, MT 59624-1185

DATED: April 16, 2014

Montana Department of
ENVIRONMENTAL QUALITY

MEMO

TO: Katherine Orr, Hearing Examiner
Board of Environmental Review

FROM: Joyce Wittenberg, Board Secretary
Board of Environmental Review
P.O. Box 200901
Helena, MT 59620-0901

DATE: April 15, 2014

SUBJECT: Board of Environmental Review Case No. BER 2014-02 WQ

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: THE NOTICE OF APPEAL AND REQUEST FOR HEARING BY MISSOULA COUNTY REGARDING DEQ'S ISSUANCE OF MPDES PERMIT NO. MT0000035 ISSUED TO M2GREEN REDEVELOPMENT'S SITE IN FRENCHTOWN, MT.	Case No. BER 2014-02 WQ

The BER has received the attached request for hearing. Also attached is DEQ's administrative document(s) relating to this request.

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

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

Bob Habeck, Acting Bureau Chief
Water Protection Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments
c: Peter Nielsen, Missoula Valley Water Quality District (Appellant)
Martha E. McClain, Deputy County Attorney (for Appellant)

MISSOULA
COUNTY

MARTHA E. McCLAIN, DEPUTY COUNTY ATTORNEY
MISSOULA COUNTY COURTHOUSE
200 W. BROADWAY
MISSOULA, MONTANA 59802-4292
mmcclain@co.missoula.mt.us
TELE: (406) 258-4737 FAX: 258-3979

April 11, 2014

Robin Shropshire, Chair
Montana Board of Environmental Review
Department of Environmental Quality
1520 Sixth E. Sixth Avenue
P.O. Box 200901
Helena MT 59620-0901

Re: Letter/Petition of Appeal – MPDES Permit 000035

Dear Ms. Shropshire,

The Missoula City-County Health Department/Water Quality District (MCCHD/WQD) appeals the Department of Environmental Quality's Notice of Final Decision to issue permit MT-0000035 pursuant to the Montana Pollutant Discharge Elimination System (MPDES) Program, Title 75, Chapter 5 of the Montana Water Quality Act and Sections 303 and 402 of the Federal Clean Water Act.

An existing permit authorized and set standards for industrial wastewater discharge from the former Frenchtown paper mill, which closed in 2010. The facility was sold to a new owner and most of the buildings were demolished and discharge eliminated. DEQ gave notice of its intention to re-issue permit MT-000035 on July 22, 2013, nearly four years after cessation of direct discharge and more than three years after plant closure. Despite demolition of the previous facility, a non-compete clause which prohibits resumption of the past industrial activity, and no new development of the site, DEQ has preserved the groundwater mixing zone, four outfalls, phosphorus and nitrogen effluent limitations and waste load allocations allowed for the former operation which cannot be justified by the current or proposed operation at this site. The MCCHD/WQD submitted comments requesting denial of the permit renewal application and termination of the permit on August 22, 2013.

On March 13, 2014 DEQ issued a Notice of Final Decision to issue the permit, effective thirty days after service of the notice. MCCHD/WQD received the notice on March 17, 2014. ARM 17.30.1365 MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF PERMITS states that permits may be terminated at the request of any interested person, and that denials of requests for termination may be appealed to the Board of Environmental Review by a petition or a letter setting forth the relevant facts

According to ARM 17.30.1378 ISSUANCE AND EFFECTIVE DATE OF PERMIT,

the department shall issue a notice of final decision to issue a permit, and the notice shall include reference to procedures for appealing the decision. DEQ's notice dated March 13, 2014 failed to meet these requirements regarding provision of reference to appeal procedures. A letter was sent to the department on behalf of the MCCHD/WQD, dated March 27, requesting the notice be re-issued with the required information. As of this date, no response from DEQ has been provided.

MCCHD/WQD's appeal of this decision is based on the following relevant facts, laws and regulations:

1. The Missoula Water Quality District is a local water quality protection program, formed pursuant to Montana State law for the purpose of protecting surface and ground water quality in Missoula County. The former Smurfit-Stone paper mill, now owned by M2Green, lies within the boundaries of the Water Quality District.
2. DEQ transferred a permit from Smurfit-Stone Container Corporation to M2 Green Redevelopment on May 3, 2011 as a minor modification of permit pursuant to ARM 17.30.1362. DEQ failed to adhere to the requirements of ARM 17.30.1362, which plainly state that a permit may be transferred as a minor modification "only where the department determines that no other change in the permit is necessary." DEQ knew that significant changes to the permit would be necessary, which resulted in DEQ's requirement of updated permit application. DEQ explained in its Response to comments that it transferred an existing permit upon request of M2Green. Further, "(B)ecause the permit was already expired and administratively extended and the paper mill had ceased operations. DEQ transferred the permit and required an updated permit." DEQ's permit Fact Sheet, dated June 2013, stated that "Because a condition of the sale required that the site no longer be used as a paper mill, DEQ requested an updated application from M2Green Redevelopment that accurately reflected the expected uses, wastewater treatment and proposed discharges at the site." The sales agreement between Smurfit-Stone Container and MLR Investments includes a non-compete clause in Section 13 that requires that the mill not be operated to produce pulp and paper products. This clause provides that, "The Buyer agrees not to sell or lease the Property or the Equipment to, or, directly or indirectly, enter into any business arrangement with, any paper making manufacturer for the purpose of producing paper." This provision was extended in the sales agreement between MLR Investments and M2 Green LLC. DEQ abused its discretion by transfer of the permit as a minor modification when significant changes to the permit were necessary, rather than "no other change".
3. DEQ abused its discretion by not terminating or denying the permit renewal for cause as provided by 17.30.1363(d), based on "a change in any condition that requires either a temporary or permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW)." The permit previously regulated industrial wastewater. The re-issued permit does not authorize the discharge of industrial wastewater – it authorizes the discharge of domestic wastewater from an undeveloped, unconstructed facility. Given the permanent reduction or elimination of discharge controlled by the permit, DEQ should have applied the rules to the known facts and denied M2Green's application. Federal Clean Water Act regulations CFR §122.64(a)(4) also state that "grounds for termination of permit based on a change in any condition that requires either a temporary or permanent reduction or

elimination of any discharge or sludge use or disposal practice controlled by the permit, (for example, *plant closure* or termination of discharge by connection to a POTW)."

4. The permit transfer agreement submitted by Smurfit-Stone Container incorrectly states that it sold the property to M2Green. Smurfit-Stone Container sold the property to MLR Investments. The permit was never transferred to MLR Investments. MLR sold the property to M2Green. Therefore the permit transfer from Smurfit-Stone Container to M2Green is not permitted by the Montana Administrative Rules.
5. DEQ did not require a complete application from M2Green as mandated by ARM 17.30.1322(5) and (6). M2Green stated in its revised application that it planned to develop the site to house a wind-powered turbine generator manufacturer with up to 2000 employees. It is unknown when, or even if, the planned facility will be operational. Further, M2Green and its representatives have publicly disclosed alternative development plans for this facility, including residential development including condominiums, residential subdivisions and "a small city". These plans have been released publicly, discussed at public meetings conducted by the Missoula County Commissioners and West Valley Community Council, and have been described in newspaper articles and on M2Green's website. The lack of accurate definition of activities that will require an MPDES permit clearly prevents an application from being deemed complete by DEQ.
6. According to Response to Comments, DEQ transferred the existing permit upon request of M2Green "because the permit was already expired and administratively extended and the paper mill had ceased operations, DEQ transferred the permit and required an updated application." M2 Green submitted an updated permit application in September 2011. DEQ issued a notice of deficiency to that permit application in November 2011. DEQ's 2013 fact sheet on the draft permit states that "because the facility and site no longer discharged process wastewater and the only activities occurring at the site were for demolition of the previous facility, DEQ granted M2Green an extended time to respond to the application deficiencies". DEQ should have at that time denied the permit renewal application and terminated the permit.
7. MPDES permit applications submitted by M2Green Redevelopment LLC incorrectly characterized the facility as an existing facility that discharges wastes to the waters of the State and the U.S. However, direct discharge from the facility ended in 2009, and seepage discharge ended in 2011. Permit applications were submitted on two dates in 2012. No discharge was occurring on these dates. Facilities that previously generated wastewater had been salvaged or scrapped at the time of permit application. DEQ failed to deny the permit renewal applications and require submission of new applications for a new source.
8. Once M2Green determines the type of facility that will truly exist on the site, any permit issued for discharging activities should be evaluated as a "new source" or a "new discharger" as provided in ARM 17.30.1340 and 17.30.1304(47) if a new source performance standard is applicable. If no new source performance standard is applicable, the permit application should be treated as a "new discharger" as defined in ARM 17.30.1304(45). New facilities will necessarily totally replace the process or production equipment that caused the discharge of pollutants at the previous source. The construction would not be considered a modification because it would not alter, replace or add to existing process or production equipment. The existing production equipment has been removed.

9. Federal Clean Water Act regulations, 40 CFR 122.45(b)(2)(i), requires that permit limits be based not upon design capacity but rather upon a reasonable measure of actual production of the facility. To obtain alternate limits the applicant must define the maximum production capability and demonstrate that production is substantially below production capability and that there is a reasonable potential for an increase above the actual production during the term of the permit. The applicant has failed to provide any specific plans for facilities that will generate wastewater. For new sources or new dischargers, actual production shall be estimated using projected production. M2Green's June 2012 application described the cessation of production and discharge. The application further described its "plans to house a manufacturer of wind powered turbine-generator units that could employ up to 2,000 workers. The facility does not exist and does not generate wastewater discharges to the Waters of the State or U.S. The applicant and its representatives have since publicly revealed different plans for the site including residential development including condominiums, residential subdivisions and "a small city." DEQ failed to acknowledge known facts in its review of the M2Green permit application.
10. DEQ's decision would renew a permit that was last issued in 2000 for a paper mill, to a facility purportedly manufacturing wind powered turbine generators that could employ up to 7,384 employees, based on the 96,000 gallon design capacity cited in the draft permit, more than ten times the number of employees who worked at the mill previously. The hypothetical wind powered turbine generator manufacturing facility would generate an entirely different type of wastewater from new facilities, but use the old permit's groundwater mixing zone, four approved outfalls, nutrient effluent limitations and wasteload allocations. The permit would transfer the wasteload allocation for the former paper mill to an unknown future facility, allowing up to 66 pounds per day total nitrogen and 51 pounds per day total phosphorus. These allocations are 30-40 times higher than those requested in the permit application. The allocation allowed for phosphorus would be twice the amount discharged by the City of Missoula, on average, for the past three years.
11. Permit applications submitted by the applicant claim no discharge to groundwater in one section (Form 1 Section A (7)), while stating in another section (Form 2E,Section I) that seepage to groundwater would in fact occur. DEQ failed to address the discharges to groundwater under Montana Groundwater Pollution Control System regulations.
12. DEQ's draft permit would grant the applicant a 3,150 acre mixing zone, despite its failure to regulate groundwater discharges under the Montana Groundwater Pollution Control System Regulations. The boundaries of the mixing zone were based on the original property ownership of the Smurfit-Stone Container Corporation, which has changed since that time. No justification or request was made by the applicant for such a mixing zone. DEQ has not complied with the provisions of ARM 17.30.517 and 518 in granting the proposed mixing zone, including procedures to evaluating the mixing zone for the proposed discharge based on the characteristics of effluent proposed, the characteristics of groundwater and rate of proposed discharge, estimating the anticipated concentration of pollutants at the downgradient boundary of the mixing zone, and determining that proposed mixing zone is the smallest practicable size and that it will have a minimum practicable effect on water users.

13. DEQ has failed to acknowledge the applicability of Montana Water Quality Act nondegradation provisions which must be applied to any new permit. Regardless of what M2Green ultimately does at the site, it cannot resume the former manufacturing activities and does not propose to maintain the previous discharge. However, the department maintains M2Green's plans are an "existing facility" and not a "new or increased source" (defined at ARM 17.30.702(18) and therefore not subject to the criteria in ARM 17.30.715(1) (Fact Sheet, Page 6). The demolition of the existing facility and development of new activities qualify as a "new source" under the nondegradation provisions of the Montana Water Quality Act.
14. ARM 17.30.1342(7) includes a condition applicable to all permits: "(7) This permit does not convey any property rights of any sort, or any exclusive privilege." Contrary to this clear language, DEQ has proposed to allow a wasteload allocation for nitrogen and phosphorus to run with the land and with a permit that was incorrectly transferred and proposed for renewal.
15. The re-issued permit preserves four outfalls utilized in operating the defunct paper mill, without justification. Outfalls that will not be used as part of the proposed discharge should not be authorized, including Outfalls 1, 2 and 4. Outfalls that were previously allowed for the now defunct mill should be removed from the floodplain and floodway to remove restrictions to flood conveyance, hazards to public safety and risk of erosion to the former pond system of dikes and levees. The location of the outfalls also presents a barrier to site remediation and restoration.
16. DEQ's decision would enable an unknown, new large discharger to locate and use a 14 year old former paper mill's permit, with a 3,150 acre groundwater mixing zone, four outfalls, and the former mill's wasteload allocation permitting up 66 pounds per day nitrogen and 51 pounds per day phosphorus.
17. If the permit was terminated by DEQ a new discharger could obtain a permit by completing the full process of application for a new discharge permit, and meeting all contemporary guidelines and regulations for effluent quality, mixing zones and treatment. The permittee would be required to meet the nondegradation provisions of the Montana Water Quality Act. Alternatives for wastewater treatment and discharge could be considered. A future facility would not be automatically granted outdated mixing zones, effluent limits, outfalls or a wasteload allocation that would permit large wastewater discharges. Any other new discharger would be required to comply with these regulations. A new discharger at this site should be treated as others similarly situated.
18. A new permit for groundwater or surface water discharge could be obtained upon compliance with all contemporary regulations, thus this action will not restrict beneficial re-use of the site or economic development. In fact the permit as written would limit other development because this hypothetical facility would be allowed to use the entire wasteload allocation for nitrogen and phosphorus previously allocated to a large paper mill, leaving no room for other dischargers to be permitted.
19. When the EPA and DEQ re-evaluate the Total Maximum Daily Loads for the Clark Fork River, this permit would not be considered an existing permitted load to the river.
20. Water quality improvements in the Clark Fork River and in groundwater that have occurred over the past several decades would be maintained, and the goals of the Federal Clean Water Act and Montana Water Quality Act would be met.

21. DEQ has made factual and legal errors in the issuance of MT-000035. The decision is clearly erroneous in view of the evidence before DEQ and is arbitrary and capricious and characterized by a clearly unwarranted exercise of discretion. The issuance of the permit is at odds with the purpose of the MPDES permitting program and the goals of the Clean Water Act to maintain and restore water quality.
22. MCCHD/WQD hereby requests the Board proceed to hearing on this matter and to determine that the permit is void.

Sincerely,

Martha E. McClain
Deputy County Attorney
Missoula City-County Health Department
Missoula Water Quality District

Peter Nielsen
Environmental Health Supervisor, Missoula Valley Water Quality District

Cc : Bob Habeck, Chief Water Protection Bureau Montana DEQ
Tracy Stone-Manning, Director, Montana DEQ

Montana Department of
ENVIRONMENTAL QUALITY

Steve Bullock, Governor
Tracy Stone-Manning, Director

P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: www.deq.mt.gov

March 13, 2014

Mark Spizzo
M2Green Redevelopment, LLC
14377 Pulp Mill Road
Missoula MT 59808

RE: Notice of Final Decision, Montana Pollutant Discharge Elimination System (MPDES) Permit Number MT0000035

Dear Mr. Spizzo:

In accordance with the Administrative Rules of Montana (ARM) 17.30.1377, enclosed is the Response to Comments and a copy of the proposed modified permit for the M2Greeen Redevelopment Frenchtown site. The permit is issued by the Department under the authority of 75-5-402, Montana Code Annotated (MCA) and Sections 303 and 402 of the federal Clean Water Act.

The Response to Comments addresses issues that were identified during the public comment period. The public comment period closed August 22, 2013.

Below is a summary of changes that were made in the draft permit in response to public comments:

1. The following language was added to Part I.B, Effluent Limitations, Outfalls 001, 002, and 003:

   Prior to commencing discharge at Outfall 001, 002, or 003, the permittee must receive written approval from DEQ on the design and application of the conveyance method prior to construction. Transport of wastewater in any unlined ditch is not permitted.

2. The following language was added to Part I.B, Effluent Limitations, Outfall 005:

   Authority to discharge to the south polishing pond (SPP) or alternate pond sites is stayed until the site(s) have been assessed under the appropriate clean-up statute(s) and remediated if found to be contaminated. Following such assessments, the permittee must receive written approval from EPA and/or DEQ as appropriate regarding pond location, design, and remedial status prior to discharging to the SPP and/or construction of an alternate pond site(s). All new plans and specifications for any new or upgraded

wastewater treatment system components, including any new disposal pond sites, are subject to department review and approval according to the requirements of department circular DEQ-2.

Effective immediately upon commencement of discharge and lasting through the term of the permit, the quality of effluent discharged through Outfall 005 shall, as a minimum, meet the limitations as set forth below:

3. Monitoring requirements for 2,3,7,8 TCDD, total recoverable arsenic and total recoverable manganese, in both the effluent and ground water, were removed from the permit. These requirements were removed because the federal superfund and state remediation processes will assess past contamination related to these parameters. The permit requirements above will ensure that contamination from these parameters is addressed prior to the commencement of the permitted discharge.

In accordance with ARM 17.30.1378, the Department's final decision to issue the permit is effective 30 days after service of this notice. Under ARM 17.30.1370, the applicant may appeal this decision within the 30 day period in accordance with 75-5-403 and 75-5-611, MCA. Pursuant to 40 CFR 122.44, the Regional Administrator may object to or make recommendations to the proposed permit.

A copy of the permit should be made available to the person(s) in charge of the operation of the wastewater treatment facilities so they are aware of the requirements in the permit. Please take note of any revised monitoring requirements specified in Part I of the permit. Also, the final permit may contain special conditions requiring actions on the part of the permittee. Please refer to Part I of the permit for additional information. The preprinted Discharge Monitoring Report (DMR) forms will be sent soon.

If you have any questions please contact Jeff May in the Water Protection Bureau at (406)-444-5326.

Sincerely,

Bob Habeck

Bob Habeck, Chief
Water Protection Bureau
Permitting and Compliance Division

Enclosure: Response to Comments
Permit MT0000035

cc w/enclosures: Carson Coate, USEPA, Helena, MT

Major Private
Permit No.: MT0000035

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.*,

M2Green Redevelopment, LLC

is authorized to discharge from its **wastewater treatment system**

located at **14377 Pulp Mill Road, Missoula MT 59808**

to receiving waters named, **Clark Fork River and ground water,**

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. The wasteload allocation specified herein support and serve to define the total maximum daily load for affected receiving water.

This permit shall become effective: **May 1, 2014**

This permit and the authorization to discharge shall expire at midnight, **April 30, 2019**

FOR THE MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

Bob Habeck, Chief
Water Protection Bureau
Permitting & Compliance Division

Issue Date: **March 13, 2014**

TABLE OF CONTENTS

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, discharging into **the Clark Fork River,** located at 46. 95819 N latitude and 114.21928 W longitude. **Mixing Zone:** The maximum extent of the acute and chronic mixing zone in the named receiving waters is as follows: (0) feet upstream; (200) feet downstream from the outfall for the parameters total ammonia and nitrate.
002 -	**Location:** At the end of the pipe, discharging into **the Clark Fork River,** located at 46. 96022 N latitude and 114.21992 W longitude. **Mixing Zone:** The maximum extent of the acute and chronic mixing zone in the named receiving waters is as follows: (0) feet upstream; (200) feet downstream from the outfall for the parameters total ammonia and nitrate.
003 -	**Location:** At the end of the pipe, discharging into **the Clark Fork River,** located at 46. 97717 N latitude and 114.22708 W longitude. **Mixing Zone:** The maximum extent of the acute and chronic mixing zone in the named receiving waters is as follows: (0) feet upstream; (200) feet downstream from the outfall for the parameters total ammonia and nitrate.

004 - **Location:** At the end of the pipe, discharging into the **Clark Fork River,** located at 46. 98975 N latitude and 114.22606 W longitude.

Mixing Zone: The maximum extent of the acute and chronic mixing zone in the named receiving waters is as follows: (0) feet upstream; (200) feet downstream from the outfall for temperature.

005 - **Location:** At the end of the pipe, discharging into **ground water,** located at 46. 96398 N latitude and 114.20587 W longitude.

Mixing Zone: The maximum extent of the acute and chronic mixing zone in the named receiving waters is as follows: Ground water within the facility property boundaries.

B. Effluent Limitations

Outfalls 001, 002, and 003

Effective immediately and lasting through the term of the permit, the quality of effluent discharged through Outfalls 001, 002 and 003 shall, as a minimum, meet the limitations as set forth below:

There shall be no discharge which causes visible oil sheen in the receiving water.

No discharge may occur from Outfalls 001, 002, and 003 from June 21 to September 21 of each year.

Prior to commencing discharge at Outfall 001, 002, or 003, the permittee must receive written approval from DEQ on the design and application of the conveyance method prior to construction. Transport of wastewater in any unlined ditch is not permitted.

Outfall 004

Effective immediately and lasting through the term of the permit, the quality of effluent discharged through Outfall 004 shall, as a minimum, meet the limitations as set forth below:

Effluent Limitations: Outfall 004			
Parameter	**Units**	**Average Monthly Limit [1]**	**Daily Maximum Limit [1]**
pH	S.U.	In the range of 6.0 to 9.0	
Temperature	° F	--	95

Footnotes:
1. See Definition section at end of permit for explanation of terms.

The discharge from Outfall 004 must consist entirely of uncontaminated non-contact cooling water or unaltered ground water.

Outfall 005

Authority to discharge to the south polishing pond (SPP) or alternate pond sites is stayed until the site(s) have been assessed under the appropriate clean-up statute(s) and remediated if found to be contaminated. Following such assessments, the permittee must receive written approval from EPA and/or DEQ as appropriate regarding pond location, design, and remedial status prior to discharging to the SPP and/or construction of an alternate pond site(s). All new plans and specifications for any new or upgraded wastewater treatment system components, including any new disposal pond sites, are subject to department review and approval according to the requirements of department circular DEQ-2.

Effective immediately upon commencement of discharge and lasting through the term of the permit, the quality of effluent discharged through Outfall 005 shall, as a minimum, meet the limitations as set forth below:

Effluent Limitations: Outfall 005			
Parameter	**Units**	**Average Monthly Limit [1]**	**Average Weekly Limit [1]**
Biochemical Oxygen Demand (BOD_5)	mg/L	30	45
	lb/day	6.5	9.8
Total Suspended Solids (TSS)	mg/L	30	45
	lb/day	6.5	9.8
BOD_5, Percent Removal	%	85 [2]	--
TSS, Percent Removal	%	85 [2]	--
pH	S.U.	In the range of 6.0 to 9.0	
Chlorine, total residual [3]	mg/L	0.011	0.019
Escherichia coli (E. Coli) Bacteria [4]	cfu/100 mL	126	252
Escherichia coli (E. Coli) Bacteria [5]	cfu/100 mL	630	1260
Oil and Grease	mg/L	--	10 [6]
Total Nitrogen	lb/day	--	66 [7]
Total Phosphorus	lb/day	--	51 [7]

Footnotes:
1. See Definition section at end of permit for explanation of terms.
2. Average monthly minimum.
3. This limit only applies if chlorine is used for disinfection. Sampling results less than 0.1 mg/L are considered in compliance with this limit.
4. This limit applies April 1 through October 31.
5. This limit applies November 1 through March 31.
6. Daily maximum.
7. Daily maximum. Effective June 21 to September 21 each year.

C. Monitoring Requirements

As a minimum, upon the effective date of this permit, the following constituents shall be monitored at the frequency and with the type of measurement indicated. Effluent samples or measurements shall be collected at the discharge structure prior to mixing with the receiving water and be representative of the volume and nature of the monitored discharge.

At Outfall 004, flow and temperature must be monitored at the outfall location, prior to mixing with the receiving water; pH shall be monitored where the cooling water enters the cooling ditch.

At Outfall 005, the monitoring location must be after treatment and prior to discharge to the South Polishing Pond.

If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report Form (EPA No. 3320-1) that no discharge or overflow occurred.

The influent monitoring location must be prior to the EQ basin.

All analytical procedures, sampling, and preservation methods must comply with the requirements of the methods specified in 40 CFR 136.

All analytical procedures must comply with the applicable RRV in Department Circular DEQ-7 unless specified otherwise in this permit.

Monitoring Requirements, Outfalls 001, 002, and 003

Parameter	Unit	Sample Location	Sample Frequency	Sample Type [1]	RRV [2]
Flow	mgd	Effluent	Continuous	(3)	---
pH	s.u.	Effluent	1/Week	Instantaneous	0.1
Oil and Grease, visual	presence	Effluent	Daily	Visual	---
Total Ammonia, as N	mg/L	Effluent	1/Month	Composite	0.05
Nitrate + Nitrite, as N	mg/L	Effluent	1/Month	Composite	0.01
Kjeldahl Nitrogen, Total as N	mg/L	Effluent	1/Month	Composite	0.5
Phosphorus, Total as P	mg/L	Effluent	1/Month	Composite	0.001
	lb/day	Effluent	1/Month	Calculated	---
Nitrogen, Total as N [4]	mg/L	Effluent	1/Month	Calculated	---
	lb/day	Effluent	1/Month	Calculated	---
Copper, Total Recoverable	µg/L	Effluent	1/Year	Grab	2
Cadmium, Total Recoverable	ug/L	Effluent	1/Year	Grab	0.03

Footnotes:
1. See Definition section at end of permit for explanation of terms.
2. The Required Reporting Value (RRV) is the detection level that must be achieved in reporting surface water or ground water monitoring or compliance data to the Department.
3. Requires recording device or totalizer; permittee shall report daily maximum and daily average flow on DMR.
4. Calculated as the sum of Nitrate plus Nitrite and Total Kjeldahl Nitrogen.

Monitoring Requirements, Outfall 004					
Parameter	Unit	Sample Location	Sample Frequency	Sample Type [1]	RRV [2]
Flow	mgd	Effluent	Continuous	(3)	---
Temperature	° F	Effluent	Daily	Instantaneous	---
pH	S.U.	Effluent	Daily	Instantaneous	---

Footnotes:
1. See Definition section at end of permit for explanation of terms.
2. The Required Reporting Value (RRV) is the detection level that must be achieved in reporting surface water or ground water monitoring or compliance data to the Department.
3. Requires recording device or totalizer; permittee shall report daily maximum and daily average flow on DMR.

Monitoring Requirements, Outfall 005					
Parameter	Unit	Sample Location	Sample Frequency	Sample Type [1]	RRV [2]
Flow	mgd	Effluent	Continuous	(3)	---
Biochemical Oxygen Demand (BOD_5)	mg/L	Effluent	1/Week	Composite	5
	lb/day	Effluent	1/Month	Calculated	---
	mg/L	Influent	1/Month	Composite	5
Total Suspended Solids (TSS)	mg/L	Effluent	1/Week	Composite	5
	lb/day	Effluent	1/Month	Calculated	---
	mg/L	Influent	1/Month	Composite	5
pH	s.u.	Effluent	1/Week	Instantaneous	0.1
E. coli Bacteria	cfu/100ml	Effluent	1/Week	Grab	1/100 mL
Chlorine, total residual [4]	mg/L	Effluent	Daily	Grab	0.1
Oil and Grease [5]	mg/L	Effluent	1/Month	Grab	1
Total Ammonia, as N	mg/L	Effluent	1/Month	Composite	0.05
Nitrate + Nitrite, as N	mg/L	Effluent	1/Month	Composite	0.01
Kjeldahl Nitrogen, Total as N	mg/L	Effluent	1/Month	Composite	0.5
Phosphorus, Total as P	mg/L	Effluent	1/Month	Composite	0.001
	lb/day	Effluent	1/Month	Calculated	---
Nitrogen, Total as N [6]	mg/L	Effluent	1/Month	Calculated	---
	lb/day	Effluent	1/Month	Calculated	---
Copper, Total Recoverable	µg/L	Effluent	1/Year	Grab	2
Cadmium, Total Recoverable	ug/L	Effluent	1/Year	Grab	0.03

Footnotes:
1. See Definition section at end of permit for explanation of terms.
2. The Required Reporting Value (RRV) is the detection level that must be achieved in reporting surface water or ground water monitoring or compliance data to the Department.
3. Requires recording device or totalizer; permittee shall report daily maximum and daily average flow on DMR.
4. Monitoring is only required when chlorine is used for disinfection.
5. Use EPA method 1664A, hexane exctractable.
6. Calculated as the sum of Nitrate plus Nitrite and Total Kjeldahl Nitrogen

Groundwater Monitoring Requirements SMW Wells 7, 8, 9, 10, 11, 12, 13, 14, 21 TW Wells 1R, 2R, 4R, 5R, 514				
Parameter	Unit	Sample Frequency	Sample Type [1]	RRV [2]
Nitrate + Nitrite, as N	mg/L	1/Quarter	Grab	0.01
Kjeldahl Nitrogen, Total as N	mg/L	1/Quarter	Grab	0.5
Phosphorus, Total as P	mg/L	1/Quarter	Grab	0.001
Nitrogen, Total as N [3]	mg/L	1/Quarter	Calculated	---

Footnotes:
1. See Definition section at end of permit for explanation of terms.
2. The Required Reporting Value (RRV) is the detection level that must be achieved in reporting surface water or ground water monitoring or compliance data to the Department.
3. Calculated as the sum of Nitrate plus Nitrite and Total Kjeldahl Nitrogen

Reporting Requirements

Load Calculations

In addition to reporting the concentration values, the monthly loads expressed in lbs/day must be calculated and reported for BOD_5 and TSS. The monthly loads must be calculated using the average daily flow rate and daily average parameter concentration as shown in the following equations:

Load (lb/day) =
Parameter concentration (mg/l) x Effluent Flow Rate (**gpm**) x (0.012)

or

Parameter concentration (mg/l) x Effluent Flow Rate (**mgd**) x (8.34)

Percent (%) Removal

The percent removal shall be calculated using the following formula:

$$\% \text{ Removal} = \frac{[\textit{Influent Concentration}]-[\textit{Effluent Concentration}]}{[\textit{Influent Concentration}]} \times 100\%$$

Where:

Influent Concentration = Corresponding 30-Day average influent

concentration based on the analytical results of the reporting period.

Effluent Concentration = Corresponding 30-Day average effluent concentration based on the analytical results of the reporting period.

D. Special Conditions

1. Sewage Sludge:

The use or disposal of sewage sludge must be in conformance with the Environmental Protection Agency (EPA) General Permit MTG650000 or an equivalent permit issued pursuant to 40 CFR 503. A notice of intent must be filed with the EPA and the Department in accordance with the timeframes and procedures identified in the applicable permit. All materials required by the General Permit to be submitted to the Department shall be signed in accordance with Part IV.G and sent to the address provided in Part II.D of this permit.

The permittee shall not dispose of sewage sludge such that any portion thereof enters any state water, including ground water. The permittee shall notify the Department in writing 45 days prior to any change in sludge management at the facility.

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. Sludge samples shall be collected at a location representative of the quality of sludge immediately prior to use-disposal practice.

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. See Part I.C of this permit for any applicable sludge monitoring procedures. 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 $25,000, or by imprisonment for not more than six months, or by both.

D. Reporting of Monitoring Results

Effluent monitoring results obtained during the previous month(s) shall be summarized for each month and reported on a Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed reporting 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 reporting period, "no discharge" shall be reported on the report form. Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with the "Signatory Requirements" (see Part IV.G of this permit), and submitted to the Department at the following addresses:

(a) Montana Department of Environmental Quality
Water Protection Bureau
PO Box 200901
Helena, Montana 59620- 0901
Phone: (406) 444-3080

E. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any Compliance Schedule of this permit shall be submitted no later than 14 days following each schedule date.

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 incident of noncompliance affecting the environment 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) 444-3080 or the Office of Disaster and Emergency Services at (406) 841-3911. 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) 444-3080.

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.1.2 of this permit.

K. Inspection and Entry

The permittee shall allow the head of the Department or the Regional Administrator, or an authorized representative 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 and the Director 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 $25,000 per day or one year in prison, or both, for the first conviction, and $50,000 per day of violation or by imprisonment for not more than two 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. Sludge shall not be directly blended with or enter the final plant discharge and/or waters of the United States.

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 ten (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.

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:

1. 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.

2. There are any planned substantial changes to the existing sewage sludge management practices of storage and disposal. The permittee shall give the Department notice of any planned changes at least 180 days prior to their implementation.

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 modifying, revoking 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 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 or Water Rights

The issuance of this permit does not convey any property or water rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

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 consisting of 15% of the fee plus interest on the required fee computed at the rate established under 15-31-510(3), MCA, or

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 the 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. Sewage Sludge: There have been substantial changes (or such changes are planned) in sludge use or disposal practices; applicable management practices or numerical limitations for pollutants in sludge have been

promulgated which are more stringent than the requirements in this permit, and/or it has been determined that the permittee's sludge use or disposal practices do not comply with existing applicable state or federal regulations.

6. 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.

7. Toxicity Limitations: 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.

   c. The TRE/TIE results indicated that the toxicant(s) represent pollutants(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 this 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. **"Annual Average Load"** means the arithmetic mean of all 30-day or monthly average loads reported during the calendar year for a monitored parameter.

5. **"Approval Authority"** means the EPA Region VIII administrator as incorporated by 40 CFR 403.3(c).

6. **"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.

7. **"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.

8. **"Average weekly limitation"** means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

9. **"BOD_5"** means the five-day measure of pollutant parameter biochemical oxygen demand.

10. **"Bypass"** means the intentional diversion of waste streams from any portion of a treatment facility.

11. **"$CBOD_5$"** means the five-day measure of pollutant parameter carbonaceous biochemical oxygen demand.

12. **"Composite samples"** shall be flow proportioned. The composite sample shall, as a minimum, contain at least four (4) samples collected over the compositing period. Unless otherwise specified, 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. Acceptable methods for preparation of composite samples are as follows:

a. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;

b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;

c. Constant sample volume, time interval between samples proportional to flow (i.e. sample taken every "X" gallons of flow); and,

d. Continuous collection of sample, with sample collection rate proportional to flow rate.

13. **"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.

14. **"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.

15. **"Department"** means the Montana Department of Environmental Quality (MDEQ). Established by 2-15-3501, MCA.

16. **"Director"** means the Director of the Montana Department of Environmental Quality.

17. **"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.

18. **"EPA"** means the United States Environmental Protection Agency.

19. **"Federal Clean Water Act"** means the federal legislation at 33 USC 1251, *et seq.*

20. **"Geometric Mean"** means the value obtained by taking the Nth root of the product of the measured values.

21. **"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.

22. **"Indirect discharge"** means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Federal Clean Water Act.

23. **"Industrial User"** means a source of Indirect Discharge.

24. **"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.

25. **"Instantaneous Measurement"**, for monitoring requirements, means a single reading, observation, or measurement.

26. **"Interference"** means a discharge which, alone or in conjunction with other contributing discharges

    a. Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

    b. Therefore causes a violation of any requirement of the POTW's MPDES permit (including an increase in the magnitude or duration of a violation) or causes the prevention of sewage sludge use or disposal in compliance with the following statutes and regulations: Section 405 of the Clean Water Act; 40 CFR Part 503 - Standards for the Use and Disposal of Sewage Sludge; Resource Conservation and Recovery Act (RCRA); 40 CFR Part 258 - Criteria for Municipal Solid Waste Landfills; and/or any State regulations regarding the disposal of sewage sludge.

27. **"Maximum daily discharge limitation"** means the highest allowable daily discharge.

28. **"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 other wise specified in the permit. (ARM 17.30.702(22))

29. **"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.

30. **"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.

31. **"Pass through"** means a discharge which exits the POTW into waters of the State of Montana in quantities or concentrations which, alone or in conjunction with other discharges, is a cause of a violation of any requirement of the POTW's MPDES permit (including an increase in the magnitude or duration of a violation).

32. **"POTW"** means a publicly owned treatment works.

33. **"Regional Administrator"** means the administrator of Region VIII of EPA, which has jurisdiction over federal water pollution control activities in the state of Montana.

34. **"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.

35. **"Sewage Sludge"** means any solid, semi-solid or liquid residue generated during the treatment of domestic sewage and/or a combination of domestic sewage and industrial waste of a liquid nature in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the incineration of sewage sludge or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

36. **"TIE"** means a toxicity identification evaluation.

37. **"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.

38. **"TRE"** means a toxicity reduction evaluation.

39. **"TSS"** means the pollutant parameter total suspended solids.

40. **"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 MISSOULA COUNTY REGARDING DEQ'S ISSUANCE OF MPDES PERMIT NO. MT0000035 ISSUED TO M2GREEN REDEVELOPMENT'S SITE IN FRENCHTOWN, MT	**CASE NO. BER 2014-02 WQ**

FIRST PREHEARING ORDER

Counsel for Missoula City-County Health Department/Water Quality District (Appellant), filed a "Petition of Appeal" regarding the Department of Environmental Quality's (Department) MPDES Permit No. MT0000035, dated March 13, 2014, issued to M2Green Redevelopment, LLC, in Frenchtown, Montana. The following guidelines and rules are provided to assist the parties in an orderly resolution of this contested case.

1. REFERENCES: This matter is governed by the Montana Administrative Procedure Act, Contested Cases, Mont. Code Ann. Tit. 2, ch. 4, pt. 6, Mont. Admin. R. 17.30.1378, by Mont. Admin. R. 17.4.101, in which the Board of Environmental Review (Board) has adopted the Attorney General's Model Rules for contested cases, Mont. Admin. R. 1.3.211 through 1.3.225, and by Mont. Code Ann. Tit. 75, Ch. 5, pts. 4 and 6.

2. FILING: Except for discovery requests and responses (which are not routinely filed), **original** documents shall be sent for filing with the Board, addressed as follows:

MS. JOYCE WITTENBERG
Secretary, Board of Environmental Review
Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901

One **copy** of each document that is filed should be sent to the Interim Hearing Examiner addressed as follows:

KATHERINE J. ORR
Interim Hearing Examiner
Agency Legal Services Bureau
1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440

Although discovery documents are not normally filed, when a motion or brief is filed making reference to discovery documents, the party filing the motion or brief should also attach the relevant discovery documents.

3. SERVICE Copies of all documents filed with the Board and provided to the Hearing Examiner, including correspondence, must be served upon the opposing party. A certificate of service should be provided.

4. EX PARTE COMMUNICATIONS: The Montana Administrative Procedure Act in Mont. Code Ann. § 2-4-613, and the Attorney General's Model Rule 18 in Mont. Admin. R. 1.3.222, prohibit *ex parte* communications with a hearing examiner concerning any issue of fact or law in a contested case. In addition to observing this rule, please contact the opposing party before you communicate with the undersigned Interim Hearing Examiner, even on purely procedural matters such as the need for a continuance.

5. SCHEDULING: The parties are requested to consult with each other and propose to the undersigned a schedule upon which they agree by **May 7, 2014**. The schedule should include the following dates:

(a) for joinder/intervention of additional parties;

(b) for disclosure by each party to the other parties of: (1) the name and address of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses; and, (2) a copy of, or a description by category and location of, all documents and tangible things that are in

the possession, custody, or control of the disclosing party and that the disclosing party may use to support its claims or defenses;

(c) for completion of discovery (if any party wishes to conduct discovery);

(d) for exchange of lists of witnesses and copies of documents that each party intends to offer at the hearing;

(e) for submitting any motions and briefs in support;

(f) for a prehearing conference to hear argument on any motions and resolve other prehearing matters; and,

(g) for the contested case hearing, as well as the place of hearing.

DATED this 17th day of April, 2014.

KATHERINE J. ORR
Interim Hearing Examiner
Agency Legal Services Bureau
1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing First Prehearing Order to be mailed to:

Joyce Wittenberg
Secretary, Board of Environmental Review
Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901
(original)

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

Bob Habeck, Acting Bureau Chief
Water Protection Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Martha E. McClain
Deputy County Attorney
Missoula County Courthouse
200 W. Broadway
Missoula, MT 59802-4292

Peter Nielsen
Missoula Valley Water Quality District
301 W. Alder St., Second Floor
Missoula, MT 59802

DATED: April 17, 2014

Montana Department of
ENVIRONMENTAL QUALITY

MEMO

TO: Katherine Orr, Hearing Examiner
Board of Environmental Review

FROM: Joyce Wittenberg, Board Secretary
Board of Environmental Review
P.O. Box 200901
Helena, MT 59620-0901

DATE: April 15, 2014

SUBJECT: Board of Environmental Review Case No. BER 2014-03 WQ

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: THE NOTICE OF APPEAL AND REQUEST FOR HEARING BY THE CLARK FORK COALITION REGARDING DEQ'S ISSUANCE OF MPDES PERMIT NO. MT0000035 ISSUED TO M2GREEN REDEVELOPMENT'S SITE IN FRENCHTOWN, MT.	Case No. BER 2014-03 WQ

The BER has received the attached request for hearing. Also attached is DEQ's administrative document(s) relating to this request.

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

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

Bob Habeck, Acting Bureau Chief
Water Protection Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments
c: Karen Knudsen, Clark Fork Coalition (Appellant)
Jack Tuholske, Attorney for Appellant

CLARK FORK COALITION P.O. Box 7593, Missoula, MT 59807 ph. 406.542.0539

April 11, 2014

Robin Shropshire, Chairperson
Montana Board of Environmental Review
Department of Environmental Quality
1520 E. Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901

RE: Letter/Petition of Appeal Regarding MPDES Permit 0000035

The Clark Fork Coalition appeals the Department of Environmental Quality's (DEQ) Notice of Final Decision to issue permit MT-0000035 pursuant to the Montana Pollutant Discharge Elimination System (MPDES) Program, Title 75, Chapter 5 of the Montana Water Quality Act and Sections 303 and 402 of the Federal Clean Water Act. The Clark Fork Coalition requests that the permit be declared void.

The closure of one of the largest sources of industrial pollution on the Clark Fork River should have prompted DEQ, as protector of the public's waters, to use that opportunity to further protect the long-term health of the river. Neither the Clean Water Act nor the Montana Water Quality Act require that pollution be allowed up to the limits of water quality standards. Nor do they create permits with rights that "run with the land" or the facility that has the original permit.

The Clark Fork Coalition submitted comments on permit renewal MT-0000035 on August 22, 2013, requesting termination of the permit. DEQ responded to our comments with minor modifications and issued a Notice of Final Decision to issue the permit on March 13, 2014, effective thirty days after service of the notice. The Clark Fork Coalition received the notice on March 17, 2014. DEQ's notice neglected to include reference to procedures for appealing the decision as required by ARM 17.30.1378.

ARM 17.30.1365 (Modification, Revocation and Reissuance of Permits) provides that permits may be terminated at the request of any interested person, and that denials of requests for termination may be appealed to the Board of Environmental Review by a petition or a letter setting forth the relevant facts.

The Clark Fork Coalition's appeal of this decision is based on the following relevant facts, laws and regulations:

1. The Clark Fork Coalition, founded in 1985, is a non-profit river conservation organization dedicated to protecting and restoring clean water throughout the Clark Fork River watershed. It is comprised of 2,700 supporters who are united in the belief that clean water is integral to the health of our rivers and our communities. Clark Fork Coalition members use the Clark

Fork River for agricultural, guiding/outfitting, recreational, aesthetic and scientific purposes, including use of the river that is affected by the MPDES permit at issue in this case.

2. The Clark Fork Coalition has long worked toward reduction of nutrient (nitrogen and phosphorous) concentrations in waters of the Clark Fork River watershed. Our organization has tracked and commented on wastewater discharge at the Frenchtown paper mill site since 1985. It was one of the founding members of the Tri-State Implementation Council in 1993, having mobilized community support and lobbied the EPA and Congress for funding for a comprehensive water quality monitoring program in the Clark Fork watershed. The mission of the Tri-State Implementation Council (later renamed Tri-State Water Quality Council) was to control nuisance algae growth in the Clark Fork River by reducing nutrient concentrations from point and nonpoint sources of pollution. As part of the Tri-State Water Quality Council in 1998, the Clark Fork Coalition was active in development of the 10-year Voluntary Nutrient Reduction Program (VNRP) among the four largest dischargers in the upper 200 miles of the Clark Fork River. The VNRP ultimately resulted in the TMDL (Total Maximum Daily Load) for the Clark Fork River and the first riverine numeric nutrient standards in Montana. Since 2009, the Clark Fork Coalition has been a member of the Department of Environmental Quality's Nutrient Working Group to help develop numeric nutrient standards for all surface waters in Montana.

3. Nitrogen and phosphorous compounds are among the top ten most common types of pollution in Montana's flowing waters. They are the primary cause of excess algal growth in our streams and rivers. Besides creating an aesthetic nuisance, excess algae diminishes natural aquatic habitat and results in low dissolved oxygen levels harmful and potentially fatal to aquatic life.

4. Annual monitoring of nutrients by the Tri-State Water Quality Council and DEQ shows that nutrient concentrations in the Clark Fork River below Missoula have decreased between 1985 and 2007. Statistically significant decreasing trends in total nitrogen and total phosphorous are documented at the Clark Fork below Missoula (below the Missoula Waste Water Treatment Plant (WWTP)) and at the Clark Fork below Huson (below the Frenchtown mill) monitoring stations (*Water Quality Status and Trends in the Clark Fork – Pend Oreille Watershed, 1984-2007*, Report for the Tri-State Water Quality Council by PBS&J Consultants). Decreasing concentrations are likely the result of upgrades at the Missoula WWTP, increased sewer hookups (decreased nonpoint source inputs from septic systems), and the phosphate ban in Missoula that took effect in 1989. Currently, total nitrogen and total phosphorous concentrations at these two stations meet nutrient standards most of the time, but not 100% of the time.

5. The Smurfit-Stone Container mill discharged wastewater to the Clark Fork River under permit MT-0000035, which was effective on September 1, 2000 and expired by May 31, 2005. The previous permittee, Stone Container Corporation (SC), submitted an MPDES renewal application and fees in November, 2004. DEQ administratively extended the permit until the issuance of a new permit. In November 2009, DEQ requested that SC submit an updated application, but the mill closed in January 2010. Direct discharge to the river from the mill ended in 2009. Treatment of residual process water ended in mid-summer 2010. Seepage of treated effluent occurred throughout 2010 and to late 2011. By the end of November 2011, the ponds were empty and no further seepage to groundwater occurred. M2Green Redevelopment, LLC (M2Green) acquired the property in May 2011. The sales

agreement contained a non-compete clause, stating, "The Buyer agrees not to sell or lease the Property or the Equipment to, or, directly or indirectly, enter into any business arrangement with, any paper making manufacturer for the purpose of producing paper." Thus it was clear in May of 2011 that the mill would never again produce paper. Demolition and/or sale of all paper-making equipment and many of the mill buildings began shortly thereafter. Thus the facility upon which the previous permit was based no longer exists and never will again exist at the site.

6. Based on information and belief, the facility was first sold to MLR Investments by Smurfit-Stone Container, and then to M2Green. If that is true then the permit cannot be transferred to M2Green as a subsequent purchaser, because the permit was never transferred to MLR Investments.

7. Upon the request of M2Green, DEQ transferred permit MT-0000035 from Smurfit-Stone Container to M2Green on June 16, 2011 as a minor modification pursuant to ARM 17.30.1362. DEQ did not follow the requirements of ARM 17.30.1362, which state that a permit may be transferred as a minor modification only "where the department determines that no other change in the permit is necessary." DEQ explained in its Response to Comments (March 13, 2014) that it transferred the permit, "because the permit was already expired and administratively extended and the paper mill had ceased operations. DEQ transferred the permit and required an updated permit application to reflect the then current and/or proposed activities at the site." Further, DEQ's permit Fact Sheet, dated June 2013, states "Because a condition of the sale required that the site no longer be used as a paper mill, DEQ requested an updated application from M2Green Redevelopment that accurately reflected the expected uses, wastewater treatment and proposed discharges at the site." Therefore DEQ knew that significant changes to the permit would be necessary, not minor modifications.

8. At the time the permit was transferred, the Smurfit-Stone mill had been closed for a year and a half and direct discharge had ceased for at least 2 years. Facilities that had previously discharged wastewater had been demolished or sold. Thus the basis for the permit no longer existed and DEQ should have terminated the permit rather than transfer it.

9. M2Green submitted a permit renewal application in September 2011. DEQ responded with a notice of deficiency in November 2011. M2Green resubmitted its permit application in May 2012 and was issued another notice of deficiency from DEQ in May 2012. M2Green again resubmitted its application in June 2012 and DEQ issued a notice of completeness in July 2012. DEQ issued a draft permit, including a statement of basis and an environmental assessment, for public comment in July 2013.

10. In its renewal application, M2Green developed a hypothetical scenario for discharge of domestic wastewater from a wind-turbine factory that would result in a discharge load of total nitrogen at 2 lbs/day average and 10.8 lbs/day maximum. Total phosphorus discharge load would be 1.3 lbs/day average and 6.4 lbs/day maximum. (This is based on average and maximum effluent discharge of 26,000 gallons per day and 96,000 gallons per day as listed in DEQ's Statement of Basis, and average and maximum effluent concentrations for total nitrogen and phosphorous listed in M2Green's permit application). Nonetheless, in the permit renewal, DEQ grants M2Green the former paper mill's waste load allocation of 66 lbs/day nitrogen and 51 lbs/day phosphorous. This waste load allocation is 30 to 40 times

higher than required by the described scenario in M2Green's application. In M2Green's letter of June 26, 2012 accompanying its revised permit renewal application it states, "During the March 7, 2012 meeting at the DEQ's office in Helena it was agreed that the current Total Maximum Daily Limits (sic) for total nitrogen and total phosphorous would stay with the new permit because they transferred to M2Green with the permit transfer. These limits are 66 lbs/day total nitrogen and 50.6 lbs/day total phosphorous."

11. DEQ made the determination to transfer Smurfit Stone Container's waste load allocations for nitrogen and phosphorous to M2Green before the department received an application from M2Green that fully described the proposed facility or passed the completeness criteria. M2Green's first renewal application to DEQ is not available, but the Notice of Deficiency letter from DEQ to M2Green indicates that the application contained many of the same provisions as the former pulp mill. DEQ's deficiency letter of November 8, 2011 states, "The Department needs a clearer indication of the specific processes, and their wastewater generating potential, in this manufacturing category for which you intend to obtain permit coverage... Form 2C appears to be an application for a Kraft pulp and linerboard manufacturing operation." And, "...it remains the Department's understanding that this facility will no longer be operated as a Kraft pulp and linerboard manufacturing operation." DEQ had not received an amended application at the time they agreed to transfer the waste load allocation.

12. The application is void on its face for failing to describe with specificity an actual facility with real discharges needing a permit. M2Green has since stated that it might build a residential development on the site (see *Missoulian*, March 16, 2014, "New Frenchtown millsite redevelopment director envisions 'a small city' "), demonstrating the wholly speculative nature of any development at the site. M2Green has not demonstrated that a wind-turbine factory will be constructed on the site or that it needs the permit that it was issued.

13. The Federal Clean Water Act (CWA), 33 U.S.C. 1251 (a) establishes a national goal for waters of the U.S., which includes the Clark Fork River, as follows: "The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter—
    (1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985.

14. The DEQ stands in the shoes of the EPA and is bound by all of EPA's regulations and policies regarding MPDES permits.

15. Final permit authorizations, including an amendment or modification due to a change in waste stream, require submission of an application to the permitting agency, preparation of a draft permit and fact sheet or statement of basis by the agency, a public notice and comment period, and agency consideration of public comment, all of which must be based upon actual plans for discharge by a facility. 33 U.S.C. § 1342(b)(3); 40 C.F.R. §§ 122.44, 124.6, 124.8, 124.11, 124.56. The permit is void on its face because the application was based on a hypothetical facility that lacks any actual plans.

16. ARM 17.30.1363 (1)(d) provides for termination of permits or denial of permit renewal:

> *(1)* The *following are causes for terminating a permit during its term, or for denying a permit renewal application:*
> *(d) a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).*

17. ARM 17.30.1363 (1)(d) mirrors 40 C.F.R. 122.64, which states that causes for termination include a "change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit." 40 C.F.R. § 122.64(a)(4).

18. These two regulations require termination of the Smurfit-Stone/M2Green permit because one of the enumerated "causes for termination" – a permanent reduction of the waste stream – has occurred. Based on this regulation, the lawful process in this case would have been to terminate the permit and allow M2Green to apply for a new permit.

19. ARM 17.30.1342(7) includes a condition applicable to all permits: "(7) This permit does not convey any property rights of any sort, or any exclusive privilege." DEQ has nonetheless treated both the permit and the waste load allocation (WLA) as a property right by asserting in the Response to Comments (March 13, 2014), "The TMDL WLA is the allocated load for discharges from this site. Pursuant to 40 CFR 122.44(d)(1)(vii)(B), MPDES permits must include effluent limitations developed consistent with the assumptions and requirements of any WLA assigned in a TMDL. Until the TMDL is revised and a new WLA adopted, the permit must incorporate the current WLA." However, the WLA in the TMDL for this site was developed for the existing paper mill at that time, and paper mills are large dischargers of nitrogen and phosphorous. Mill closure and demolition should trigger reevaluation of the waste load allocation in the TMDL before a permit is issued for a new and different type of facility. The waste load allocation under a TMDL is based upon the specific use for which it was intended; neither the federal Clean Water Act nor the Montana Water Quality Act permit an MPDES permit to be permanently tied to a particular site.

20. EPA's regulation at 40 C.F.R. 145 (b) (2) (i) states:

> Except in the case of POTWs (Publicly Owned Treatment Works) or as provided in paragraph (b)(2)(ii) of this section, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

The permit issued to M2Green violates this regulation in two ways. First, the lack of any facility at the site means that no "actual production" exists. Second, no projected production exists because there is no projected facility at the site that has been designed to the point that production figures can be estimated.

21. EPA does not permit transfer of a permit's discharge allowances "whole cloth" when the transferee is a new facility and the previous facility has been permanently closed. See attached Exhibit A, EPA letter to Oregon DEQ, September 13, 2013. The above-cited regulation prevents the blanket transfer of a permit from a closed facility to a new facility, especially to a new facility that has no concrete plans to develop a project that even needs an MPDES permit.

22. The EPA Permit Writer's Manual (1996) constitutes EPA regulatory authority that is binding on the state of Montana's MPDES program. Section 11.3.3 states that permit termination is required when:

    "A temporary or permanent reduction or elimination of a discharge (e.g. plant closure)."

    "Once the permit is terminated, it can be placed into effect again only by the reissuance process, which requires a new permit application. All of the above situations [including plant closures] may also be addressed through the permit modification process on a case-by-case determination."

    DEQ violated the EPA Permit Writer's Manual by failing to terminate the permit and failing to require M2Green to apply for a new permit.

23. The fact that the actual use of the premises is unknown means that the permit was also issued in violation of the Best Available Technology Requirements of the CWA. In the absence of uniform guidelines, EPA (or a state administering the NPDES permit program) must incorporate technology-based effluent limits on a case-by-case basis using the permit writer's "best professional judgment" (BPJ). 33 U.S.C. § 1342(a)(1)(B); 40 C.F.R. § 125.3(c)(2). Montana's water pollution control regulations incorporate these federal requirements by reference. *See* ARM §§ 17.30.1344, 1345, 1361. Indeed the CWA's technology-based effluent limitation "shall be applied to all point sources of discharge of pollutants" in accordance with the Act's requirements. 33 U.S.C. § 1311(e). EPA regulations similarly provide that "[t]echnology-based treatment requirements under [33 U.S.C. § 1311(b)] represent the *minimum level of control that must be imposed* in a permit issued under [33 U.S.C. § 1342]." 40 C.F.R. § 125.3(a). Section 5 of the EPA Permit Writer's Manual makes clear that the imposition of BPJ must be based on an actual evaluation of an industrial site, not a hypothetical guess of what might be built. It is impossible for DEQ to apply BPJ and meet technology-based treatment standards in this permit because no one knows what the actual discharge will be.

24. If and when a facility is developed at the Smurfit-Stone site, the need for a new permit will arise under CWA Section 306 and the more restrictive technology-based standards will apply.

25. The permit is also improper under EPA regulations because it was not properly drafted to reflect the conditions of an actual, proposed waste stream. A change in waste stream, including alteration in concentrations of pollutants in a waste stream, requires approval from the permitting agency and public participation in the permitting process before commencement of the discharge. 40 C.F.R. §§ 122.62, 122.63, 123.25(a)(25), 124.5. MPDES permits must include evaluations and verification that permit limits are based on

current operations and discharges presently on-site. 40 C.F.R. § 122.45(d).

26. The permit also grants a large mixing zone that is unnecessary and unlawful under A.R.M. 17.30.517-518. DEQ failed to follow the procedures for designating a mixing zone and instead simply grandfathered in the previous mixing zone based on the property boundaries of a facility that no longer exists and is no longer owned by Smurfit Stone Container. A new permit would require re-calculation of the mixing zone and trigger non-degradation review pursuant to MCA § 75-5-303; ARM 70.301.701, *et seq.*, all of which DEQ has avoided by the procedure used here.

27. The permit issued here allows discharge from the four outfalls permitted for the Smurfit-Stone operation. There is no evidence that M2Green needs four outfalls (or any outfalls for that matter) and thus DEQ had no basis to approve the outfalls.

28. The permit issued by DEQ to M2Green violates the purpose of the CWA by retarding the restoration of the Clark Fork River and furthering, not eliminating, the discharge of pollutants. The cessation of a major polluting facility on the already-impaired Clark Fork River should be grounds for retiring the permit, not maintaining the degraded status quo.

29. In addition, the Montana Constitution Art, II, sec. 3 and Art. IX, sec. 1 create both a right and a duty to maintain and improve the environment. The Constitution should further inform and require DEQ to cancel the permit upon closure of the facility.

30. The proper decision for DEQ, in view of the policy of the CWA and MWQA, and the relevant implementing regulations, would be to revoke the permit issued to Smurfit Stone Container and wait until M2Green submits an application for a new facility with specific discharge requirements.

31. For the reasons stated herein the decision by DEQ to issue Permit 0000035 to M2Green is arbitrary, capricious, unsupported by the facts, unlawful and an abuse of discretion.

32. The Clark Fork Coalition hereby requests that the Board proceed to hearing on this matter, after setting an appropriate pre-hearing schedule for discovery and pre-trial matters, and to ultimately determine that Permit 0000035 is void and of no effect.

Karen Knudsen
Executive Director, Clark Fork Coalition

Jack Tuholske (KK)
Jack Tuholske
Attorney for the Clark for Coalition

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
WATER AND
WATERSHEDS

September 12, 2013

Ms. Jackie Ray
Oregon Department of Environmental Quality
700 SE Emigrant, Suite 330
Pendleton, OR 97801 *(via email to: ray.jackie@deq.state.or.us)*

Re: U.S. Environmental Protection Agency Comments
Draft National Pollutant Discharge Elimination System (NPDES) Permit and Fact Sheet
Northwest Aluminum Specialties, Inc., et al, NPDES Permit No. 101759

Dear Ms. Ray:

The U.S. Environmental Protection Agency has selected to review the above-referenced permit consistent with the Performance Partnership Agreement (PPA) and the EPA's obligation to oversee implementation of the NPDES program by delegated states. The EPA reviewed the draft permit for consistency with federal laws and regulations and with the Department of Environmental Quality's (DEQ) regulations and permit writing guidance.

The Northwest Aluminum Co. owns a site in the City of The Dalles, Oregon, where they used to operate a primary aluminum smelting facility. The primary aluminum smelting operation was demolished by July 2009. Wastewater is currently being generated from the non-contact cooling system at Northwest Aluminum Specialties, Inc., leachate from the adjacent Lockheed Martin CERCLA and RCRA landfills, and stormwater runoff from the properties.[1]

The EPA has the following comments on the draft permit:

The EPA's main concern with the draft permit is that the draft permit includes the exact same limits as the previous permits even though the permit evaluation report (a.k.a. fact sheet) indicates that the manufacturing operations at the site have changed significantly since issuance of the current permit in February 2005.[2] The public notice for the draft permit indicates, "*[o]nce a new facility inhabits the site, that new discharge volume and type will be re-evaluated.*"[3] DEQ must evaluate and verify appropriate permit limits based on current manufacturing operations and discharges presently existing at the site. Federal regulation 40 CFR §122.45(d) requires that all discharges be evaluated to determine the need for effluent limitations necessary to achieve the water quality standards. In

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1 Excerpt from Public Notice, Oregon Department of Environmental Quality, Public Notice, Draft Permit and Evaluation Report, July 17, 2013.
http://www.deq.state.or.us/news/publicnotices/uploaded/130717_4513_ProposedNPDESPermitNWAluminum.pdf

2 DEQ, NDPES Permit no. 101759 and Evaluation Report
(http://www.deq.state.or.us/wqpr/1497_A0906161023208286443.PDF)

3 DEQ, Public Notice, Draft Permit and Evaluation Report, July 17, 2013.
http://www.deq.state.or.us/news/publicnotices/uploaded/130717_4513_ProposedNPDESPermitNWAluminum.pdf

EXHIBIT
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the future, the authorization of new discharges from the site must be done through a permit modification prior to the discharge commencing.

The draft permit is issued to four separate entities; Northwest Aluminum Specialties Inc., Lockheed Martin Corporation, Northwest Aluminum Company, and Arcadis U.S. Inc. The fact sheet does not provide details about the nature of Arcadis' discharge or indeed if the facility contributes to the discharge. To the extent possible, DEQ should provide a flow diagram and an additional explanation about the nature of discharges and identification of pollutants of concern (POC) from each of the permitted entities.

The draft permit authorizes the discharge of combined process, non-process wastewater and stormwater runoff, and applies effluent limits to the combined discharge at outfall 001. Application of effluent limits on the commingled discharge does not allow technology- or water quality-based effluent limits to be appropriately applied, and may allow for the dilution of process wastewater streams. Federal regulation 40 CFR §122.45(h) allows effluent limits to be imposed on internal waste streams when the fact sheet sets forth circumstances that make such limitations necessary. DEQ should re-evaluate and explain the applicable limits to each process stream and determine if internal monitoring points are necessary to demonstrate compliance with appropriate effluent limitations.

The draft permit authorizes stormwater discharges, but does not include stormwater related requirements such as development of a stormwater pollution prevention plan (SWPPP) or implementation of best management practices (BMPs). If these businesses are in one of the Primary Metals SIC codes, the permit may or may not require benchmarks depending on their SIC code. The draft permits must include requirements for the stormwater discharge or require coverage under Oregon's industrial stormwater permit to fulfill the requirements of NPDES regulations pertaining to stormwater discharges.

The draft permit does not use DEQ's current permit template, and does not include the most up-to-date permit language and requirements, for example, new language for permit activities on cover page of permit, pH units on limits table, and minimum (detection) levels (ML) stated in the permit. The EPA encourages the use of the permit template as the starting point for all newly issued permits to enhance the consistency and completeness of Oregon's NPDES permits.

The NPDES regulations at 40 CFR §124.8(a) stipulate that every state-issued major permit must be accompanied by a fact sheet and other sections of §124 specify required elements. The permit evaluation report does not adequately cover the required elements. Portions of the evaluation report were carried over from the previous permit and appear to be irrelevant to present activities at the site. Most importantly, the permit writer must identify the basis for permit limits, technology-, water quality- or BPJ-based. The report should indicate if the effluent limitation guidelines (ELG) apply to the industry or industries at the site, and if so, calculations must be included to explain the derivation of the permit limits based on the requirements of the ELG. Refer to the EPA's *Permit Writers' Manual* (Page 11-9, Exhibit 11-6), for a summary of the required elements.[4]

As stated in the permit evaluation report, "*[t]he average total wastewater flow rate from the facility is approximately 1-2 million gallons per day (MGD). The facilities wastewater flows were*

[4] EPA's Permit Writers' Manual, September 2010. (http://www.epa.gov/npdes/pubs/pwm_2010.pdf)

previously evaluated at a volume of 7.55 MGD. Since the current permit allows this volume, the proposed permit will be evaluated based on 7.55 MGD." (Page 2) It is unacceptable to base permit limits on process flows and/or production volumes, as appropriate, that no longer exist. Federal regulation 40 CFR §122.45(b)(2)(i) states, "effluent limitations...shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility." DEQ must re-evaluate the permit limits based on the anticipated flows and/or volumes during the permit cycle.

The evaluation report states, "*[w]astewater from the deburring tanks is discharged to the City of The Dalles sewer collection system.*"(Page 3) The report should mention or explain the pretreatment requirements for the discharge of industrial process water to a POTW and the status of the City of The Dalles pretreatment authority.

The evaluation report indicates that the mixing zone study was done in 1993 (Page 4), prior to the change in manufacturing activities on the site. In addition, it is unclear if dilution modeling was done to estimate the dilution factors at "critical flow" and the dye studies were done to validate the model results, or if the dilutions presented in Table 1 are simply the dye study results at the flow conditions present during the study. Considering the significant changes in the discharge since 1993, it is appropriate for the permit to require the discharger(s) to re-evaluate dilution at the edge of the approved mixing zones.

The evaluation report should more clearly indicate how the pollutants of concern (POCs) were identified. (Page 4) The report indicates that the only pollutants of concern are those pollutants for which there were limits in the current permit. Indicate if additional POCs were identified in the permit application.

The reasonable potential analysis (RPA) (Pages 5-11) in the evaluation report uses a percentage of river flow instead of the previously discussed dilution factor to evaluate RPA, except for temperature. DEQ should clarify and correct, as needed, the appropriate dilution factor for evaluating reasonable potential and establishing water quality-based effluent limits.

The EPA has the following comments related to the CERCLA site:

General Comments

The permit references the Cyanide Destruct System in numerous places. The CDS system was brought on in 1990, but it was replaced with biological treatment in 2007. Thermal treatment is no longer used to treat leachate discharged under the NPDES permit. The tank, which we refer to as the CERCLA tank, is part of the leachate collection system (LCS). The NPDES permit should be changed to remove references to the CDS and instead use references to the CERCLA tank as part of the LSC system.

Specific Comments in Permit

Pg. 2, Outfall C: The CDS system is no longer used

Pg. 3, Item 2: There is no longer any thermal discharge coming from the facility since thermal treatment is no longer used.

Pg. 4, Outfall Number 001: PCBs were removed from the items listed. We are aware of PCBs located on the property. Is there any concern over this item being removed?

Pg. 4, Outfall C: The reference to Lockheed Martin Marietta's Cyanide Destruct System should be replaced with a reference to the Leachate Collection System (LCS).

Pg. 6, Item 4: The reference to Lockheed Martin Marietta's Cyanide Destruct System should be replaced with a reference to the Leachate Collection System (LCS).

Pg. 6, Item 5: Special condition 5 requires that, "All leachate, including water from the detector trench, collected from the Lockheed Martin Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) waste pile and from the Lockheed Martin Resource Conservation Recovery Act (RCRA) landfill must be treated by the Cyanide Destruction System prior to discharge to Outfall No. 001." Again, the reference to the CDS is inaccurate and should refer to the LCS.

Specific Comments on Permit Evaluation

Pg. 1, Introduction: The first paragraph should be revised to state "NWA sold land inside their boundaries to Northwest Aluminum Specialites' (NWAS) recycling plant in 2006 and Lockheed Martin owns the land where the Leachate Collection System (LCS) and CERCLA tank are located."

Pg. 2, first paragraph, last sentence: The reference to Lockheed Martin Marietta's Cyanide Destruct System should be replaced with a reference to the Leachate Collection System (LCS).

Pg. 2, Facility Description, third paragraph: The reference to Lockheed Martin Marietta's Cyanide Destruct System should be replaced with a reference to the Leachate Collection System (LCS).

Pg. 2 and 3, Outfalls: The references to Lockheed Martin Marietta's Cyanide Destruct System should be replaced with a reference to the Leachate Collection System (LCS).

The EPA requests that response to these comments be provided by letter or email prior to issuance of the final permit. Please contact me at (206) 553-1755 or by email at lidgard.michael@epa.gov if you have any questions about this letter or related matters, or you may contact Karen Burgess, of my staff, at (206) 553-1644 or burgess.karen@epa.gov.

Sincerely,

Michael J. Lidgard, Manager
NPDES Permits Unit

cc: Ms. Heidi Willisam, DEQ Permit Writer *(via email only to: williams.heidi@deq.state.or.us)*
Ms. Emerald Laija, EPA - Hanford Project Office *(via email only to: laija.emerald@epa.gov)*

Montana Department of
ENVIRONMENTAL QUALITY

Steve Bullock, Governor
Tracy Stone-Manning, Director

P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: www.deq.mt.gov

March 13, 2014

Mark Spizzo
M2Green Redevelopment, LLC
14377 Pulp Mill Road
Missoula MT 59808

RE: Notice of Final Decision, Montana Pollutant Discharge Elimination System (MPDES) Permit Number MT0000035

Dear Mr. Spizzo:

In accordance with the Administrative Rules of Montana (ARM) 17.30.1377, enclosed is the Response to Comments and a copy of the proposed modified permit for the M2Greeen Redevelopment Frenchtown site. The permit is issued by the Department under the authority of 75-5-402, Montana Code Annotated (MCA) and Sections 303 and 402 of the federal Clean Water Act.

The Response to Comments addresses issues that were identified during the public comment period. The public comment period closed August 22, 2013.

Below is a summary of changes that were made in the draft permit in response to public comments:

1. The following language was added to Part I.B, Effluent Limitations, Outfalls 001, 002, and 003:

   Prior to commencing discharge at Outfall 001, 002, or 003, the permittee must receive written approval from DEQ on the design and application of the conveyance method prior to construction. Transport of wastewater in any unlined ditch is not permitted.

2. The following language was added to Part I.B, Effluent Limitations, Outfall 005:

   Authority to discharge to the south polishing pond (SPP) or alternate pond sites is stayed until the site(s) have been assessed under the appropriate clean-up statute(s) and remediated if found to be contaminated. Following such assessments, the permittee must receive written approval from EPA and/or DEQ as appropriate regarding pond location, design, and remedial status prior to discharging to the SPP and/or construction of an alternate pond site(s). All new plans and specifications for any new or upgraded

wastewater treatment system components, including any new disposal pond sites, are subject to department review and approval according to the requirements of department circular DEQ-2.

Effective immediately upon commencement of discharge and lasting through the term of the permit, the quality of effluent discharged through Outfall 005 shall, as a minimum, meet the limitations as set forth below:

3. Monitoring requirements for 2,3,7,8 TCDD, total recoverable arsenic and total recoverable manganese, in both the effluent and ground water, were removed from the permit. These requirements were removed because the federal superfund and state remediation processes will assess past contamination related to these parameters. The permit requirements above will ensure that contamination from these parameters is addressed prior to the commencement of the permitted discharge.

In accordance with ARM 17.30.1378, the Department's final decision to issue the permit is effective 30 days after service of this notice. Under ARM 17.30.1370, the applicant may appeal this decision within the 30 day period in accordance with 75-5-403 and 75-5-611, MCA. Pursuant to 40 CFR 122.44, the Regional Administrator may object to or make recommendations to the proposed permit.

A copy of the permit should be made available to the person(s) in charge of the operation of the wastewater treatment facilities so they are aware of the requirements in the permit. Please take note of any revised monitoring requirements specified in Part I of the permit. Also, the final permit may contain special conditions requiring actions on the part of the permittee. Please refer to Part I of the permit for additional information. The preprinted Discharge Monitoring Report (DMR) forms will be sent soon.

If you have any questions please contact Jeff May in the Water Protection Bureau at (406)-444-5326.

Sincerely,

Bob Habeck

Bob Habeck, Chief
Water Protection Bureau
Permitting and Compliance Division

Enclosure: Response to Comments
Permit MT0000035

cc w/enclosures: Carson Coate, USEPA, Helena, MT

Major Private
Permit No.: MT0000035

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.*,

M2Green Redevelopment, LLC

is authorized to discharge from its **wastewater treatment system**

located at **14377 Pulp Mill Road, Missoula MT 59808**

to receiving waters named, **Clark Fork River and ground water,**

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. The wasteload allocation specified herein support and serve to define the total maximum daily load for affected receiving water.

This permit shall become effective: **May 1, 2014**

This permit and the authorization to discharge shall expire at midnight, **April 30, 2019**

FOR THE MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

Bob Habeck, Chief
Water Protection Bureau
Permitting & Compliance Division

Issue Date: **March 13, 2014**

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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, discharging into **the Clark Fork River,** located at 46. 95819 N latitude and 114.21928 W longitude. **Mixing Zone:** The maximum extent of the acute and chronic mixing zone in the named receiving waters is as follows: (0) feet upstream; (200) feet downstream from the outfall for the parameters total ammonia and nitrate.
002 -	**Location:** At the end of the pipe, discharging into **the Clark Fork River,** located at 46. 96022 N latitude and 114.21992 W longitude. **Mixing Zone:** The maximum extent of the acute and chronic mixing zone in the named receiving waters is as follows: (0) feet upstream; (200) feet downstream from the outfall for the parameters total ammonia and nitrate.
003 -	**Location:** At the end of the pipe, discharging into **the Clark Fork River,** located at 46. 97717 N latitude and 114.22708 W longitude. **Mixing Zone:** The maximum extent of the acute and chronic mixing zone in the named receiving waters is as follows: (0) feet upstream; (200) feet downstream from the outfall for the parameters total ammonia and nitrate.

004 - **Location:** At the end of the pipe, discharging into the **Clark Fork River,** located at 46. 98975 N latitude and 114.22606 W longitude.

Mixing Zone: The maximum extent of the acute and chronic mixing zone in the named receiving waters is as follows: (0) feet upstream; (200) feet downstream from the outfall for temperature.

005 - **Location:** At the end of the pipe, discharging into **ground water,** located at 46. 96398 N latitude and 114.20587 W longitude.

Mixing Zone: The maximum extent of the acute and chronic mixing zone in the named receiving waters is as follows: Ground water within the facility property boundaries.

B. Effluent Limitations

Outfalls 001, 002, and 003

Effective immediately and lasting through the term of the permit, the quality of effluent discharged through Outfalls 001, 002 and 003 shall, as a minimum, meet the limitations as set forth below:

There shall be no discharge which causes visible oil sheen in the receiving water.

No discharge may occur from Outfalls 001, 002, and 003 from June 21 to September 21 of each year.

Prior to commencing discharge at Outfall 001, 002, or 003, the permittee must receive written approval from DEQ on the design and application of the conveyance method prior to construction. Transport of wastewater in any unlined ditch is not permitted.

Outfall 004

Effective immediately and lasting through the term of the permit, the quality of effluent discharged through Outfall 004 shall, as a minimum, meet the limitations as set forth below:

Effluent Limitations: Outfall 004			
Parameter	**Units**	**Average Monthly Limit (1)**	**Daily Maximum Limit (1)**
pH	S.U.	In the range of 6.0 to 9.0	
Temperature	° F	--	95
Footnotes: 1. See Definition section at end of permit for explanation of terms.			

The discharge from Outfall 004 must consist entirely of uncontaminated non-contact cooling water or unaltered ground water.

Outfall 005

Authority to discharge to the south polishing pond (SPP) or alternate pond sites is stayed until the site(s) have been assessed under the appropriate clean-up statute(s) and remediated if found to be contaminated. Following such assessments, the permittee must receive written approval from EPA and/or DEQ as appropriate regarding pond location, design, and remedial status prior to discharging to the SPP and/or construction of an alternate pond site(s). All new plans and specifications for any new or upgraded wastewater treatment system components, including any new disposal pond sites, are subject to department review and approval according to the requirements of department circular DEQ-2.

Effective immediately upon commencement of discharge and lasting through the term of the permit, the quality of effluent discharged through Outfall 005 shall, as a minimum, meet the limitations as set forth below:

Effluent Limitations: Outfall 005			
Parameter	**Units**	**Average Monthly Limit [1]**	**Average Weekly Limit [1]**
Biochemical Oxygen Demand (BOD_5)	mg/L	30	45
	lb/day	6.5	9.8
Total Suspended Solids (TSS)	mg/L	30	45
	lb/day	6.5	9.8
BOD_5, Percent Removal	%	85 [2]	--
TSS, Percent Removal	%	85 [2]	--
pH	S.U.	In the range of 6.0 to 9.0	
Chlorine, total residual [3]	mg/L	0.011	0.019
Escherichia coli (E. Coli) Bacteria [4]	cfu/100 mL	126	252
Escherichia coli (E. Coli) Bacteria [5]	cfu/100 mL	630	1260
Oil and Grease	mg/L	--	10 [6]
Total Nitrogen	lb/day	--	66 [7]
Total Phosphorus	lb/day	--	51 [7]

Footnotes:
1. See Definition section at end of permit for explanation of terms.
2. Average monthly minimum.
3. This limit only applies if chlorine is used for disinfection. Sampling results less than 0.1 mg/L are considered in compliance with this limit.
4. This limit applies April 1 through October 31.
5. This limit applies November 1 through March 31.
6. Daily maximum.
7. Daily maximum. Effective June 21 to September 21 each year.

C. Monitoring Requirements

As a minimum, upon the effective date of this permit, the following constituents shall be monitored at the frequency and with the type of measurement indicated. Effluent samples or measurements shall be collected at the discharge structure prior to mixing with the receiving water and be representative of the volume and nature of the monitored discharge.

At Outfall 004, flow and temperature must be monitored at the outfall location, prior to mixing with the receiving water; pH shall be monitored where the cooling water enters the cooling ditch.

At Outfall 005, the monitoring location must be after treatment and prior to discharge to the South Polishing Pond.

If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report Form (EPA No. 3320-1) that no discharge or overflow occurred.

The influent monitoring location must be prior to the EQ basin.

All analytical procedures, sampling, and preservation methods must comply with the requirements of the methods specified in 40 CFR 136.

All analytical procedures must comply with the applicable RRV in Department Circular DEQ-7 unless specified otherwise in this permit.

Monitoring Requirements, Outfalls 001, 002, and 003

Parameter	Unit	Sample Location	Sample Frequency	Sample Type [1]	RRV [2]
Flow	mgd	Effluent	Continuous	(3)	---
pH	s.u.	Effluent	1/Week	Instantaneous	0.1
Oil and Grease, visual	presence	Effluent	Daily	Visual	---
Total Ammonia, as N	mg/L	Effluent	1/Month	Composite	0.05
Nitrate + Nitrite, as N	mg/L	Effluent	1/Month	Composite	0.01
Kjeldahl Nitrogen, Total as N	mg/L	Effluent	1/Month	Composite	0.5
Phosphorus, Total as P	mg/L	Effluent	1/Month	Composite	0.001
	lb/day	Effluent	1/Month	Calculated	---
Nitrogen, Total as N [(4)]	mg/L	Effluent	1/Month	Calculated	---
	lb/day	Effluent	1/Month	Calculated	---
Copper, Total Recoverable	µg/L	Effluent	1/Year	Grab	2
Cadmium, Total Recoverable	ug/L	Effluent	1/Year	Grab	0.03

Footnotes:
1. See Definition section at end of permit for explanation of terms.
2. The Required Reporting Value (RRV) is the detection level that must be achieved in reporting surface water or ground water monitoring or compliance data to the Department.
3. Requires recording device or totalizer; permittee shall report daily maximum and daily average flow on DMR.
4. Calculated as the sum of Nitrate plus Nitrite and Total Kjeldahl Nitrogen.

Monitoring Requirements, Outfall 004					
Parameter	Unit	Sample Location	Sample Frequency	Sample Type [1]	RRV [2]
Flow	mgd	Effluent	Continuous	(3)	---
Temperature	° F	Effluent	Daily	Instantaneous	---
pH	S.U.	Effluent	Daily	Instantaneous	---

Footnotes:
1. See Definition section at end of permit for explanation of terms.
2. The Required Reporting Value (RRV) is the detection level that must be achieved in reporting surface water or ground water monitoring or compliance data to the Department.
3. Requires recording device or totalizer; permittee shall report daily maximum and daily average flow on DMR.

Monitoring Requirements, Outfall 005					
Parameter	Unit	Sample Location	Sample Frequency	Sample Type [1]	RRV [2]
Flow	mgd	Effluent	Continuous	(3)	---
Biochemical Oxygen Demand (BOD_5)	mg/L	Effluent	1/Week	Composite	5
	lb/day	Effluent	1/Month	Calculated	---
	mg/L	Influent	1/Month	Composite	5
Total Suspended Solids (TSS)	mg/L	Effluent	1/Week	Composite	5
	lb/day	Effluent	1/Month	Calculated	---
	mg/L	Influent	1/Month	Composite	5
pH	s.u.	Effluent	1/Week	Instantaneous	0.1
E. coli Bacteria	cfu/100ml	Effluent	1/Week	Grab	1/100 mL
Chlorine, total residual [4]	mg/L	Effluent	Daily	Grab	0.1
Oil and Grease [5]	mg/L	Effluent	1/Month	Grab	1
Total Ammonia, as N	mg/L	Effluent	1/Month	Composite	0.05
Nitrate + Nitrite, as N	mg/L	Effluent	1/Month	Composite	0.01
Kjeldahl Nitrogen, Total as N	mg/L	Effluent	1/Month	Composite	0.5
Phosphorus, Total as P	mg/L	Effluent	1/Month	Composite	0.001
	lb/day	Effluent	1/Month	Calculated	---
Nitrogen, Total as N [6]	mg/L	Effluent	1/Month	Calculated	---
	lb/day	Effluent	1/Month	Calculated	---
Copper, Total Recoverable	µg/L	Effluent	1/Year	Grab	2
Cadmium, Total Recoverable	ug/L	Effluent	1/Year	Grab	0.03

Footnotes:
1. See Definition section at end of permit for explanation of terms.
2. The Required Reporting Value (RRV) is the detection level that must be achieved in reporting surface water or ground water monitoring or compliance data to the Department.
3. Requires recording device or totalizer; permittee shall report daily maximum and daily average flow on DMR.
4. Monitoring is only required when chlorine is used for disinfection.
5. Use EPA method 1664A, hexane exctractable.
6. Calculated as the sum of Nitrate plus Nitrite and Total Kjeldahl Nitrogen

Groundwater Monitoring Requirements SMW Wells 7, 8, 9, 10, 11, 12, 13, 14, 21 TW Wells 1R, 2R, 4R, 5R, 514				
Parameter	Unit	Sample Frequency	Sample Type [1]	RRV [2]
Nitrate + Nitrite, as N	mg/L	1/Quarter	Grab	0.01
Kjeldahl Nitrogen, Total as N	mg/L	1/Quarter	Grab	0.5
Phosphorus, Total as P	mg/L	1/Quarter	Grab	0.001
Nitrogen, Total as N [(3)]	mg/L	1/Quarter	Calculated	---

Footnotes:
1. See Definition section at end of permit for explanation of terms.
2. The Required Reporting Value (RRV) is the detection level that must be achieved in reporting surface water or ground water monitoring or compliance data to the Department.
3. Calculated as the sum of Nitrate plus Nitrite and Total Kjeldahl Nitrogen

Reporting Requirements

Load Calculations

In addition to reporting the concentration values, the monthly loads expressed in lbs/day must be calculated and reported for BOD_5 and TSS. The monthly loads must be calculated using the average daily flow rate and daily average parameter concentration as shown in the following equations:

Load (lb/day) =
Parameter concentration (mg/l) x Effluent Flow Rate (**gpm**) x (0.012)

or

Parameter concentration (mg/l) x Effluent Flow Rate (**mgd**) x (8.34)

Percent (%) Removal

The percent removal shall be calculated using the following formula:

$$\% \text{ Removal} = \frac{[\textit{Influent Concentration}]-[\textit{Effluent Concentration}]}{[\textit{Influent Concentration}]} \times 100\%$$

Where:

Influent Concentration = Corresponding 30-Day average influent

concentration based on the analytical results of the reporting period.

Effluent Concentration = Corresponding 30-Day average effluent concentration based on the analytical results of the reporting period.

D. Special Conditions

1. Sewage Sludge:

The use or disposal of sewage sludge must be in conformance with the Environmental Protection Agency (EPA) General Permit MTG650000 or an equivalent permit issued pursuant to 40 CFR 503. A notice of intent must be filed with the EPA and the Department in accordance with the timeframes and procedures identified in the applicable permit. All materials required by the General Permit to be submitted to the Department shall be signed in accordance with Part IV.G and sent to the address provided in Part II.D of this permit.

The permittee shall not dispose of sewage sludge such that any portion thereof enters any state water, including ground water. The permittee shall notify the Department in writing 45 days prior to any change in sludge management at the facility.

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. Sludge samples shall be collected at a location representative of the quality of sludge immediately prior to use-disposal practice.

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. See Part I.C of this permit for any applicable sludge monitoring procedures. 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 $25,000, or by imprisonment for not more than six months, or by both.

D. Reporting of Monitoring Results

Effluent monitoring results obtained during the previous month(s) shall be summarized for each month and reported on a Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed reporting 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 reporting period, "no discharge" shall be reported on the report form. Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with the "Signatory Requirements" (see Part IV.G of this permit), and submitted to the Department at the following addresses:

(a) Montana Department of Environmental Quality
Water Protection Bureau
PO Box 200901
Helena, Montana 59620- 0901
Phone: (406) 444-3080

E. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any Compliance Schedule of this permit shall be submitted no later than 14 days following each schedule date.

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 incident of noncompliance affecting the environment 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) 444-3080 or the Office of Disaster and Emergency Services at (406) 841-3911. 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) 444-3080.

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 Regional Administrator, or an authorized representative 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 and the Director 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 $25,000 per day or one year in prison, or both, for the first conviction, and $50,000 per day of violation or by imprisonment for not more than two 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. Sludge shall not be directly blended with or enter the final plant discharge and/or waters of the United States.

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 ten (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.

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:

1. 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.

2. There are any planned substantial changes to the existing sewage sludge management practices of storage and disposal. The permittee shall give the Department notice of any planned changes at least 180 days prior to their implementation.

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 modifying, revoking 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 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 or Water Rights

The issuance of this permit does not convey any property or water rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

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 consisting of 15% of the fee plus interest on the required fee computed at the rate established under 15-31-510(3), MCA, or

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 the 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. Sewage Sludge: There have been substantial changes (or such changes are planned) in sludge use or disposal practices; applicable management practices or numerical limitations for pollutants in sludge have been

promulgated which are more stringent than the requirements in this permit, and/or it has been determined that the permittee's sludge use or disposal practices do not comply with existing applicable state or federal regulations.

6. 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.

7. Toxicity Limitations: 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.

   c. The TRE/TIE results indicated that the toxicant(s) represent pollutants(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 this 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. **"Annual Average Load"** means the arithmetic mean of all 30-day or monthly average loads reported during the calendar year for a monitored parameter.

5. **"Approval Authority"** means the EPA Region VIII administrator as incorporated by 40 CFR 403.3(c).

6. **"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.

7. **"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.

8. **"Average weekly limitation"** means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

9. **"BOD_5"** means the five-day measure of pollutant parameter biochemical oxygen demand.

10. **"Bypass"** means the intentional diversion of waste streams from any portion of a treatment facility.

11. **"$CBOD_5$"** means the five-day measure of pollutant parameter carbonaceous biochemical oxygen demand.

12. **"Composite samples"** shall be flow proportioned. The composite sample shall, as a minimum, contain at least four (4) samples collected over the compositing period. Unless otherwise specified, 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. Acceptable methods for preparation of composite samples are as follows:

a. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;

b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;

c. Constant sample volume, time interval between samples proportional to flow (i.e. sample taken every "X" gallons of flow); and,

d. Continuous collection of sample, with sample collection rate proportional to flow rate.

13. **"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.

14. **"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.

15. **"Department"** means the Montana Department of Environmental Quality (MDEQ). Established by 2-15-3501, MCA.

16. **"Director"** means the Director of the Montana Department of Environmental Quality.

17. **"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.

18. **"EPA"** means the United States Environmental Protection Agency.

19. **"Federal Clean Water Act"** means the federal legislation at 33 USC 1251, *et seq.*

20. **"Geometric Mean"** means the value obtained by taking the Nth root of the product of the measured values.

21. **"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.

22. **"Indirect discharge"** means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Federal Clean Water Act.

23. **"Industrial User"** means a source of Indirect Discharge.

24. **"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.

25. **"Instantaneous Measurement"**, for monitoring requirements, means a single reading, observation, or measurement.

26. **"Interference"** means a discharge which, alone or in conjunction with other contributing discharges

    a. Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

    b. Therefore causes a violation of any requirement of the POTW's MPDES permit (including an increase in the magnitude or duration of a violation) or causes the prevention of sewage sludge use or disposal in compliance with the following statutes and regulations: Section 405 of the Clean Water Act; 40 CFR Part 503 - Standards for the Use and Disposal of Sewage Sludge; Resource Conservation and Recovery Act (RCRA); 40 CFR Part 258 - Criteria for Municipal Solid Waste Landfills; and/or any State regulations regarding the disposal of sewage sludge.

27. **"Maximum daily discharge limitation"** means the highest allowable daily discharge.

28. **"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 other wise specified in the permit. (ARM 17.30.702(22))

29. **"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.

30. **"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.

31. **"Pass through"** means a discharge which exits the POTW into waters of the State of Montana in quantities or concentrations which, alone or in conjunction with other discharges, is a cause of a violation of any requirement of the POTW's MPDES permit (including an increase in the magnitude or duration of a violation).

32. **"POTW"** means a publicly owned treatment works.

33. **"Regional Administrator"** means the administrator of Region VIII of EPA, which has jurisdiction over federal water pollution control activities in the state of Montana.

34. **"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.

35. **"Sewage Sludge"** means any solid, semi-solid or liquid residue generated during the treatment of domestic sewage and/or a combination of domestic sewage and industrial waste of a liquid nature in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the incineration of sewage sludge or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

36. **"TIE"** means a toxicity identification evaluation.

37. **"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.

38. **"TRE"** means a toxicity reduction evaluation.

39. **"TSS"** means the pollutant parameter total suspended solids.

40. **"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 THE CLARK FORK COALITION REGARDING DEQ'S ISSUANCE OF MPDES PERMIT NO. MT0000035 ISSUED TO M2GREEN REDEVELOPMENT'S SITE IN FRENCHTOWN, MT	**CASE NO. BER 2014-03 WQ**

FIRST PREHEARING ORDER

Counsel and the Executive Director for the Clark Fork Coalition (Appellant), have filed a "Petition of Appeal" regarding the Department of Environmental Quality's (Department) MPDES Permit No. MT0000035, dated March 13, 2014, issued to M2Green Redevelopment, LLC, in Frenchtown, Montana. The following guidelines and rules are provided to assist the parties in an orderly resolution of this contested case.

1. REFERENCES: This matter is governed by the Montana Administrative Procedure Act, Contested Cases, Mont. Code Ann. Tit. 2, ch. 4, pt. 6, Mont. Admin. R. 17.30.1378, by Mont. Admin. R. 17.4.101, by which the Board of Environmental Review (Board) has adopted the Attorney General's Model Rules for contested cases, Mont. Admin. R. 1.3.211 through 1.3.225, and by Mont. Code Ann. Tit. 75, Ch. 5, pts. 4 and 6.

2. FILING: Except for discovery requests and responses (which are not routinely filed), **original** documents shall be sent for filing with the Board, addressed as follows:

MS. JOYCE WITTENBERG
Secretary, Board of Environmental Review
Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901

One **copy** of each document that is filed should be sent to the Interim Hearing Examiner addressed as follows:

KATHERINE J. ORR
Interim Hearing Examiner
Agency Legal Services Bureau
1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440

Although discovery documents are not normally filed, when a motion or brief is filed making reference to discovery documents, the party filing the motion or brief should also attach the relevant discovery documents.

3. SERVICE: Copies of all documents filed with the Board and provided to the Hearing Examiner, including correspondence, must be served upon the opposing party. A certificate of service should be provided.

4. EX PARTE COMMUNICATIONS: The Montana Administrative Procedure Act in Mont. Code Ann. § 2-4-613, and the Attorney General's Model Rule 18 in Mont. Admin. R. 1.3.222, prohibit *ex parte* communications with a hearing examiner concerning any issue of fact or law in a contested case. In addition to observing this rule, please contact the opposing party before you communicate with the undersigned Interim Hearing Examiner, even on purely procedural matters such as the need for a continuance.

5. SCHEDULING: The parties are requested to consult with each other and propose to the undersigned a schedule upon which they agree by **May 7, 2014**. The schedule should include the following dates:

(a) for joinder/intervention of additional parties;

(b) for disclosure by each party to the other parties of: (1) the name and address of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses; and, (2) a copy of, or a description by category and location of, all documents and tangible things that are in

the possession, custody, or control of the disclosing party and that the disclosing party may use to support its claims or defenses;

(c) for completion of discovery (if any party wishes to conduct discovery);

(d) for exchange of lists of witnesses and copies of documents that each party intends to offer at the hearing;

(e) for submitting any motions and briefs in support;

(f) for a prehearing conference to hear argument on any motions and resolve other prehearing matters; and,

(g) for the contested case hearing, as well as the place of hearing.

DATED this 17th day of April, 2014.

KATHERINE J. ORR
Interim Hearing Examiner
Agency Legal Services Bureau
1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing First Prehearing Order to be mailed to:

Joyce Wittenberg
Secretary, Board of Environmental Review
Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901
(original)

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

Bob Habeck, Acting Bureau Chief
Water Protection Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Jack Tuholske
1149 Harrison
P.O. Box 7458
Missoula, MT 59807

Karen Knudsen
Clark Fork Coalition
P.O. Box 7593
Missoula, MT 59807

DATED: April 17, 2014