

TELECONFERENCE AGENDA

FRIDAY, SEPTEMBER 26, 2014

METCALF BUILDING, ROOM 111

1520 EAST SIXTH AVENUE, HELENA, MONTANA

NOTE: It is expected that most available Board members will be participating telephonically. The Board attorney and secretary, along with any Board members who so choose, will be present at the location stated above. Interested persons, members of the public, and the media are welcome to attend at the location stated above. Members of the public and press also may join Board members with prior arrangement. Contact information for Board members is available on the Board's Website (<http://www.deq.mt.gov/ber/index.asp>) or from the Board Secretary (406-444-2544). The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone or by e-mail at jwittenberg@mt.gov no later than 24 hours prior to the meeting to advise her of the nature of the accommodation needed.

9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the July 25, 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.** On August 1, 2014, the parties submitted a Proposed Schedule with a hearing proposed for the week of April 27, 2015.
 - 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 June 4, 2014, the attorney for DEQ filed Department of Environmental Quality's Motion for Summary Judgment and Brief in Support, and on August 29, 2014, he filed Department's Motion to Continue Hearing and Request for Prehearing Conference.
 - c. **In the matter of final action regarding the appeal and request for hearing by Missoula County and the Clark Fork Coalition regarding DEQ's issuance of MPDES Permit No. MT0000035 issued to M2Green Redevelopment's site in Frenchtown, MT, BER 2014-02/03 WQ.** On June 30, 2014, the Board received

Stipulation for Dismissal of Administrative Appeal signed by the parties. An order to dismiss the appeal was presented to the Board at its July 25 meeting. The Board did not take action on the order.

2. Non-enforcement cases assigned to the Hearings Examiner

- a. **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.** 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. On August 5, 2014, the Board received Status Report from the attorneys for appellant YELP.

3. Contested Cases not assigned to a Hearing Examiner

- a. **In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.** On 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 July 25 Board meeting:
- 7/11/14 – Appellant Montana Environmental Information Center's Reply in Support of Motion for Summary Judgment
 - 7/30/14 – DEQ's Surreply Brief in Response to MEIC Reply Brief Filed July 7, 2014
 - 7/30/14 – DEQ's Unopposed Motion for Leave to File Surreply Brief and to Extend Briefing Schedule
 - 7/30-14 – DEQ's Request for Oral Argument
 - 7/30/14 – DEQ's Notice of Errata for Response Brief Filed May 30, 2014
 - 8/4/14 – Order Granting Leave to File Surreply and Extending Briefing Schedule
 - 8/8/14 – Signal Peak Energy, LLC's Combined Reply in Support of Cross-Motion for Summary Judgment and Surreply to MEIC's Motion for Summary Judgment
 - 8/25/14 – Appellant Montana Environmental Information Center's Surreply in Support of Summary Judgment

B. OTHER BRIEFING ITEMS

1. The department will provide the Board with a report regarding the air quality permit fees that are anticipated for the next calendar year, as required by ARM 17.8.510(1).

III. ACTION ITEMS

A. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. In the matter of final adoption of the proposed amendments to 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, as noticed in MAR 17-360.
2. In the matter of final adoption of proposed amendments to 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}, as noticed in MAR 17-361.

B. NEW CONTESTED CASES

1. **In the matter of Phillips 66 Company's appeal of Outfall 006 Arsenic Limits in Montana Pollution Discharge Elimination System Permit No. MT0000256, Billings, Yellowstone County, MT, BER 2014-05 WQ.** The Board received the appeal on August 6, 2014. The Board may appoint a permanent hearings examiner or decide to hear the matter.
2. **In the matter of Columbia Falls Aluminum Company's (CFAC) appeal of DEQ's modification of Montana Pollutant Discharge Elimination System Permit No. MT0030066, Columbia Falls, Flathead County, MT, BER 2014-06 WQ.** The Board received the appeal on August 22, 2014. The Board may appoint a permanent hearings examiner or decide to hear the matter.
3. **In the matter of violations of the Opencut Mining Act by Bay Materials, LLC at Normont Farms Pit, Toole County, Montana, BER 2014-07 OC.** The Board received the appeal on August 29, 2014. The Board may appoint 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

MINUTES

July 25, 2014

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Madam Chair Shropshire at 9:01 a.m., on Friday, July 25, 2014, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Madam Chair Shropshire, Larry Mires, Marietta Canty, Heidi Kaiser, Chris Tweeten, and Joe Russell

Board Members Absent: Joan Miles

Board Attorney Present: Ben Reed, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers (Deputy Director); Chris Saeger – Director's Office; John North, Paul Nicol, Kirsten Bowers, Kurt Moser, and Norman Mullen – Legal; John DeArment – Permitting & Compliance Division; Jon Dilliard, Rachel Clark, Eugene Pizzini, Barb Kingery – Public Water Supply & Subdivisions Bureau; Jon Kenning, Tom Reid, Laura Andersen, Freddi Haab, and Paul Skubinna – Water Protection Bureau; John Arrigo – Enforcement Division; George Mathieus and Kari Smith – Planning Division; Eric Urban, Mike Suplee, Rosie Sada, and David Feldman – Water Quality Planning Bureau; Jeff Blend – Energy Pollution Prevention Bureau; Todd Teegarden – Technical & Financial Assistance Bureau

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Mark Fitzwater, Ron Alles – City of Helena; Dave Galt – Montana Petroleum Association; Tina Laidlaw – Environmental Protection Agency

- I.A.1 | Review and approve May 30, 2014, Board meeting minutes.
- Chairman Shropshire asked if anyone had comments on the draft minutes. No one had comments.
- Mr. Mires MOVED to approve the minutes as written. Mr. Tweeten SECONDED the motion. The motion CARRIED with a 6-0 vote.
- 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.
- Mr. Reed said he had not heard from the parties about settlement, so he expects this will go to hearing.
- 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.
- Mr. Reed said he is waiting for Sunrise Motel to respond to the department's motion for summary judgment.
- II.A.2.a | 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.
- Mr. Reed said he anticipates receiving a status report from the parties in this matter by August 1.
- II.A.3.a | In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.
- Mr. Reed said there has been no movement in the matter. He confirmed that a modified permit is not available yet.
- II.A.3.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, BER 2013-07 SM.
- Mr. Reed said the Board received MEIC's reply in support of their motion for summary judgment on July 7. He said all the parties believe the case can be finalized without a hearing based on the motions for summary judgment, and he concurs.
- III.A.1 | In the matter of DEQ's proposal to initiate rulemaking to amend ARM 17.30.1101, 17.30.1102, 17.30.1105, 17.30.1106, 17.30.1107, 17.30.1111, 17.30.1341 and 17.30.1342 pertaining to Montana pollutant discharge elimination system (MPDES) permits, purpose and scope, definitions, permit requirements, exclusions, designation procedures: small municipal separate storm sewer systems (MS4s), application procedures, permit requirements, general permits and conditions applicable to all permits and repeal of ARM 17.30.1110, 17.30.1115 and 17.30.1117 application procedures: general, notice of intent procedures, and transfer of permit coverage.

Mr. Reid described the rule changes requested and provided rationale for the changes. He pointed out some typos in the notice that need to be corrected. He said the department is asking the Board to initiate the rulemaking.

Mr. Reed and Mr. Arrigo responded to questions from Board members.

Chairman Shropshire asked if any members of the public would like to comment on the proposed rulemaking.

Mr. Alles commented on the MS4 piece of the rulemaking and said he will be commenting more in depth at the hearing.

Chairman Shropshire called for a motion to initiate the rulemaking and assign Mr. Reed as the permanent hearings examiner. Mr. Tweeten so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED with a 6-0 vote.

III.B.2 *(Taken out of order because of the logistics of this topic's interaction with III.B.1.)*

In the matter of final action regarding the proposed amendments to Title 17, Chapter 38, Sub-Chapter 1, Public Water and Sewer Plans, Cross Connections, and Drilling Water Wells, updating Department Circulars DEQ-1 and DEQ-3 related to public drinking water design standards to the 2014 edition, clarification of the requirements for the submission of plans and specifications, clarification of the engineering review fee tables, updating expedited checklists, adding new Department Circular DEQ-10 describing the use of springs as a public source and new Department Circular DEQ-16 describing the use of cisterns for non-community public water systems, and amendments to Title 17, Chapter 36, Sub-chapter 3, Subdivisions/On-site Subsurface Wastewater Treatment, to adopt the 2014 editions of DEQ-1 and DEQ-3.

Mr. Pizzini said the Board initiated the rulemaking at its January 21, 2014, meeting, and that a public hearing was held on March 7. He said at the end of the comment period ten general comments had been received, nine of which the department concurred with. He said the remaining comment could be dealt with through the deviation process.

Mr. Pizzini and Ms. Clark responded to questions from Board members.

Chairman Shropshire asked if any member of the public would like to comment on the rulemaking. No one commented.

Chairman Shropshire called for a motion to adopt the Presiding Officer's Report, the House Bill 311 and 521 analyses, the department's proposed responses to comments, and rules in Circulars DEQ-1, DEQ-3, DEQ-10, and DEQ-16 with modifications indicated. Mr. Russell so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a 6-0 vote.

III.B.1 In the matter of final action regarding Title 17, Chapter 36, Sub-chapter 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 DEQ Circular 4, 2013, edition; Title 17, Chapter 38, Sub-chapter 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, 17.36.325 and to remove the adoption by reference

to ARM 17.36.327; Title 17 Chapter 38, Sub-chapters 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; Title 17, Chapter 38, Sub-chapter 106(2) to add a provision (f) for the review of public water supply systems that corresponds to proposed Department Circular DEQ-16.

Ms. Kingery said the Board initiated the rulemaking in April and a hearing was held May 19. She said six people commented during the comment period, and that some of the comments were outside the scope of the rulemaking. She asked the Board to consider the rule package for final adoption.

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

Chairman Shropshire called for a motion to adopt the Presiding Officer's report, the House Bill 521, 311, and small business impact analyses, and the rules with modifications indicated in the draft notice of amendment. Mr. Mires so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED with a 6-0 vote.

III.B.3

In the matter of final action regarding new Department Circular DEQ-12A "Montana base numeric nutrient standards" for surface waters, and the amendment of rules in MAR Notice No. 17-356 to incorporate the base numeric nutrient standards into the water-quality standards. The Department is requesting the new circular and the rule amendments be adopted by the Board.

Mr. Mathieus addressed the Board. He said the department had been collecting data for this since about 2000. He said public hearings were held and comments received were fairly equal in support and opposition. He said amendments were made in response to some of the comments. He said the department recommends adoption of DEQ Circular 12A, and the amendments of the rules in the notice.

Mr. Mathieus thanked everyone who participated in the process.

Mr. Mathieus and Mr. North responded to questions from the Board.

Chairman Shropshire asked if any members of the public would like to comment on the rulemaking.

Mr. Galt said the Montana Petroleum Association stands opposed to the rule due to language within it and the non-severability clause. He also offered comments on behalf of the Montana Mining Association indicating they, too, are opposed to the rules due to the non-severability issue and concerns that the nutrient package not allowing for new business.

Mr. Mathieus and Mr. Galt responded to additional questions from the Board.

Chairman Shropshire called for a motion to adopt the Presiding Officer's report, the House Bill 311 and 521 analyses, the department proposed responses to comments, and the rules in Circular DEQ-12A with the modifications indicated in the draft notice of

- amendment. Mr. Russell so MOVED. Mr. Tweeten SECONDED the motion. The motion CARRIED with a 5-1 vote.
- III.C.1 In the matter of final action regarding the appeal and request for hearing by Missoula County and the Clark Fork Coalition regarding DEQ's issuance of MPDES Permit No. MT0000035 issued to M2Green Redevelopment's site in Frenchtown, MT, BER 2014-02/03 WQ.
- Mr. Reed said the parties stipulated to dismiss the appeal, agreeing that this is not the proper venue for the action. He said the dismissal is contingent on the District Court and Supreme Court agreeing with the parties' assessment of the law.
- The Board discussed the matter further.
- Chairman Shropshire called for a motion to authorize her to sign the order dismissing the case. Discussion ensued. The Board did not take action on the matter.
- III.C.2 In the matter of final action regarding violations of the Clean Air Act of Montana by Myrstol Logging, Inc., Clyde Park, Park County, MT, BER 2014-04 AQ.
- Mr. Reed said the appellant has withdrawn his appeal.
- Chairman Shropshire called for a motion to authorize her to sign the order dismissing the appeal. Mr. Tweeten so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED with a 6-0 vote.
- IV. General Public Comment
- Chairman Shropshire asked if any member of the audience would like to speak to any matters before the Board. There were no comments.
- V. Adjournment
- Chairman Shropshire called for a motion to adjourn. Ms. Kaiser so MOVED. Mr. Tweeten SECONDED the motion. The motion CARRIED 6-0.
- The meeting adjourned at 11:18 a.m.

Board of Environmental Review July 25, 2014, minutes approved:

ROBIN SHROPSHIRE
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR RULE ADOPTION**

Agenda Item # III.A.1.

Agenda Item Summary: The department requests that the board act on MAR Notice No. 17-360, published on June 26, 2014, to amend certain air quality permit application fees, clarify relevant definitions, and make other housekeeping amendments.

List of Affected Board Rules: This 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 board is considering final action on adoption of amendments to the above-referenced rules. The amendments were proposed in Montana Administrative Register (MAR) Notice No. 17-360. The BER is considering changes to that proposal because of comments received. The proposed amendments are contained in the draft notice of amendment.

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.

The amendments to ARM 17.8.504(1)(a), as initially proposed, unintentionally delete the fee for minor modifications at major sources. As clearly reflected in the statement of reasonable necessity, the only substantive change to be made in (1)(a) is an increase in the fee for major permit modifications. Elimination of the fee for minor modifications is not indicated in the statement of reasonable necessity. Retention of this fee is necessary to adequately fund the program.

Hearing Information: A public hearing was held on July 16, 2014. The Hearing Examiner's Report is attached.

Board Options: The board may:

1. Adopt the proposed amendments as set forth in the attached Notice of Public Hearing on Proposed 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 to not adopt the amendments.

DEQ Recommendation: The department recommends the board adopt the rules with the modification indicated in the draft Notice of Amendment.

Enclosures:

1. Notice of Public Hearing on Proposed Amendment
2. HB 521 and 311 Analyses
3. Department Comment
4. Hearing Examiner's Report
5. Draft Notice of Amendment

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On July 16, 2014, at 1:00 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, 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., July 7, 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:~~

<u>Source Type</u>	<u>New Source</u>	<u>Modified Source</u>
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 applications, ~~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
<u>MAQP (Montana Air Quality Permit)</u>			
NSR Major Modification	subchapters 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	subchapters 7 and 12	1.2	\$1,200.00
TOTAL			\$8,360.00
<u>Operating (Title V) Permit</u>			
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., July 24, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Ben Reed, 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

/s/ John F. North

JOHN F. NORTH

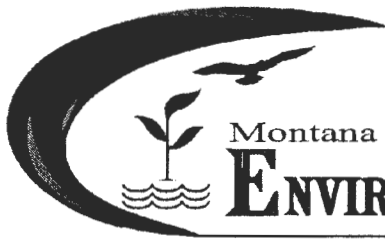
Rule Reviewer

BY: /s/ Robin Shropshire

ROBIN SHROPSHIRE

Chairman

Certified to the Secretary of State, June 16, 2014.



Montana Department of
ENVIRONMENTAL QUALITY

MEMO

TO: Board of Environmental Review
FROM: Norman J. Mullen, Department of Environmental Quality (DEQ) Staff Attorney *NJM*
SUBJECT: House Bill 521 (stringency) and House Bill 311 (takings) review of rulemaking concerning the amendment of ARM 17.8.501 and 17.8.504 pertaining to definitions and air quality permit application fees) in ARM Notice No. 17-360 (publ. 6/26/14)
DATE: July 15, 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 (Board), 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 17.8.501 and 17.8.504 to delete some definitions used to establish fees and to increase some fees for preconstruction and operating permit applications, renewals, and modifications.

None of the proposed amendments would make the state rules more stringent than comparable federal regulations or guidelines. Therefore, no further House Bill 521 analysis is required.

The language of § 75-2-207, MCA, implies that it was not intended to apply to fee rules. The language requiring a finding that the proposed "state standard or requirements" protect public health or the environment, can mitigate harm to public health or the environment, and is achievable under current technology does not seem applicable to fee rules. Further, the statutory language requiring reference to peer-reviewed scientific studies in the record also is not applicable to fee rules.

However, even if § 75-2-207, MCA, applies to the present rulemaking, the proposed amendments would not make the State's rules more stringent than comparable federal regulations or guidelines.

(over, please)

House Bill 521 and House Bill 311 Memo for
Air Quality Fee Amendments Rulemaking
ARM Notice No. 17-360
July 15, 2014
Page 2

The federal Clean Air Act (FCAA) sets certain requirements for fees at 42 U.S.C. § 7661a(b)(3)(B), and implementing regulations restate these requirements at 40 C.F.R. § 70.9. These concern a fee per ton of pollutants emitted by a source required to have an operating permit. There are no application, modification, or renewal fee requirements for preconstruction or operating permits in the FCAA or implementing regulations. Therefore, the proposed amendments are not more stringent than a comparable federal regulation or guideline addressing the same circumstances. No further analysis is required.

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 proposed amendments to the fee rules 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.

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST
(using form prepared by Montana Department of Justice, Jan. 2011)

In the matter of the amendment of ARM 17.8.501 and 17.8.504 pertaining to definitions and air quality permit application fees MAR Notice 17-360 (publ. 6/26/14)

**DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE
PRIVATE PROPERTY ASSESSMENT ACT?**

YES NO

- | | | |
|-------|--------------------|--|
| _____ | _____ <u> √ </u> | 1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights? |
| _____ | _____ <u> √ </u> | 2. Does the action result in either a permanent or indefinite physical occupation of private property? |
| _____ | _____ <u> √ </u> | 3. Does the action deprive the owner of all economically beneficial use of the property? |
| _____ | _____ <u> √ </u> | 4. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO, skip questions 4a and 4b and continue with question 5.] |
| _____ | _____ | 4a. Is there a reasonable, specific connection between the government requirement and legitimate state interests? |
| _____ | _____ | 4b. Is the government requirement roughly proportional to the impact of the proposed use of the property? |
| _____ | _____ <u> √ </u> | 5. Does the action deny a fundamental attribute of ownership? |
| _____ | _____ <u> √ </u> | 6. Does the action have a severe impact on the value of the property? |
| _____ | _____ <u> √ </u> | 7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally?
[If the answer is NO , do not answer questions 7a-7c.] |
| _____ | _____ | 7a. Is the impact of government action direct, peculiar, and significant? |
| _____ | _____ | 7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded? |
| _____ | _____ | 7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question? |

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 5, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 4a or 4b.

If taking or damaging implications exist, the agency must comply with Mont. Code Ann. § 2-10-105, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.




Montana Department of
ENVIRONMENTAL QUALITY

"Healthy environment, healthy people"

Steve Bullock, Governor
Tracy Stone-Manning, Director

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

TO: Board of Environmental Review

FROM: Charles Homer, Program Manager Air Resources Management Bureau 

SUBJECT: Montana Department of Environmental Quality's testimony concerning the amendment of ARM 17.8.501 and 17.8.504 pertaining to definitions and air quality permit application fees) in ARM Notice No. 17-360 (publ. 6/26/14)

DATE: July 16, 2014

The Board of Environmental Review (board) initiated rulemaking on May 30, 2014. In this rulemaking action, the board is following the provision in the Clean Air Act of Montana to adopt a schedule of fees for permit applications. Applicants for air quality permits for sources of air pollution are obligated to pay fees sufficient to cover the direct and indirect costs of developing and administering the permitting program according to the Clean Air Act of Montana.

Currently, major sources of air pollution subject to the requirements of Montana's Title V and New Source Review – Prevention of Significant Deterioration (NSR-PSD) Montana Air Quality Permit programs are required to submit permit application fees. The current permit application fees do not completely cover the costs incurred by the Montana Department of Environmental Quality (department) in processing these permit applications. The annual operating fees paid by other existing permitted facilities fund these costs instead. This creates a situation where existing businesses are subsidizing new businesses.

The department evaluated the appropriate permit application fee by estimating the average staff hours necessary for processing a major source Title V operating permit application for a relatively simple facility with few emitting units and comparing those hours with the costs currently recovered under the existing fee structure. For example, an applicant for a new major source Title V operating permit currently pays a permit application fee of \$500. The application fee of \$500 funds approximately 10 hours of staff time. This estimate uses \$50 per hour (includes benefits and overhead) for the cost of staff time. Processing a new operating permit application for a major facility takes, at a minimum, 120 hours of staff time and could take several hundred hours for the most complex facilities. Using 120 hours of staff time as a baseline, the processing of an application for a new and relatively simple Title V operating permit application costs the department approximately \$6000 in personal services. The proposed amendment to the Title V operating permit application fee structure would increase the fee for processing such an application. The discrepancy between costs and fees collected is similar for other major sources applications.

Under the proposed amendments, the application fees for minor and synthetic minor sources would remain unchanged. However, applicants seeking new or modified major source permits, i.e., major NSR-PSD and Title V operating permits, would see an application fee increase. The applicants seeking these major source permits are large facilities like refineries and power plants.

The department has held several meetings with the Clean Air Act Advisory Council (CAAAC) over the past year to seek input on the proposed application fee increases. The fee increases being proposed have been adjusted in response to those discussions.

The department would like to propose an amendment to the permit application fee rule as noticed. In proposing the amended application fee for modifications at sources subject to NSR-PSD to the board, the department unintentionally omitted the permit application fee for minor modifications.

The department is proposing that the board retain the permit application fee for minor modifications at sources subject to NSR-PSD at its current level, \$500. The department has prepared proposed language that would add the following phrase to (1)(a): (iii) for a modification other than a major modification - \$500. A draft of this language is attached to my testimony.

In developing the rule proposal, the department discussed an increase in the permit application fee modifications at sources subject to NSR-PSD with the CAAAC. It is the department's intent to propose an increase in this application fee consistent with the noticed increases in the other application fees at a future date.

Although the increase in application fees may seem significant, the department believes the permit application fees for the major sources may still not fully fund the amount of resources required for processing a complex and contentious application. The department supports the permit application fee increases in the Board's proposed rule revisions as set forth in the MAR notice dated June 26, 2014.

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

3
4 **In the matter of the amendment of**
5 **ARM 17.8.501 and 17.8.504**
6 **pertaining to definitions and air**
7 **quality permit application fees**

8 **PRESIDING OFFICER REPORT**

9 **INTRODUCTION**

10 1. On July 16, 2014, the undersigned presided over and conducted
11 the public hearing held in Room 111 of the Metcalf Building, Helena,
12 Montana, to take public comment on the above-captioned proposed
13 amendments of existing rules. The amendments propose to amend ARM
14 17.8.501 and 17.8.504 pertaining to definitions and air quality permit
15 application fees. Under the proposed amendments, the application fees for
16 minor and synthetic minor sources would remain unchanged. However,
17 applicants seeking new or modified major NSR-PSD and Title V operating
18 permits, would see an application fee increase in order to cover costs for the
19 resources required for processing complex applications for, e.g., refineries and
20 power plants.

21 The Notice of Public Hearing on Proposed Amendment, Repeal and
22 Adoption was contained in the 2014 Montana Administrative Register, Notice
23 Number 17-360, published on June 26, 2014, in Issue No. 12, at pages 1321
24 through 1326. A copy of the notice is attached to this report. (Attachments
25 are provided in the same order as they are referenced in this report.)

26 2. The hearing began at 1:00 p.m. The hearing was transcribed by
27 Susan Johnson with Lesofski Court Reporting & Video Conferencing of
 Helena, MT.

3. The undersigned announced that persons at the hearing would be given an opportunity to submit their data, views, or arguments concerning the proposed action, either orally or in writing. At the hearing, the undersigned also identified and summarized the MAR notice, stated that copies of the MAR notice were available in the hearing room, and read the Notice of Function of Administrative Rule Review Committee as required by Mont. Code Ann. § 2-4-302(7)(a). The rulemaking interested persons list and the opportunity to have names placed on that list was addressed. Also referenced was the authority to make the proposed rule amendments as well as the opportunity to present matters at the hearing or in writing, as stated in the MAR notice.

SUMMARY OF HEARING

4. Mr. Charles Homer, Supervisor of the Technical Support Section of the Air Resources Management Bureau with the Montana Department of Environmental Quality presented written and oral testimony explaining the rule amendments. He recommended that the rule amendments be adopted as proposed in the MAR notice. Mr. Homer's comments are attached.

5. There were no members of the public who presented testimony at the hearing.

SUMMARY OF WRITTEN MATERIALS

6. No written comments were timely received.

7. The Department also submitted a memorandum from DEQ staff attorney, Mr. Norman J. Mullen with HB 521 and HB 311 reviews of the proposed amendments together with a Private Property Assessment Act Checklist. Mr. Mullen's memorandum is attached to this report.

8. Mr. Mullen concluded that HB 521 probably does not apply to the proposed amendments and even if it did, there are no federal regulations or

1 guidelines that would make the state rules more stringent than comparable
2 federal regulations or guidelines. .

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

10 10. No further written comments have been received. The period to
11 submit comments ended at 5 p.m. on July 24, 2014.

12 **PRESIDING OFFICER COMMENTS**

13 11. The Board and the Department have jurisdiction to adopt and
14 amend, the amendments and rules referenced in this rulemaking pursuant to
15 Mont. Code Ann §§ 75-2-111 and 75-2-220, 75-2-234.

16 12. House Bill 521 (1995), codified in the Air Quality Act at Mont.
17 Code Ann. §§ 75-2-111 and 75-2-207 generally provides that the Board may
18 not adopt a rule that is more stringent than comparable federal regulations or
19 guidelines, unless the Board makes written findings after public hearing and
20 comment. The proposed amendments are not comparable to federal regulation
21 or guidelines. Therefore written findings are not necessary.

22 13. House Bill 311 (1995), the Private Property Assessment Act,
23 codified as Mont. Code Ann. § 2-10-101 through -105, provides that a state
24 agency must complete a review and impact assessment prior to taking an
25 action with taking or damaging implications. The proposed amendments
26 affect real property. A Private Property Assessment Act Checklist was
27 prepared in this matter. The proposed amendments do not have direct taking

1 or damaging implications for property. Therefore, no further HB 311
2 assessment is necessary.

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

6 15. The Board may adopt the proposed rule amendments or reject
7 them, or adopt the rule amendments and new rule with revisions not exceeding
8 the scope of the public notice.

9 16. Under Mont. Code Ann. § 2-4-305(7), for the rulemaking process
10 to be valid, the Board must publish a notice of adoption within six months of
11 the date the Board published the notice of proposed rulemaking in the
12 Montana Administrative Register, or December 26, 2014.

13 Dated this 7th day of September, 2014.

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15 
16 BENJAMIN REED
17 Presiding Officer
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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On June 26, 2014, the Board of Environmental Review published MAR Notice No. 17-360 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1321, 2014 Montana Administrative Register, Issue Number 12.

2. The board has amended ARM 17.8.501 exactly as proposed and has amended ARM 17.8.504 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

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

(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;
- (iii) for a modification other than a major modification - \$500;
- (b) through (5) remain as proposed.

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

COMMENT NO. 1: The amendments to ARM 17.8.504(1)(a) unintentionally delete the fee for minor modifications. This fee should be restored at the current level.

RESPONSE: The board agrees. As clearly reflected in the statement of reasonable necessity, the only substantive change to be made in (1)(a) is an increase in the fee for major permit modifications. Elimination of the fee for minor modifications is not indicated in the statement of reasonable necessity. Furthermore, even if it had intended to eliminate the fee for minor modifications, the board would have authority to choose not to adopt that amendment, and retention of the fee is necessary to adequately fund the air quality program. The board has therefore retained the existing \$500 fee for minor modifications.

4. No other comments or testimony were received.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

JOHN F. NORTH
Rule Reviewer

By:

ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, _____, 2014.

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR RULE ADOPTION**

Agenda Item # III.A.2.

Agenda Item Summary: The department requests that the board act on MAR Notice 17-361, published on June 26, 2014, to amend certain air quality rule provisions in ARM Title 17, chapter 8, subchapter 8 for particulate matter less than 2.5 micrometers in diameter (PM-2.5) from sources subject to major source permit rules.

List of Affected Board 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 board is considering final action on adoption of amendments to the above-referenced rules. The amendments were proposed in Montana Administrative Register (MAR) notice No. 17-361. The board did not receive any substantive comments on the proposed rulemaking notice, and is considering adopting the amendments as proposed. See Draft Notice of Amendment.

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/m³, 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 amend ARM 17.8.818 and ARM 17.8.820 to remove 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: A public hearing was held on July 16, 2014. The Hearing Examiner's Report is attached.

Board Options: The board may:

1. Adopt the proposed amendments as set forth in the attached Notice of Public Hearing on Proposed 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 to not adopt the amendments.

DEQ Recommendation: The department recommends the board adopt the rules as proposed in the Notice of Public Hearing on Proposed Amendment.

Enclosures:

1. Notice of Public Hearing on Proposed Amendment
2. HB 521 and 311 Analyses
3. Hearing Examiner's Report
4. Draft Notice of Amendment

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.818 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 July 16, 2014, at 2:00 p.m., or at the conclusion of the hearing for MAR Notice No. 17-360, the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, 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., July 7, 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:

17.8.818 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 $\mu\text{g}/\text{m}^3$, 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 $\mu\text{g}/\text{m}^3$	0.3 $\mu\text{g}/\text{m}^3$	0.3 $\mu\text{g}/\text{m}^3$
	24-hour	0.07 $\mu\text{g}/\text{m}^3$	1.2 $\mu\text{g}/\text{m}^3$	1.2 $\mu\text{g}/\text{m}^3$

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., July 24, 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

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Robin Shropshire

ROBIN SHROPSHIRE

Chairman

Certified to the Secretary of State, June 16, 2014.



Montana Department of
ENVIRONMENTAL QUALITY

MEMO

TO: Board of Environmental Review
FROM: Norman J. Mullen, Department of Environmental Quality (DEQ) Staff Attorney *NJM*
SUBJECT: House Bill 521 (stringency) and House Bill 311 (takings) review of rulemaking concerning 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 17-361 (publ. 6/26/14)
DATE: July 15, 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 (Board), 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 17.8.818 and 17.8.820. These rules address New Source Review-Prevention of Significant Deterioration (NSR-PSD). The amendment to ARM 17.8.818 would change the significant monitoring concentration (SMC) for particulate matter smaller than 2.5 microns from four micrograms per cubic meter (ug/m^3) to zero ug/m^3 . The amendment to ARM 17.8.820 would remove significant impact levels (SILs) for the same pollutant. These amendments are being proposed because the federal Environmental Protection Agency was required to make similar amendments to its regulations by a federal court case, *Sierra Club v. EPA*, 705 F.3d 458, 403 U.S. App. D.C. 318 (2013), and then EPA did amend its regulations accordingly. 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).

None of the proposed amendments would make the state rules more stringent than comparable federal regulations or guidelines. Indeed, the amendments are being proposed to make the state rules consistent with, and equally as stringent as, the comparable federal regulations. Therefore, no further House Bill 521 analysis is required.

(over, please)

House Bill 521 and House Bill 311 Memo for
SMC and SILs Amendments Rulemaking
ARM Notice No. 17-361
July 15, 2014
Page 2

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 proposed amendments 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.

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST
(using form prepared by Montana Department of Justice, Jan. 2011)

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, MAR Notice 17-361 (publ. 6/26/14)

**DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE
PRIVATE PROPERTY ASSESSMENT ACT?**

YES NO

- | | | |
|-------|----------------------|--|
| _____ | _____ <u>√</u> _____ | 1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights? |
| _____ | _____ <u>√</u> _____ | 2. Does the action result in either a permanent or indefinite physical occupation of private property? |
| _____ | _____ <u>√</u> _____ | 3. Does the action deprive the owner of all economically beneficial use of the property? |
| _____ | _____ <u>√</u> _____ | 4. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO, skip questions 4a and 4b and continue with question 5.] |
| _____ | _____ _____ | 4a. Is there a reasonable, specific connection between the government requirement and legitimate state interests? |
| _____ | _____ _____ | 4b. Is the government requirement roughly proportional to the impact of the proposed use of the property? |
| _____ | _____ <u>√</u> _____ | 5. Does the action deny a fundamental attribute of ownership? |
| _____ | _____ <u>√</u> _____ | 6. Does the action have a severe impact on the value of the property? |
| _____ | _____ <u>√</u> _____ | 7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally?
[If the answer is NO , do not answer questions 7a-7c.] |
| _____ | _____ _____ | 7a. Is the impact of government action direct, peculiar, and significant? |
| _____ | _____ _____ | 7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded? |
| _____ | _____ _____ | 7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question? |

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 5, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 4a or 4b.

If taking or damaging implications exist, the agency must comply with Mont. Code Ann. § 2-10-105, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.

1 given an opportunity to submit their data, views, or arguments concerning the
2 proposed action, either orally or in writing. At the hearing, the undersigned
3 also identified and summarized the MAR notice, stated that copies of the
4 MAR notice were available in the hearing room, and read the Notice of
5 Function of Administrative Rule Review Committee as required by Mont.
6 Code Ann. § 2-4-302(7)(a). The rulemaking interested persons list and the
7 opportunity to have names placed on that list was addressed. Also referenced
8 was the authority to make the proposed rule amendments as well as the
9 opportunity to present matters at the hearing or in writing, as stated in the
10 MAR notice.

11 **SUMMARY OF HEARING**

12 4. Ms. Liz Ulrich, Air Quality Planner with the Air Resources
13 Management Bureau with the Montana Department of Environmental Quality,
14 presented written and oral testimony explaining the rule amendments. He
15 recommended that the rule amendments be adopted as proposed in the MAR
16 notice. Ms. Ulrich's comments are attached.

17 5. There were no members of the public who presented testimony at
18 the hearing.

19 **SUMMARY OF WRITTEN MATERIALS**

20 6. Prior to the hearing, written comments were timely received from
21 Theresa Blazicevich dated June 26, 2014. Ms. Blazicevich's comments are
22 attached to this report. Ms. Blazicevich commented that she believes open
23 burning to be a significant contributor of particulate matter pollution in Ravalli
24 County, and that she would like more extensive open burning regulation by the
25 Department of Environmental Quality. This comment is addressed in the
26 Notice of Amendment prepared by the Department.

27 7. The Department also submitted a memorandum from DEQ staff

1 attorney, Mr. Norman J. Mullen with HB 521 and HB 311 reviews of the
2 proposed amendments together with a Private Property Assessment Act
3 Checklist. Mr. Mullen's memorandum is attached to this report.

4 8. Mr. Mullen concluded that HB 521 probably does not apply to
5 the proposed amendments and even if it did, there are no federal regulations or
6 guidelines that would make the state rules more stringent than comparable
7 federal regulations or guidelines. Rather, these amendments are being
8 proposed to make the state rules consistent with, and thus as stringent as,
9 federal regulations.

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

17 10. No further written comments have been received. The period to
18 submit comments ended at 5 p.m. on July 24, 2014.

19 **PRESIDING OFFICER COMMENTS**

20 11. The Board and the Department have jurisdiction to adopt and
21 amend, the amendments and rules referenced in this rulemaking pursuant to
22 Mont. Code Ann §§ 75-2-111 and 75-2-220, 75-2-234.

23 12. House Bill 521 (1995), codified in the Air Quality Act at Mont.
24 Code Ann. §§ 75-2-111 and 75-2-207 generally provides that the Board may
25 not adopt a rule that is more stringent than comparable federal regulations or
26 guidelines, unless the Board makes written findings after public hearing and
27

1 comment. The proposed amendments are not comparable to federal regulation
2 or guidelines. Therefore written findings are not necessary.

3 13. House Bill 311 (1995), the Private Property Assessment Act,
4 codified as Mont. Code Ann. § 2-10-101 through -105, provides that a state
5 agency must complete a review and impact assessment prior to taking an
6 action with taking or damaging implications. The proposed amendments
7 affect real property. A Private Property Assessment Act Checklist was
8 prepared in this matter. The proposed amendments do not have direct taking
9 or damaging implications for property. Therefore, no further HB 311
10 assessment is necessary.

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

14 15. The Board may adopt the proposed rule amendments or reject
15 them, or adopt the rule amendments and new rule with revisions not exceeding
16 the scope of the public notice.

17 16. Under Mont. Code Ann. § 2-4-305(7), for the rulemaking process
18 to be valid, the Board must publish a notice of adoption within six months of
19 the date the Board published the notice of proposed rulemaking in the
20 Montana Administrative Register, or by December 26, 2014.

21 Dated this 8th day of September, 2014.

22
23 

24 BENJAMIN REED
25 Presiding Officer
26
27

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On June 26, 2014, the Board of Environmental Review published MAR Notice No. 17-361 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 1321, 2014 Montana Administrative Register, Issue Number 12.

2. The board has amended the rules exactly as proposed.

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

COMMENT NO. 1: Commenter believes open burning is a significant contributor of particulate matter pollution in Ravalli County and would like more extensive open burning regulation by the Department of Environmental Quality.

RESPONSE: The comment concerns matters beyond the scope of this rulemaking. No change is being made to the rules in response to this comment.

4. No other comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

_____	By: _____
JOHN F. NORTH	ROBIN SHROPSHIRE
Rule Reviewer	Chairman

Certified to the Secretary of State, _____, 2014.



MEMO

TO: Ben Reed, Hearing Examiner
Board of Environmental Review

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

DATE: August 8, 2014

SUBJECT: Board of Environmental Review Case No. BER 2014-05 WQ

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF:
PHILLIPS 66 COMPANY'S APPEAL OF
OUTFALL 006 ARSENIC LIMITS IN
MONTANA POLLUTANT DISCHARGE
ELIMINATION SYSTEM PERMIT NO.
MT0000256, BILLINGS, YELLOWSTONE
COUNTY, MT.

Case No. BER 2014-05 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

Jon Kenning, Bureau Chief
Water Protection Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

c: Catherine A. Laughner, Attorney for Appellant

MONTANA BOARD OF

ENVIRONMENTAL REVIEW

This 6th day of August, 2014at 1:50 o'clock p.m.By: L. A. Laughner

Catherine A. Laughner
BROWNING, KALECZYC, BERRY & HOVEN, P.C.
801 W. Main, Suite 2A
Bozeman, MT 59715-3336
Telephone: (406) 585-0888
Facsimile: (406) 587-0165
cathyl@bkbh.com

Attorney for Phillips 66 Company

STATE OF MONTANA, BOARD OF ENVIRONMENTAL REVIEW

IN THE MATTER OF:

PHILLIPS 66 COMPANY'S APPEAL OF
OUTFALL 006 ARSENIC LIMITS IN
MONTANA POLLUTANT DISCHARGE
ELIMINATION SYSTEM PERMIT NO.
MT0000256

Applicant Phillips 66 Company, by and through its counsel Catherine A. Laughner of the law firm Browning, Kaleczyc, Berry & Hoven, P.C., appeals the Arsenic Daily Maximum limit of 0.010 mg/L and 30-Day Average limit of 0.005 mg/L in Proposed Permit No. MT000256, modified July 2, 2014.

Respectfully Submitted this 6th day of August, 2014.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By C. A. Laughner
Catherine A. Laughner
BROWNING, KALECZYC, BERRY & HOVEN, P.C.
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Attorneys for Phillips 66 Company

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of August, 2014, a true copy of the foregoing was mailed by first-class mail, postage prepaid, addressed as follows:

Kurt R. Moser, Legal Counsel
Montana Department of Environmental Quality
1520 E. Sixth Avenue
P. O. Box 200901
Helena, MT 59620-0901

A handwritten signature in blue ink, reading "Patricia Colver". The signature is written in a cursive style with a large initial "P".

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

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.*,

Phillips 66 Company

is authorized to discharge from its **Phillips 66 Billings Refinery**

located at **401 S. 23rd St. Billings, Montana 59107**

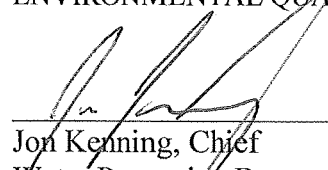
to receiving waters named, **Yegen Drain and Yellowstone River**

in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein. Authorization for discharge is limited to those outfalls specifically listed in the permit. The wasteload allocation specified herein support and serve to define the total maximum daily load for affected receiving water.

This permit shall become effective: **December 1, 2009.**

This permit and the authorization to discharge shall expire at midnight, **November 30, 2014.**

FOR THE MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY



Jon Kenning, Chief
Water Protection Bureau
Permitting & Compliance Division

Modified: July 2, 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.

<u>Outfall</u>	<u>Description</u>
001	Location: At the end of the pipe, discharging into the Yegen Drain, located at 45.7815 N latitude, 108.48461 W longitude. Mixing Zone: (001) The maximum extent of the chronic mixing zone in the named receiving waters is as follows: 200 feet downstream for the following parameters: ammonia and selenium.
002	Location: Hydrostatic test wastewater discharge at the end of the pipe, discharging to the Yegen Drain located at 45.7815 N latitude, 108.48461 W longitude. Mixing Zone: (002) The maximum extent of the chronic mixing zone in the named receiving waters is as follows: 200 feet downstream for the following parameters: ammonia and selenium.
003	Location: Storm water discharging at the end of pipe, to the Yegen Drain located at 45.77639 N Latitude, 108.48861 W longitude. Mixing Zone: None
004	Location: Storm water discharging at the end of pipe, to the Yegen Drain located at 45.78167 N latitude, 108.48444 W longitude. Mixing Zone: None
005	Location: Storm water discharging at the end of pipe, to the Yegen Drain located at 45.78694 N latitude, 108.48528 W longitude Mixing Zone: None

006

Location: At the end pipe, discharging into the Yellowstone River at, 45.79639 N latitude, -108.46972 W longitude.

Mixing Zone: The maximum extent of the chronic mixing zone in the Yellowstone River is as follows: 1,000 feet downstream from the effluent diffuser. The chronic mixing zone is for the following parameters: total ammonia, nitrate plus nitrite, total cyanide, and the total recoverable metals, selenium, copper, iron, and zinc.

The maximum extent of the acute mixing zone in the Yellowstone River is as follows: 100 feet downstream from the effluent diffuser. The acute mixing zone is for the following parameters: total ammonia, total cyanide, and the total recoverable metals, selenium, copper, and zinc.

B. Effluent Limitations

1. Interim Limits

Beginning on the effective date of this permit and continuing through midnight **May 30, 2014** the quality of effluent discharged by the facility shall, as a minimum, meet the limitations as set forth below:

Numeric Effluent Limitations Outfall 001-A⁽¹⁾			
Parameter	Units	Daily Maximum Limit	30-Day Average Limit⁽²⁾
Oil and Grease	mg/L	10	NA
Total Residual Oxidant as Chlorine ^(3,4)	mg/L	0.019	0.011
NA Not Applicable (1) See the definitions in Part V. of the permit for explanation of terms. (2) Calculations are based on the average of the daily loads for the reporting period. (3) Limit applies when hydrostatic test wastewater is routed through wastewater treatment system (4) Analyses less than the RRV shall be considered in compliance with these effluent limits			

The pH of the discharge shall remain between 6 and 9 standards units at all times.

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

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

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

There shall be no acute toxicity in the effluent discharged at Outfall 001.

Numeric Effluent Limitations Outfall 002-A ⁽¹⁾			
Parameter	Units	Daily Maximum Limit	30-Day Average Limit
Oil and Grease	mg/L	10	NA
Total Residual Oxidant as Chlorine ⁽²⁾	mg/L	0.019	0.011
NA Not Applicable (1) See the definitions in Part V. of the permit for explanation of terms. (2) Analyses less than the RRV shall be considered in compliance with these effluent limits			

The pH of the discharge shall remain between 6 and 9 standard units.

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

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

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

There shall be no acute toxicity in the effluent discharged at Outfall 002.

Numeric Effluent Limitations Outfall 006 ⁽¹⁾			
Parameter	Units	Daily Maximum Limit	30-Day Average Limit ⁽²⁾
Oil and Grease	mg/L	10	NA
Arsenic, Total Recoverable	mg/L	0.010	0.005
Total Residual Chlorine ^(3, 4)	mg/L	0.019	0.011
NA Not Applicable (1) See the definitions in Part V. of the permit for explanation of terms. (2) Calculations are based on the average of the daily loads for the reporting period. (3) Limit applies when hydrostatic test wastewater is routed through wastewater treatment system (4) Analyses less than the RRV shall be considered in compliance with these effluent limits			

The pH of the discharge shall remain between 6 and 9 standard units at all times

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

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

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

There shall be no acute toxicity in the effluent discharged at Outfall 006.

A discharge from Outfall 006 may only occur if there is no discharge from Outfall 001. Discharges from Outfall 006 and Outfall 001 may not occur simultaneously.

Numeric Effluent Limitations Outfall SUM-A ^(1,2)			
Parameter	Units	Daily Maximum Limit	30-Day Average Limit⁽³⁾
Biochemical Oxygen Demand (BOD ₅)	lbs/day	485	270
Total Suspended Solids (TSS)	lbs/day	338	215
Chemical Oxygen Demand (COD)	lbs/day	2,243	1,253
Total Ammonia, as N	lbs/day	314	143
Oil and Grease	lbs/day	148	78
Phenols	lbs/day	2.26	1.08
Sulfide, as S	lbs/day	3.09	1.38
Total Chromium	lbs/day	4.51	2.07
Hexavalent Chromium	lbs/day	0.39	0.17
NA Not Applicable			
(1) See the definitions in Part V. of the permit for explanation of terms.			
(2) Sum of Outfall 001, Outfall 002, and Outfall 006.			
(3) Calculations are based on the average of the daily loads for the reporting period.			

2. Final Limits

Beginning on **June 1, 2014** and continuing for the term of the permit, the quality of effluent discharged by the facility shall, as a minimum, meet the limitations as set forth below:

Numeric Effluent Limitations Outfall 001-A⁽¹⁾			
Parameter	Units	Daily Maximum Limit	30-Day Average Limit⁽²⁾
Total Ammonia, as N	mg/L	3.96	2.88
Oil and Grease	mg/L	10	NA
Selenium, Total Recoverable	mg/L	0.009	0.006
Total Residual Oxidant as Chlorine ^(3,4)	mg/L	0.019	0.011
NA Not Applicable (1) See the definitions in Part V. of the permit for explanation of terms. (2) Calculations are based on the average of the daily loads for the reporting period. (3) Limit applies when hydrostatic test wastewater is routed through wastewater treatment system (4) Analyses less than the RRV shall be considered in compliance with these effluent limits			

The pH of the discharge shall remain between 6 and 9 standards units at all times.

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

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

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

There shall be no acute toxicity in the effluent discharged at Outfall 001.

Numeric Effluent Limitations Outfall 002-A⁽¹⁾			
Parameter	Units	Daily Maximum Limit	30-Day Average Limit
Total Ammonia, as N	mg/L	3.96	2.88
Selenium, Total Recoverable	mg/L	0.009	0.006
Oil and Grease	mg/L	10	NA
Total Residual Oxidant as Chlorine ⁽²⁾	mg/L	0.019	0.011

Numeric Effluent Limitations Outfall 002-A ⁽¹⁾			
Parameter	Units	Daily Maximum Limit	30-Day Average Limit
NA Not Applicable (1) See the definitions in Part V. of the permit for explanation of terms. (2) Analyses less than the RRV shall be considered in compliance with these effluent limits			

The pH of the discharge shall remain between 6 and 9 standard units.

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

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

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

There shall be no acute toxicity in the effluent discharged at Outfall 002.

Numeric Effluent Limitations Outfall 006-A ⁽¹⁾			
Parameter	Units	Daily Maximum Limit	30-Day Average Limit ⁽²⁾
Oil and Grease	mg/L	10	NA
Arsenic, Total Recoverable	mg/L	0.010	0.005
Total Residual Chlorine ^(3,4)	mg/L	0.019	0.011
NA Not Applicable (1) See the definitions in Part V. of the permit for explanation of terms. (2) Calculations are based on the average of the daily loads for the reporting period. (3) Limit applies when hydrostatic test wastewater is routed through wastewater treatment system. (4) Analyses less than the RRV shall be considered in compliance with these effluent limits.			

The pH of the discharge shall remain between 6 and 9 standard units at all times

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

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

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

There shall be no acute toxicity in the effluent discharged at Outfall 006.

A discharge from Outfall 006 may only occur if there is no discharge from Outfall 001. Discharges from Outfall 006 and Outfall 001 may not occur simultaneously.

Numeric Effluent Limitations Outfall SUM-A ^(1,2)			
Parameter	Units	Daily Maximum Limit	30-Day Average Limit⁽³⁾
Biochemical Oxygen Demand (BOD ₅)	lbs/day	485	270
Total Suspended Solids (TSS)	lbs/day	338	215
Chemical Oxygen Demand (COD)	lbs/day	2,243	1,253
Total Ammonia, as N	lbs/day	314	143
Oil and Grease	lbs/day	148	78
Phenols	lbs/day	2.26	1.08
Sulfide, as S	lbs/day	3.09	1.38
Total Chromium	lbs/day	4.51	2.07
Hexavalent Chromium	lbs/day	0.39	0.17
NA Not Applicable			
(1) See the definitions in Part V. of the permit for explanation of terms.			
(2) Sum of Outfall 001, Outfall 002, and Outfall 006.			
(3) Calculations are based on the average of the daily loads for the reporting period.			

3. Storm Water Discharges

Effective , storm water discharged via Outfall 003, Outfall 004, and Outfall 005, shall meet the effluent limitations as set forth below.

Numeric Effluent Limitations: Outfall 003, 004, 005			
Parameter	Units	Average Monthly Limit¹	Maximum Daily Limit¹
Total Organic Carbon (TOC)	mg/L	--	110
Oil and Grease ²	mg/L	--	10
Hydrogen Sulfide ⁽³⁾	mg/L	0.002	0.003
Footnotes:			
1. See Definition section at end of permit for explanation of terms.			
2. EPA method 1664, revision A			
3. Analyses of dissolved sulfide less than the RRV for dissolved sulfide shall be considered in compliance with the hydrogen sulfide limit.			

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

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; samples or measurements shall be representative of the volume and nature of the monitored discharge. 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.

1. Effluent Monitoring – Outfall 001, Outfall 002, and Outfall 006

Outfall 001-A Monitoring Requirements					
Parameter	Units	Sample Location	Sample Frequency ⁽¹⁾	Sample Type ⁽²⁾	RRV ⁽³⁾
Effluent Flow Rate	mgd	Effluent	Continuous	Recorder	NA
pH	s.u.	Effluent	Daily	Instantaneous	0.1
Total Suspended Solids	mg/L	Effluent	3/Week	Grab	10
	lb/day	Effluent	3/Week	Calculated	NA
Total Ammonia, as N	mg/L	Effluent	3/Week	Grab	0.1
	lb/day	Effluent	3/Week	Calculated	
Biochemical Oxygen Demand	mg/L	Effluent	3/Week	Grab	5.0
	lb/day	Effluent	3/Week	Calculated	NA
Chemical Oxygen Demand	mg/L	Effluent	3/Week	Grab	10.0
	lb/day	Effluent	3/Week	Calculated	NA
Phenols, Total	mg/L	Effluent	Weekly	Grab	0.1
	lb/day	Effluent	Weekly	Calculated	NA
Sulfide, as S	mg/L	Effluent	Weekly	Grab	1.0
	lb/day	Effluent	Weekly	Calculated	NA
Oil and Grease, Total Recoverable	mg/L	Effluent	Weekly	Grab	5
	lb/day	Effluent	Weekly	Calculated	NA
Oil and Grease, Visual ⁽⁴⁾	Presence	Effluent	Daily	Visual	NA
Chromium, Total Recoverable	mg/L	Effluent	Weekly	Grab	0.01
	lb/day	Effluent	Weekly	Calculated	NA
Hexavalent Chromium	mg/L	Effluent	Weekly	Grab	0.002
	lb/day	Effluent	Weekly	Calculated	NA
Selenium, Total Recoverable	mg/L	Effluent	Weekly	Grab	0.001
Total Residual Chlorine	mg/L	Effluent	Monthly	Grab	0.1
Toxicity, acute ⁽⁵⁾	% effluent	Effluent	Quarterly	Grab	NA
Footnotes:					
(1) Refers to the frequency of observation or measurement.					
(2) See the definitions in Part V. of the permit.					
(3) Required Reporting Value (RRV)					
(4) Report Presence/Absence. If oil sheen is observed a grab sample of the effluent must be collected and analyzed for Oil and Grease on a daily basis while the sheen is present.					
(5) Acute test shall utilize <i>Pimephales promelas</i> (EPA Method 2001.0) and <i>Ceriodaphnia dubia</i> (EPA Method 2012.0), two species quarterly.					

Samples taken in compliance with all monitoring requirements specified above shall be taken at the discharge point (001), prior to the effluent mixing with the receiving water.

Outfall 002-A Monitoring Requirements					
Parameter	Units	Sample Location	Sample Frequency ⁽¹⁾	Sample Type ⁽²⁾	RRV ⁽³⁾
Effluent Flow Rate	mgd	Effluent	Daily	Calculated ⁽⁵⁾	NA
pH	s.u.	Effluent	3/Event ⁽⁴⁾	Instantaneous	0.1
Total Suspended Solids	mg/L	Effluent	3/Event ⁽⁴⁾	Grab	10
	lb/day	Effluent	3/Event ⁽⁴⁾	Calculated	NA
Total Ammonia, as N	mg/L	Effluent	3/Event ⁽⁴⁾	Grab	0.1
	lb/day	Effluent	3/Event ⁽⁴⁾	Calculated	
Biochemical Oxygen Demand	mg/L	Effluent	3/Event ⁽⁴⁾	Grab	5.0
	lb/day	Effluent	3/Event ⁽⁴⁾	Calculated	NA
Chemical Oxygen Demand	mg/L	Effluent	3/Event ⁽⁴⁾	Grab	10.0
	lb/day	Effluent	3/Event ⁽⁴⁾	Calculated	NA
Phenols, Total	mg/L	Effluent	1/Event	Grab	0.1
	lb/day	Effluent	1/Event	Calculated	NA
Sulfide, as S	mg/L	Effluent	1/Event	Grab	1.0
	lb/day	Effluent	1/Event	Calculated	NA
Oil and Grease, Total Recoverable	mg/L	Effluent	3/Event ⁽⁴⁾	Grab	5
	lb/day	Effluent	3/Event ⁽⁴⁾	Calculated	NA
Oil and Grease, Visual ⁽⁶⁾	Presence	Effluent	Daily	Visual	NA
Chromium, Total Recoverable	mg/L	Effluent	1/Event	Grab	0.01
	lb/day	Effluent	1/Event	Calculated	NA
Hexavalent Chromium	mg/L	Effluent	1/Event	Grab	0.002
	lb/day	Effluent	1/Event	Calculated	NA
Selenium, Total Recoverable	mg/L	Effluent	1/Event	Grab	0.001
Total Residual Chlorine	mg/L	Effluent	1/Event	Grab	0.1
Toxicity, acute ⁽⁷⁾	% effluent	Effluent	Quarterly	Grab	NA
Footnotes:					
(1) Refers to the frequency of observation or measurement.					
(2) See the definitions in Part V. of the permit.					
(3) Required Reporting Value					
(4) Samples must be collected within 30 minutes of initial discharge, halfway through the discharge, and within 30 minutes of cessation of discharge.					
(5) Flow rate must be calculated daily					
(6) Report Presence/Absence. If oil sheen is observed a grab sample of the effluent must be collected and analyzed for Oil and Grease on a daily basis while the sheen is present.					
(7) Acute test shall utilize <i>Pimephales promelas</i> (EPA Method 2001.0) and <i>Ceriodaphnia dubia</i> (EPA Method 2012.0), two species quarterly.					

Samples taken in compliance with all monitoring requirements specified above shall be taken at the discharge point, prior to the effluent mixing with the receiving water.

Outfall 006 Monitoring Requirements					
Parameter	Unit	Sample Location	Sample Frequency ⁽¹⁾	Sample Type ⁽²⁾	RRV ⁽³⁾
Effluent Flow Rate	mgd	Effluent	Continuous	Recorder	NA
pH	s.u.	Effluent	Daily	Instantaneous	0.1
Total Suspended Solids	mg/L	Effluent	3/Week	Grab	10
	lb/day	Effluent	3/Week	Calculated	NA
Biochemical Oxygen Demand, BOD ₅	mg/L	Effluent	3/Week	Grab	5.0
	lb/day	Effluent	3/Week	Calculated	NA
Chemical Oxygen Demand	mg/L	Effluent	3/Week	Grab	10.0
	lb/day	Effluent	3/Week	Calculated	NA
Ammonia, Total as N	mg/L	Effluent	3/Week	Grab	0.1
	lb/day	Effluent	3/Week	Calculated	NA
Phenols, Total	mg/L	Effluent	Weekly	Grab	0.01
	lb/day	Effluent	Weekly	Calculated	NA
Sulfide, as S	mg/L	Effluent	Weekly	Grab	1.0
	lb/day	Effluent	Weekly	Calculated	NA
Oil and Grease, Total Recoverable	mg/L	Effluent	Weekly	Grab	5
	lb/day	Effluent	Weekly	Calculated	NA
Oil and Grease, visual ⁽⁴⁾	Presence	Effluent	Daily	Visual	NA
Chromium, Total Recoverable	mg/L	Effluent	Weekly	Grab	0.01
	lb/day	Effluent	Weekly	Calculated	NA
Chromium, Hexavalent	mg/L	Effluent	Weekly	Grab	0.002
	lb/day	Effluent	Weekly	Calculated	NA
Arsenic, Total Recoverable	mg/L	Effluent	Weekly	Grab	0.001
Selenium, Total Recoverable	mg/L	Effluent	Weekly	Grab	0.001
Total Residual Chlorine ⁽⁵⁾	mg/L	Effluent	Monthly	Grab	0.1
Whole Effluent Toxicity ⁽⁶⁾	% effluent	Effluent	Quarterly	Grab	NA
Footnotes: 1. Refers to frequency of observation or measurement. 2. See Definition section at end of permit for explanation of terms. 3. Required Reporting Value 4. Report Presence/Absence. If oil sheen is observed a grab sample of the effluent must be collected and analyzed for Oil and Grease on a daily basis while the sheen is present. 5. Chlorine monitoring is required when hydrostatic test water is routed through the wastewater treatment system. 6. Acute test shall utilize <i>Pimephales promelas</i> (EPA Method 2001.0) and <i>Ceriodaphnia dubia</i> (EPA Method 2012.0), two species quarterly.					

Outfall 006 Monitoring Requirements (cont.)					
Parameter	Unit	Sample Location	Sample Frequency	Sample Type ¹	RRV ²
Nitrate plus Nitrite, as N	mg/L	Effluent	Monthly	Grab	0.02
Aluminum, Dissolved	µg/L	Effluent	Monthly	Grab	9
Copper, Total Recoverable	µg/L	Effluent	Monthly	Grab	2
Iron, Total Recoverable	µg/L	Effluent	Monthly	Grab	20
Mercury, Total Recoverable	µg/L	Effluent	Monthly	Grab	0.005
Nickel, Total Recoverable	µg/L	Effluent	Monthly	Grab	2
Thallium, Total Recoverable	µg/L	Effluent	Monthly	Grab	0.2
Zinc, Total Recoverable	µg/L	Effluent	Monthly	Grab	8
Footnotes:					
1. See Definition section at end of permit for explanation of terms.					
2. Required Reporting Value					

Samples taken in compliance with all monitoring requirements specified above shall be taken at a sampling port or other permanent, constructed sampling location in the effluent pipe, downstream of all treatment processes and prior to the effluent mixing with the receiving water.

2. Storm Water Discharge Monitoring – Outfalls 003, 004, 005.

Outfall 003, 004 and 005 Monitoring Requirements					
Parameter	Unit	Sample Location	Sample Frequency	Sample Type ¹	RRV ²
Flow	gpm	Effluent	1/Week	Estimated	---
Total Organic Carbon	mg/L	Effluent	1/Week	Grab	---
Oil and Grease ³	mg/L	Effluent	1/Week	Grab	5
Oil and Grease, visual sheen	Presence	Effluent	1/Week	Visual	--
Biochemical Oxygen Demand, BOD ₅	mg/L	Effluent	1/Week	Grab	--
Chemical Oxygen Demand	mg/L	Effluent	1/Week	Grab	--
Total Suspended Solids	mg/L	Effluent	1/Week	Grab	
Ammonia, total as N	mg/L	Effluent	1/Week	Grab	0.1
Nitrate + Nitrite	mg/L	Effluent	1/Week	Grab	0.02
Nitrogen, total	mg/L	Effluent	1/Week	Grab	--
Phosphorus, total	mg/L	Effluent	1/Week	Grab	--
Sulfide, dissolved ⁴	mg/L	Effluent	1/Week	Grab	0.04
Hydrogen Sulfide ⁵	mg/L	Effluent	1/Week	Calculated	--
pH	S.U.	Effluent	1/Week	Grab	--
Arsenic	µg/L	Effluent	1/Week	Grab	1
Chromium, total recoverable	µg/L	Effluent	1/Week	Grab	10
Chromium, hexavalent	µg/L	Effluent	1/Week	Grab	2
Selenium, total recoverable	µg/L	Effluent	1/Week	Grab	1
Footnotes: 1. See Definition section at end of permit for explanation of terms. See monitoring requirements narrative for additional options. 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. EPA method 1664 revision A. Hexane extraction. 4. Use method 4500 S ²⁻ -series, as specified in 40 CFR 136. 5. Method 4500 S ²⁻ -H. <i>Standard Methods for the Examination of Water and Wastewater</i> , 21 st Edition, 2005.					

Outfall 003, 004 and 005 Monitoring Requirements (cont.)					
Parameter	Unit	Sample Location	Sample Frequency	Sample Type ¹	RRV ²
Copper, total recoverable	µg/L	Effluent	Annually	Grab	1
Lead, total recoverable	µg/L	Effluent	Annually	Grab	0.5
Mercury, total recoverable	µg/L	Effluent	Annually	Grab	0.01
Manganese, total recoverable	µg/L	Effluent	Annually	Grab	5
Nickel, total recoverable	µg/L	Effluent	Annually	Grab	10
Total Phenols	µg/L	Effluent	Annually	Grab	10
Anthracene	µg/L	Effluent	Annually	Grab	0.2
Benzene	ug/L	Effluent	Annually	Grab	0.5
Toluene	µg/L	Effluent	Annually	Grab	0.5
Benzo(ghi)perylene	µg/L	Effluent	Annually	Grab	10
Ethylbenzene	µg/L	Effluent	Annually	Grab	0.5
Napthalene	µg/L	Effluent	Annually	Grab	10
Phenanthrene	µg/L	Effluent	Annually	Grab	0.25
Xylene	µg/L	Effluent	Annually	Grab	1.5
Styrene	µg/L	Effluent	Annually	Grab	0.5
Tetrachlorethylene	µg/L	Effluent	Annually	Grab	0.5
Whole Effluent Toxicity, acute ³	% Effluent	Effluent	Annually	Grab	--
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. WET monitoring is required at Outfall 004 only. If there is no discharge from Outfall 004 for the entire calendar year, the annual WET sample may be collected from either Outfall 003 or Outfall 005.					

Samples taken in compliance with all monitoring requirements specified above shall be taken at the discharge point, or from a sampling port in the discharge pipe, prior to the effluent mixing with the receiving water.

Instream Monitoring Requirements, Yellowstone River, upstream of Yegen Drain					
Parameter	Unit	Sample Location	Sample Frequency	Sample Type ¹	RRV ²
Mercury, Total Recoverable	µg/L	Effluent	Monthly	Grab	0.005
Thallium, Total Recoverable	µg/L	Effluent	Monthly	Grab	0.2
Footnotes: 1. See Definition section at end of permit for explanation of terms. 2. Required Reporting Value					

Instream monitoring samples must be collected from the Yellowstone River, upstream of the Yegen Drain. The same sample location must be used for each sampling event. Monthly instream monitoring is to begin the month that discharge via Outfall 006 commences and continue for two years.

3. Whole Effluent Toxicity Monitoring – Acute Toxicity

Starting in the first calendar quarter following the effective date of the permit, the permittee shall, at least once each quarter conduct acute static replacement toxicity tests on a grab sample of the effluent discharged from Outfall 001, Outfall 006, and Outfall 002 when discharging. WET testing for storm water discharges shall follow the annual schedule described in the table above. Testing will employ two species per quarter (annually for storm water) and will consist of 5 effluent concentrations (100, 50, 25, 12.5, 6.25 percent effluent) and a control. Dilution water and the control shall consist of the receiving water (moderately hard reconstituted water may be used, in accordance with the WET methods). Except for storm water discharges, samples shall be collected on a two day progression; i.e., if the first quarterly sample is on a Monday, the second quarter sample shall be on a Wednesday, etc. Saturdays, Sundays and Holidays will be skipped in the progression.

The static toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of *Methods for Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms*, EPA-821-R-02-012 and the “*Region VIII EPA NPDES Acute Test Conditions-Static Renewal Whole Effluent Toxicity*”. The permittee shall conduct an acute 48-hour static renewal toxicity test using one crustacean (*Ceriodaphnia sp.*) and an acute 96-hour static renewal toxicity test using fathead minnows (*Pimephales promelas*) as the alternating species. The control of pH in the toxicity test utilizing CO2 enriched atmospheres is allowed to prevent rising pH drift. The target pH selected must represent the pH value of the receiving water at the time of sample collection.

Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration. If more than 10 percent control mortality

occurs, the test is considered invalid and shall be repeated until satisfactory control survival is achieved, unless a specific individual exception is granted by the Department. This exception may be granted if less than 10 percent mortality was observed at the dilutions containing high effluent concentrations.

If acute toxicity occurs in a routine test, an additional test shall be conducted within 14 days of the date of the initial sample. Should acute toxicity occur in the second test (resample), testing shall occur once a month (or once per discharge event for storm water) until further notified by the Department. In all cases, the results of all toxicity tests must be submitted to the Department in accordance with Part II of this permit.

The quarterly results from the laboratory shall be reported along with the Discharge Monitoring Report (DMR) form submitted for the end of the reporting period (e.g., whole effluent results for the reporting quarter ending March 31 shall be reported with the March DMR due April 28th with the remaining quarterly, and/or annual, reports submitted with the June, September, and December DMR's). The format for the laboratory report shall be consistent with the latest revision of 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 testing indicate no acute toxicity, the permittee may request a reduction to quarterly acute toxicity testing on only one species 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.

D. Special Conditions

1 Toxicity Reduction Evaluation / Toxicity Identification Evaluation:

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

2. Water Quality-based Effluent Limits Compliance Schedule:

The following compliance schedule milestone items must be submitted to the Department no later than the dates specified.

Milestone	Dates
Compliance plan to reduce concentrations of selenium and total ammonia in the discharge. This plan must evaluate options to achieve compliance with final effluent limitations for these pollutants	March 28, 2012
Annual reports to describe the progress of studies and/or actions undertaken to reduce concentrations of selenium and total ammonia in the effluent and to achieve compliance with final effluent limitations in the Permit	Every year thereafter until full compliance with final effluent limitations is achieved. Annual reports due by March 28 th of each year.
Full compliance with final effluent limitations for selenium and total ammonia.	June 1, 2014

3. Storm Water Discharges

In the following section the term “storm water discharges” applies to the discharge of storm water, via pumping or in response to precipitation, from Phillips 66 Refinery property. Storm water from the facility process areas is routed through the wastewater treatment system and discharged via Outfall 001 and/or Outfall 006. Effluent limits at Outfalls 001 and 006 apply to storm water routed to the wastewater treatment system.

Non-process area storm water discharges are covered under this section of the permit. For these storm water discharges to have permit coverage, a Storm Water Pollution Prevention Plan (SWPPP) must be developed and implemented. The purpose of the SWPPP is to identify sources of pollution to storm water and to select Best Management Practices (BMPs) to eliminate or minimize pollutant discharges at the source and/or to remove pollutants contained in storm water runoff. The facility must implement the provisions of the SWPPP required under this part as a condition of this permit.

The SWPPP must comply with the following requirements:

1. General SWPPP Requirements

- a. The SWPPP and associated documentation, as well as BMPs developed and implemented, must be accomplished using good standard engineering practices.
- b. The SWPPP must be retained onsite at the facility that generates the storm water discharge. Provided no permanent offices/buildings are located at the facility site, a copy of these documents shall be retained at the office of the contact person identified in the permit application and at the office of the primary individual responsible for the implementation of the SWPPP, and shall be brought to the site at all times with these identified personnel. Should the identity of these responsible contacts/individuals change during the permit period, the permittee shall ensure measures are in place to transfer, and familiarize replacement personnel with the requirements pertaining to the SWPPP.

- c. The SWPPP must be signed in accordance with the signatory requirements stated in Part IV.G of this permit.
- d. The SWPPP must be made available upon request of Department staff, such as during inspections.
- e. The Department may notify the permittee that the SWPPP does not meet one or more of the minimum requirements of this permit. After such notification from the Department, the permittee shall make changes to the SWPPP and shall submit to the Department a written certification that the requested changes have been made. Unless otherwise stated by the Department, the permittee shall have 30 days after such notification to make the required changes. When the Department makes such notification, the permittee shall provide the Department with a copy of revisions to the SWPPP.
- f. The permittee shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance that has significant effect on the potential for the discharge of pollutants to surface waters, or if the SWPPP proves to be ineffective in achieving the general objective of controlling pollutants in a storm water discharge covered under this permit. When such revisions are made to the SWPPP based upon this permit condition, the permittee shall provide the Department with a copy of revisions to the SWPPP.
- g. The SWPPP must identify the name of receiving surface waters. If there is a distinguishable point source discharge or outfall, the SWPPP must include a description of the size, type, and location of each point source discharge or outfall. A description of storm water runoff flow and drainage patterns into the receiving surface waters must be provided. If the discharge is to a municipal separate storm sewer, the location of any storm sewer discharge into the receiving surface waters must be provided.
- h. The SWPPP must identify a specific person or persons at the facility who are responsible for SWPPP development, implementation, maintenance, and revision. The SWPPP must clearly identify the responsibilities of each person. The activities and responsibilities of the person(s) must address all aspects of the SWPPP.
- i. The SWPPP must identify facility personnel training programs used to inform personnel responsible for implementing activities identified in the SWPPP or otherwise responsible for storm water management of the components and goals of the SWPPP. Training should address topics such as spill response, good housekeeping, and material management practices. A schedule must identify the frequency for such training.
- j. The SWPPP must address preventative maintenance measures which include the inspection and maintenance of storm water management BMPs. Qualified personnel shall be identified in the SWPPP to inspect the facility site and storm

water management BMPs following each significant storm water rainfall event resulting in 0.5 inches of precipitation or more, or after significant snowmelt events. Inspections must be documented and maintained with the SWPPP. Inspections and their respective records must include tracking or follow-up procedures to ensure adequate response and corrective actions have been taken based on any problems or deficiencies observed during the inspection.

- k. The SWPPP must address good housekeeping measures to help maintain a clean, orderly, facility. Measures could include a routine schedule for the managing/removal of waste materials, as well as routine inspections of potential problem areas.
- l. The SWPPP must include a General Location Map (such as a USGS topographic quadrangle map), extending one mile beyond the property boundaries of the facility, with enough detail to identify the location of the facility, any storm water discharges, and the receiving surface waters. The facility site must be clearly delineated on this map. The permittee may use the topographic map submitted with the application provided it indicates this information with respect to storm water discharges.

2. Identification of Potential Pollutant Sources

The SWPPP must provide a description of potential pollutant sources which may reasonably be expected to affect the quality of storm water discharges. The SWPPP must identify all significant activities and materials that could potentially be significant pollutant sources. To accomplish this, the SWPPP must include, at a minimum:

- a. For each area of the facility with storm water discharges from regulated activities that have a reasonable potential to contain significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants and parameters of concern that are likely to affect the storm water discharge. Factors to consider include the toxicity of chemicals; quantity of chemical used, produced or discharged; the likelihood of contact with storm water; the history of any MPDES permit violations; and the characteristics and uses of the receiving surface waters. In the identification of potential pollutants, and depending on the type of facility, items to identify and assess may include:
 - i. Areas and management practices used for the storage, treatment, or disposal of wastes;
 - ii. Areas where significant spills and leaks of hazardous substances may have occurred;
 - iii. Areas and management practices used for the loading or unloading of dry bulk materials and liquids;
 - iv. Areas and management practices used for the outdoor storage of materials and/or products;

- v. Areas and management practices used for outdoor manufacturing or processing activities;
- vi. Areas and management practices used for vehicle fueling, washing, and maintenance;
- vii. Dust or particulate-generating processes;
- viii. Illicit connections and/or management practices;
- ix. Areas more susceptible to erosion; and,
- x. Areas with unstabilized sediment due to ground disturbance activities.

The permittee must evaluate these potential pollutant sources back at least three years prior to the date permit coverage is applied for the respective storm water discharge.

- b. A summary of existing storm water quality sampling test results which characterize historical pollutants in storm water discharges.
- c. Estimate and define area(s) of relatively impervious surfaces (including paved areas and facility structural roofs) with respect to the total area drained by each point source discharge of storm water.
- d. An evaluation of how the quality of any potential storm water running onto the facility site would impact the facility's storm water discharge.

3. Storm Water Management Best Management Practices

- a. SWPPPs must include a description of storm water management Best Management Practices (BMPs) appropriate for the facility, including those used to divert, infiltrate, reuse, or otherwise manage storm water runoff, that reduces pollutants in storm water discharges from the site. The appropriateness and priorities of BMPs in a SWPPP shall reflect the identified potential sources of pollutants to storm water at the facility in Part C.2.
- b. Reasonable and appropriate BMPs may include: reuse of collected storm water (such as for process water or as an irrigation source); inlet controls (such as oil/water separators); snow management activities; infiltration devices, detention/retention devices (including constructed wetlands); run-on/runoff controls; diversion structures; flow attenuation by use of open vegetated swales, natural depressions, and other practices; and, ponds. Where practicable, industrial materials and activities could be protected by a storm resistant shelter to prevent exposure to rain or snow.
- c. The location and description of any treatment to remove pollutants that storm water receives.
- d. The SWPPP must provide a description of measures to ensure the ongoing implementation and maintenance of BMPs. Inspections and maintenance

activities, such as cleaning oil and grit separators or catch basins, must be documented and recorded. Incidents such as spills, leaks, other releases of potential pollutants, and/or other material/waste management problems, must also be documented and recorded.

e. The SWPPP must address Spill Prevention and Response Measures as follows:

- i. Areas where potential spills may occur that could contribute pollutants to storm water discharges, and their accompanying drainage points, must be identified clearly in the SWPPP.
- ii. Where appropriate, specific material-handling procedures, storage requirements, and use of equipment, such as diversion valves, should be considered in the SWPPP.
- iii. Procedures and necessary equipment for cleaning up spills must be identified in the SWPPP and made available to the appropriate personnel.
- iv. Emergency spill/response contact and/or notification numbers must be listed in the SWPPP.
- v. SWPPP records of spills must be updated when a significant spill or leak of hazardous substances occurs and must include a description of the specific origin and location of the release, a description of the materials released, an estimate of the quantity of the release, and a description of any remediation or cleanup measures which were taken.

f. The SWPPP must address Sediment and Erosion Control BMPs as follows:

- i. The SWPPP must describe sediment and erosion control BMPs including various structural, vegetative, and/or stabilization measures.
- ii. The SWPPP must allow for BMPs to be implemented as necessary.
- iii. The SWPPP must address areas which have a higher potential for erosion due to topography, slope characteristics, facility activities, and/or other factors.
- iv. An assessment of the nature of any fill material to be used, the existing soils located at the site, and the erodibility (high, moderate, or slight) of such soils must be provided in the SWPPP.
- v. Storm water discharges associated with construction activity at the facility site may be included under this permit provided the SWPPP is developed or revised to address these discharges as follows:
 - The SWPPP must identify and locate the BMPs to be used during and after the construction project to control sediment discharges to surface waters;
 - Final stabilization of disturbed areas must be ensured;
 - This Sediment and Erosion Control section of the SWPPP must be updated with a SWPPP modification to reflect new construction activity as necessary; and,
 - The SWPPP modification must be submitted to the Department prior to the start of construction.

Provided these items are addressed, coverage for storm water discharges associated with construction activity under this permit would commence on the date stated in the SWPPP or when construction starts.

- vi. The SWPPP may include the use of BMPs such as sediment basins, detention/retention structures, berms, barriers, filter strips, covers, diversion structures, sediment control fences, straw bale dikes, seeding, sodding, and/or other control structures. Any SWPPP elements that require engineered structures, such as detention ponds or diversion structures, must be prepared by a qualified individual using good standard engineering practices.

4. SWPPP Site Map or Plan

The SWPPP must include a site map or plan which indicates the following:

- a. An identification of each point source discharge of storm water with a delineated outline of the respective drainage area;
- b. Each required point source discharge of storm water sampling location (with the formal number indicated on the map as designated on Discharge Monitoring Report forms. ;
- c. Delineated drainage patterns which clearly indicate the storm water runoff flow patterns (such as using arrows or detailed topographic contours to show which direction storm water will flow);
- d. The "areas" identified in Part C.2.a. and c.;
- e. The "BMPs" identified in Part C.3.;
- f. Major permanent facility structures;
- g. Each well where liquids associated with the facility are injected underground including any storm water conveyances;
- h. Location and source of runoff from adjacent property containing significant quantities of pollutants of concern to the facility as discussed in Part C.2.d.;
- i. Location of all surface waters on or near to the construction activity site (including perennial and intermittent waterbodies, ephemeral streams, springs, wetlands with standing water, etc.);
- j. A map scale;
- k. A north arrow; and,

- I. For construction activities:
 - i. Areas of total development and, at a minimum, areas of "disturbance" related to construction activity (including support activities related to a construction site such as concrete or asphalt batch plants, equipment staging areas, material storage areas, soil stockpile areas, material borrow areas, etc.);
 - ii. Location of all erosion and sediment control BMPs;
 - iii. Location of impervious structures (including buildings, roads, parking lots, outdoor storage areas, etc.) after construction is completed;
 - iv. Areas where vegetative BMPs are to be implemented;
 - v. Approximate slopes anticipated after major grading activities; and,
 - vi. The boundary of the 100-year floodplain, if determined.

5. Comprehensive Site Inspection and Compliance Evaluation Report

- a. For storm water discharges that are associated with industrial, mining, oil and gas, and construction activity with construction-related disturbance of five acres or more of total land area, a Comprehensive Site Inspection must be performed annually to identify areas contributing to the regulated storm water discharge and to evaluate whether BMPs to reduce pollutant loadings identified in the SWPPP are adequate and properly implemented in accordance with the terms of this permit. For inactive mining operations, if annual inspections are impracticable, then a certification once every three years by a registered professional engineer that the facility is in compliance with the permit, or alternative requirements, can be performed instead of an annual Comprehensive Site Inspection.
- b. A Comprehensive Site Inspection must assess the following:
 - i. Whether the description of potential pollutant sources is accurate as required under Part C.2. of this permit;
 - ii. Whether the site map has been updated or otherwise modified to reflect current conditions;
 - iii. Whether the BMPs to control potential pollutants in storm water discharges as identified in the SWPPP and Part C.3. are being effectively implemented; and,
 - iv. Whether any SWPPP revisions such as additional BMPs are necessary.
- c. Based on the results of the Comprehensive Site Inspection, the description of potential pollutant sources and BMPs identified in the SWPPP must be revised as appropriate within 14 days of such inspection and must provide for implementation of the changes to the SWPPP in a timely manner.
- d. A tracking or follow-up procedure, including a schedule for implementation, must be used and identified in the Report which ensures adequate response and

corrective actions have been taken in response to the Comprehensive Site Inspection and/or noncompliances.

- e. Records of the Comprehensive Site Inspection, the Compliance Evaluation Report, and any related follow-up actions must be maintained by the permittee.

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

A. Representative Sampling

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

B. Monitoring Procedures

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

C. Penalties for Tampering

The Montana Water Quality Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

D. Reporting of Monitoring Results

Self-Monitoring results will be reported monthly. Monitoring results obtained during the previous reporting period shall be summarized 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 on forms from the most recent version of EPA Region VIII's "Guidance for Whole Effluent Reporting" with copies of the laboratory analysis report. If no discharge occurs during the reporting period, "no discharge" shall be reported. 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 and the Regional Administrator at the following addresses:

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

(b) U.S. Environmental Protection
Agency
10 West 15th Street, Suite 3200
Helena, Montana 59626
Phone: (406) 457-5000

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 incidents of noncompliance as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the Water Protection Bureau at (406) 444-3080 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 Director, or an authorized representative thereof, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance, any substances or parameters at any location.

III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give the Department or the Regional Administrator advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.

B. Penalties for Violations of Permit Conditions

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

C. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. However, the permittee shall operate, as a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

F. Removed Substances

Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard.

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III.G.2 and III.G.3 of this permit.
2. Notice:
 - a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.
 - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.I of this permit, "Twenty-four Hour Reporting".
3. Prohibition of bypass:
 - a. Bypass is prohibited and the Department may take enforcement action against a permittee for a bypass, unless:
 - 1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - 2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - 3) The permittee submitted notices as required under Part III.G.2 of this permit.
 - b. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in Part III.G.3.a of this permit.

H. Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part III.H.2 of this permit are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e. Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations).
2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required under Part II.I of this permit, "Twenty-four Hour Notice of Noncompliance Reporting"; and
 - d. The permittee complied with any remedial measures required under Part III.D of this permit, "Duty to Mitigate".
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

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

J. Changes in Discharge of Toxic Substances

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

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - a. One hundred micrograms per liter (100 µg/L);

- b. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - d. The level established by the Department in accordance with 40 CFR 122.44(f).
2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
- a. Five hundred micrograms per liter (500 µg/L);
 - b. One milligram per liter (1 mg/L) for antimony;
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - d. The level established by the Department in accordance with 40 CFR 122.44(f).

IV. GENERAL REQUIREMENTS

A. Planned Changes

The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit.

B. Anticipated Noncompliance

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

C. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

D. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application must be submitted at least 180 days before the expiration date of this permit.

E. Duty to Provide Information

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

F. Other Information

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

G. Signatory Requirements

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

1. All permit applications shall be signed as follows:

- a. For a corporation: by a responsible corporate officer; a responsible corporate officer means: a president , secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation ; or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
 - c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.
2. All reports required by the permit and other information requested by the Department shall be signed by a person described above or by a duly authorized representative of that person. A person is considered a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above and submitted to the Department; and
 - b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or an individual occupying a named position.)
 3. Changes to authorization. If an authorization under Part IV.G.2 of this permit is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part IV.G.2 of this permit must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.
 4. Certification. Any person signing a document under this section shall make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who

manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

H. Penalties for Falsification of Reports

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

I. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. As required by the Clean Water Act, permit applications, permits and effluent data shall not be considered confidential.

J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.

K. Property 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 EPA for incorporation in this permit.
4. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit.

5. Toxic Pollutants: A toxic standard or prohibition is established under Section 307(a) of the Clean Water Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit.
6. Toxicity Limitation: Change in the whole effluent protocol, or any other conditions related to the control of toxicants have taken place, or if one or more of the following events have occurred:
 - a. Toxicity was detected late in the life of the permit near or past the deadline for compliance.
 - b. The TRE/TIE results indicated that compliance with the toxic limits will require an implementation schedule past the date for compliance.
 - c. The TRE/TIE results indicated that the toxicant(s) represent pollutant(s) that may be controlled with specific numerical limits.
 - d. Following the implementation of numerical controls on toxicants, a modified whole effluent protocol is needed to compensate for those toxicants that are controlled numerically.
 - e. The TRE/TIE revealed other unique conditions or characteristics which, in the opinion of the Department, justify the incorporation of unanticipated special conditions in the permit.

V. DEFINITIONS

1. **“Act”** means the Montana Water Quality Act, Title 75, chapter 5, MCA.
2. **“Administrator”** means the administrator of the United States Environmental Protection Agency.
3. **“Acute Toxicity”** occurs when 50 percent or more mortality is observed for either species (See Part I.C of this permit) at any effluent concentration. Mortality in the control must simultaneously be 10 percent or less for the effluent results to be considered valid.
4. **“Arithmetic Mean” or “Arithmetic Average”** for any set of related values means the summation of the individual values divided by the number of individual values.
5. **“Average Monthly Limitation”** means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.
6. **“Bypass”** means the intentional diversion of waste streams from any portion of a treatment facility.
7. **“Chronic Toxicity”** means when the survival, growth, or reproduction, as applicable, for either test species, at the effluent dilution(s) designated in this permit (see Part I.C.), is significantly less (at the 95 percent confidence level) than that observed for the control specimens.
8. **“Composite samples”** 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.

9. **"Daily Discharge"** means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
10. **"Daily Maximum Limit"** means the maximum allowable discharge of a pollutant during a calendar day. Expressed as units of mass, the daily discharge is cumulative mass discharged over the course of the day. Expressed as a concentration, it is the arithmetic average of all measurements taken that day.
11. **"Department"** means the Montana Department of Environmental Quality (MDEQ). Established by 2-15-3501, MCA.
12. **"Director"** means the Director of the Montana Department of Environmental Quality.
13. **"Discharge"** means the injection, deposit, dumping, spilling, leaking, placing, or failing to remove any pollutant so that it or any constituent thereof may enter into state waters, including ground water.
14. **"EPA"** means the United States Environmental Protection Agency.
15. **"Federal Clean Water Act"** means the federal legislation at 33 USC 1251, *et seq.*
16. **"Grab Sample"** means a sample which is taken from a waste stream on a one-time basis without consideration of flow rate of the effluent or without consideration for time.
17. **"Instantaneous Maximum Limit"** means the maximum allowable concentration of a pollutant determined from the analysis of any discrete or composite sample collected, independent of the flow rate and the duration of the sampling event.
18. **"Instantaneous Measurement"**, for monitoring requirements, means a single reading, observation, or measurement.
19. **"Minimum Level"** (ML) of quantitation means the lowest level at which the entire analytical system gives a recognizable signal and acceptable calibration point for the analyte, as determined by the procedure set forth at 40 CFR 136. In most cases the ML is equivalent to the Required Reporting Value (RRV) unless otherwise specified in the permit. (ARM 17.30.702(22))
19. **"Mixing zone"** means a limited area of a surface water body or aquifer where initial dilution of a discharge takes place and where certain water quality standards may be exceeded.

20. **"Nondegradation"** means the prevention of a significant change in water quality that lowers the quality of high-quality water for one or more parameters. Also, the prohibition of any increase in discharge that exceeds the limits established under or determined from a permit or approval issued by the Department prior to April 29, 1993.
21. **"Regional Administrator"** means the administrator of Region VIII of EPA, which has jurisdiction over federal water pollution control activities in the state of Montana.
22. **"Severe property damage"** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
23. **"TIE"** means a toxicity identification evaluation.
24. **"TMDL"** means the total maximum daily load limitation of a parameter, representing the estimated assimilative capacity for a water body before other designated uses are adversely affected. Mathematically, it is the sum of wasteload allocations for point sources, load allocations for non-point and natural background sources, and a margin of safety.
25. **"TRE"** means a toxicity reduction evaluation.
26. **"TSS"** means the pollutant parameter total suspended solids.
27. **"Upset"** means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

**DEPARTMENT OF ENVIRONMENTAL QUALITY
PERMITTING and COMPLIANCE DIVISION
MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM
(MPDES)**

Fact Sheet for permit modification

Permittee: ConocoPhillips

Permit No.: MT0000256

Receiving Water: Yegen Drain

Facility Information: ConocoPhillips Billings Refinery

Mailing Address: 401 South 23rd Street
Billings MT 59107-0198

Contact: Allen Eggen, Water Lead
PO Box 30198
Billings MT 59107-0198

COPY

Fee Information:

Type:	Privately Owned Treatment Works, Major
Number of Outfalls:	3 (For Fee Determination only)
Outfall - Type:	001 – Treated Wastewater to surface water
	002 – Treated wastewater to surface water
	003 – Storm water (integrated)
	004 – Storm water (integrated)
	005 – Storm water (integrated)

I. Permit Status

The ConocoPhillips Billings Refinery MPDES permit MT0000256 was issued on September 29, 2009, and became effective on December 1, 2009. The permit expires November 30, 2014.

In December 2010 ConocoPhillips submitted an application for coverage under the October 1, 2006 *General Permit for Storm Water Discharges Associated with Industrial Activity*. On January 20, 2011, the Department denied the application on grounds that the proposed storm water discharges

are subject to federal Effluent Limitation Guidelines (ELGs) and do not qualify for coverage under the General Permit as specified in ARM 17.30.1341(4). The Department advised ConocoPhillips to apply, through a major modification, for the addition of storm water outfalls to its existing MPDES individual permit.

On September 14, 2011, the Department received EPA Forms 1, 2D, and 2F requesting the addition of three outfalls to the permit. The required modification fee was received on October 3, 2011. The Department requested additional information in a notice of deficiency dated October 27, 2011. ConocoPhillips responded to the notice of deficiency on December 22, 2011, and the Department deemed the application complete on January 25, 2012.

II. Facility Information

A. Facility Description

COP Billings Refinery converts sour crude oil into gasoline, diesel, jet fuel no.1, propane, carbon black oil, fuel coke, and asphalt blendstock. Average production is 60,000 barrels per day. There are two designated outfalls – 001 and 002 – in the current permit. Outfall 001 is for the discharge of treated wastewater. Outfall 002 is for the discharge of hydrostatic testing water. Both outfalls discharge to the Yegen Drain.

B. Proposed Facility Description

This permit modification is made at the request of the permittee to add three outfalls, designated 003, 004, and 005. The outfalls are for the discharge of accumulated storm water only. This permit modification is limited to the addition of these outfalls. All other aspects of the permit remain in effect and are not reopened by this modification [ARM 17.30.1365(4)(b)].

The proposed outfall locations are:

Outfall 003 – 45.77639 N latitude, -108.48861 W longitude

Outfall 004 – 45.78167 N latitude, -108.48444 W longitude

Outfall 005 – 45.78694 N latitude, -108.48528 W longitude

All three outfalls will discharge to the Yegen Drain. The outfalls are for the discharge of accumulated storm water, but are not engineered storm water structures that will only discharge during a storm event. Discharge will occur by pumping accumulated storm water from storm water collection areas. This modification authorizes the discharge of accumulated storm water only. Discharges may occur during dry weather, and as such are not storm water discharges.

III. Technology-Based Effluent Limitations (TBEL)

A. Applicability to Technology-Based Effluent Limits

Wastewater from the ConocoPhillips Billings refinery is subject to federal Effluent Limitations Guidelines (ELGs) at 40 CFR Part 419 - Subpart B, Petroleum Refining Point Source Category – Cracking Subcategory. The ELGs allow the discharge of contaminated runoff that is not commingled or treated with process wastewater provided no single grab or composite sample exceeds the TBELs; 15 mg/L oil and grease and 110 mg/L total organic carbon (TOC). Contaminated runoff with oil and grease and TOC present above these levels is subject to additional ELG requirements.

Runoff is defined as the flow of storm water resulting from precipitation coming into contact with petroleum refinery property [40 CFR 419.11(b)]. Contaminated runoff is defined as runoff which comes into contact with any raw material, intermediate product, finished product, by-product or waste product located on petroleum refinery property [40 CFR 419.11(g)].

The modification request and application state that the proposed outfalls represent distinct and separate non-process area storm water discharges only and are not subject to the federal ELGs described above. Site drainage is constructed such that storm water runoff from refinery process areas is collected in the process area storm sewer system and is treated with the process wastewater in the wastewater treatment system prior to discharge at Outfall 001.

Although the application materials show that ConocoPhillips has tried to minimize the potential for the discharge of contaminated runoff, the Department finds that the proposed discharges of accumulated storm water have a high potential to contain contaminants. While the discharges may not be subject to the ELGs for contaminated runoff, the Department proposes to apply the ELG-based TBELs for contaminated runoff as best professional judgment (BPJ) effluent limits until the discharges can be more adequately characterized. This decision is based on the fact that there are raw materials, intermediate products, by-products and waste products within the drainage areas for the three proposed outfalls. Further, the facility is a complex industrial site where the presence of numerous pollutants, the potential for spills, and potential historical contamination all combine to increase the likelihood that storm water runoff from the proposed drainage areas will contain pollutants.

The TBELs for contaminated runoff will be applied to the three proposed outfalls. Grab samples shall be collected during the first thirty minutes of any discharge. Analytical results must be less than the more stringent of either the TBELs (15 mg/L oil and grease, 110 mg/L TOC) or the applicable water quality-based effluent limit.

B. Nondegradation Allocated Loads

The current modification does not represent a new or increased source because the facility is an existing permitted discharge. The three proposed outfalls are for the discharge of accumulated storm water that was previously discharged via Outfall 001. The new outfalls will be subject to the water quality standards and all existing and anticipated uses of the receiving water will be maintained. The pollutant loads discharged through the three new outfalls will be minimized by best management practices and settling. The discharges will be subject to ELG-based limits and applicable water quality-based effluent limits.

IV. Water Quality-Based Effluent Limitations (WQBELs)

A. *Scope and Authority*

The Montana Water Quality Act (Act) states that a permit may only be issued if the Department finds that the issuance or continuance of the permit will not result in pollution of any state waters, 75-5-401(2), Montana Code Annotated (MCA). 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 purpose of this section is to provide a basis and rationale for establishing any necessary effluent limits, based on Montana water quality standards, that will protect designated uses of the receiving stream.

B. *Receiving Water*

The receiving water for all three proposed outfalls is the Yegen Drain. The Yegen Drain is classified C-3 [ARM 17.30.611(1)(c)]. Waters classified C-3 are to be maintained suitable for bathing, swimming, and recreation, and growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers. The quality of these waters is naturally marginal for drinking, culinary, and food processing purposes, and industrial water supply [ARM 17.30.629(1)].

The Yegen Drain is not listed on either the 1996 or 2010 303(d) list of impaired water bodies.

This modification does not propose any changes to the current permit's designation of the Yegen Drain as the receiving water.

C. *Applicable Water Quality Standards*

ARM 17.30.629(2) states that discharges to waters classified C-3 may not violate the specific water quality standards listed under ARM 17.30.629(2)(a through k). In addition, discharges are subject to ARM 17.30.635 through 637, 641, 645, and 646.

D. *Mixing Zone*

No mixing zone is granted for the proposed outfalls.

This modification does not affect any other mixing zone granted in the current permit.

E. *Basis for WQBELs*

Water quality-based effluent limits are developed for pollutants of concern that have a reasonable potential to exceed a water quality standard. Pollutants of concern include any parameter with a technology-based effluent limit, a TMDL defined wasteload allocation, and those identified through monitoring or otherwise potentially present in the discharge.

Reasonable potential (RP) is evaluated using the methods described in the *Technical Support Document for Water Quality-based Toxics Control, US EPA, 1991* (TSD). The TSD uses a statistical approach to calculate a projected maximum effluent concentration in the discharge (C_d) based on the highest reported concentration for a given parameter and the coefficient of variation (CV) of the data set. For RP analyses, the Department uses the TSD method to determine C_d at the 95% confidence level and 95% probability basis. Where the data set consists of less than ten values, a default CV of 0.6 is used. C_d is then compared to the water quality standard after considering available dilution in any applicable mixing zone. Where C_d exceeds the water quality standard, RP exists, and a WQBEL is necessary.

Pollutants subject to ELGs or permit limits at Outfall 001 (reported on Form 2-F)

Oil and Grease – The oil and grease TBEL for contaminated runoff from oil refineries is 15 mg/L. The water quality standard at ARM 17.30.637(1)(b) requires that state waters be free from discharges that create a visible oil film or have oil and grease present in concentrations at or in excess of 10 mg/L.

As required by 40 CFR 122.44(d), the limit for oil and grease shall be based on the water quality standard. The maximum daily limit shall be 10 mg/L and no visible oil film may be present in any discharge.

Total Organic Carbon (TOC) – The TBEL for TOC is 110 mg/L. There is no water quality standard for TOC. A WQBEL is not necessary.

Ammonia, as N – The water quality standard for ammonia is dependent on the temperature and pH of the receiving water and the presence or absence of salmonid fishes in early life stages. The acute and chronic ammonia standards for the Yegen Drain, calculated in the current permit Fact Sheet, are 6.95 mg/L and 2.89 mg/L respectively.

Seven ammonia samples were reported on Form 2F; concentrations ranged from <0.05 mg/L to 0.1 mg/L. C_d is 0.2 mg/L, and an ammonia limit is not necessary. Ammonia monitoring will be required because it is required for future renewal applications and because the facility wastewater is subject to a water quality-based effluent limit for ammonia.

Selenium, total recoverable – Acute and chronic water quality standards for selenium are 0.02 mg/L and 0.005 mg/L respectively.

Reported selenium concentrations were all below the laboratory detection limit of 0.005 mg/L. The required reporting value for selenium is 0.001 mg/L. Using the laboratory detection limit would result in RP. However, because all of the values are non-quantified and the detection limit was equal to the chronic standard, the permit will not include a WQBEL. The permit will require monitoring for total recoverable selenium. Monitoring must achieve the RRV. RP will be re-evaluated during the next permit renewal.

Total Residual Chlorine (TRC) – Acute and chronic standards for TRC are 0.019 mg/L and 0.011 mg/L respectively.

The proposed outfalls are for the discharge of storm water only and TRC is not expected to be present. All sample results reported on Form 2F were below detection limits. No TRC limit is necessary. TRC monitoring will be required because there is a WQBEL at Outfall 001 and reporting is required for the next renewal application.

Total Phenol – The human health standard for total phenol is 0.3 mg/L. The highest total phenol concentration reported on the Form 2F was 0.02 mg/L. C_d is 0.04. A WQBEL is not necessary. Monitoring will be required because there is an effluent limit at Outfall 001 and reporting is required for the next renewal application.

Sulfide – There is no water quality standard for total sulfide. The applicable water quality standard is 0.002 mg/L, for hydrogen sulfide. Hydrogen sulfide (H_2S) is a portion of dissolved sulfide, with the percentage dependent on sample pH. As the pH increases the percentage of H_2S decreases such that at pH 7.0 approximately fifty percent of the dissolved sulfide is in the form of H_2S , while at pH 9.0 approximately one percent is H_2S (*Standard Methods for the Examination of Water and Wastewater, 21st Edition, 2005*).

The highest total sulfide concentration reported on Form 2F is 0.14 mg/L, and reported pH values ranged from 7.2 to 8.7. Using these pH values, the concentration of total sulfide, and Figure 4500-S²⁻:3 from *Standard Methods*, the approximate concentration of H₂S ranges from 0.003 mg/L to 0.053 mg/L. C_d is projected to range from 0.006 mg/L to 0.111 mg/L. A WQBEL is necessary.

Following the TSD approach, WQBELs are established by setting the chronic water quality standard as the effluent WLA and then back calculating the long term average (LTA) based on the 95th percentile probability basis. The resulting limits are 0.002 mg/L as the average monthly limit (AML) and 0.003 mg/L as the maximum daily limit (MDL).

Total Chromium – The human health standard for total chromium is 0.1 mg/L. The highest total chromium concentration reported on Form 2F is 0.014 mg/L. C_d is 0.03 mg/L. No WQBEL is necessary. Total chromium monitoring will be required because there is an effluent limit at Outfall 001 and reporting is required for the next renewal application.

Hexavalent Chromium – The acute and chronic aquatic life standards are 0.016 mg/L and 0.011 mg/L respectively. All hexavalent chromium results reported on Form 2F were less than 0.01 mg/L. The required reporting value is 0.005 mg/L. Using the laboratory detection limit and the TSD multiplier would result in RP. However, because all of the values are non-quantified and the detection limit is below the water quality standard, the permit will not include a WQBEL. The permit will require monitoring for hexavalent chromium. Monitoring must achieve the RRV. RP will be re-evaluated during the next permit renewal.

Arsenic – The human health standard for arsenic is 0.01 mg/L. Arsenic was reported as less than 0.005 mg/L at two of the proposed outfalls (003 and 005). C_d is < 0.1 mg/L and a WQBEL is not necessary. Arsenic data was not available for outfall 004. Arsenic monitoring will be required at all outfalls. RP will be re-evaluated during the next permit renewal.

Additional parameters identified on Form 2F

The following parameters were identified on Form 2F as a substance or a component of a substance currently used or manufactured as an intermediate product, final product, or by-product.

Nitrate-nitrate	Nitrogen, Total Organic	Phosphorus, total
Molybdenum, total	Manganese, total	Arsenic, total
Copper, total	Lead, total	Nickel, total
Zinc, total	Phenols, total	Styrene
Benzene	Ethylbenzene	Tetrachloroethylene
Toluene	Phenol	Anthracene
Benzo(ghi)perylene	Napthalene	Phenanthrene
Mercury, total	Cresol	Cyclohexane
Vanadium	Xylene	

Monitoring results were not available for these parameters. ConocoPhillips provided estimated concentrations for the parameters on this list that are expected to be present. Estimated data are not sufficient to assess the need for WQBEL. Monitoring for these parameters will be required in the permit. RP will be assessed during the next permit renewal.

Whole Effluent Toxicity (WET) – Because the storm water proposed for discharge is not yet adequately characterized and the need for additional WQBEL is yet to be determined, WET testing will be required annually. This requirement is for WET monitoring only. A WET limit is not proposed. Due to the short term and sporadic nature of the proposed discharges, the Department is requiring acute WET tests only.

If a discharge occurs at Outfall 004 during the calendar year, at least one WET sample must be collected from that location. If no discharge occurs at Outfall 004, then at least one sample must be collected from one of the other storm water outfalls (unless there is no discharge of storm water for the entire calendar year).

WET testing shall consist of acute tests on two species. An acute 48-hour static renewal test with *Ceriodaphnia dubia* and a 96-hour static renewal test with fathead minnows (*Pimephales promelas*) shall be conducted concurrently at least once each calendar year. WET test samples must be collected during a storm water discharge. Acute toxicity is detected when the lethal concentration to 50 percent of the test population (LC_{50}) occurs in any test concentration, to either test species.

The permit will include standard WET language addressing test failures, retesting, accelerated testing and requirements for conducting Toxicity Identification / Toxicity Reduction Evaluations.

V. Final Effluent Limitations

The following effluent limitations apply to storm water discharged from the three proposed outfalls.

Effluent Limitations: Outfall 003, 004, 005			
Parameter	Units	Average Monthly Limit ¹	Maximum Daily Limit ¹
Total Organic Carbon (TOC)	mg/L	--	110
Oil and Grease ²	mg/L	--	10
Hydrogen Sulfide	mg/L	0.002	0.003
Footnotes: 1. See Definition section at end of permit for explanation of terms. 2. EPA method 1664, revision A			

VI. Storm Water Monitoring Requirements

During discharge, the sampling location at each outfall shall be at the end of the discharge pipe. A sampling port in the discharge pipe between the pump and the discharge location may also be used. Samples must reflect the nature and effect of the discharge. Samples shall be collected, preserved and analyzed in accordance with approved procedures listed in 40 CFR 136.

Results for parameters requiring monitoring once per week shall be summarized and reported monthly on discharge monitoring report (DMR) forms. Parameters with annual monitoring requirements shall be summarized and reported on DMR forms once per calendar year. If no discharge occurs for an entire monitoring period, "no discharge" shall be reported on the DMR forms.

The Required Reporting Value (RRV) is the detection level that must be achieved in reporting surface water monitoring or compliance data to the Department as listed in Circular DEQ-7. The RRV is the Department's best determination of a level of analysis that can be achieved by the majority of the commercial, university, or governmental laboratories using EPA-approved methods or methods approved by the Department. As a minimum, the following constituents shall be monitored in the influent and effluent at the frequencies and with the types of measurements indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge.

Outfall 003, 004 and 005 Monitoring Requirements

Parameter	Unit	Sample Location	Sample Frequency	Sample Type ¹	RRV ²
Flow	gpm	Effluent	1/Week	Estimated	---
Total Organic Carbon	mg/L	Effluent	1/Week	Grab	---
Oil and Grease ³	mg/L	Effluent	1/Week	Grab	1
Oil and Grease, visual sheen	Presence	Effluent	1/Week	Visual	--
Biochemical Oxygen Demand, BOD ₅	mg/L	Effluent	1/Week	Grab	--
Chemical Oxygen Demand	mg/L	Effluent	1/Week	Grab	--
Total Suspended Solids	mg/L	Effluent	1/Week	Grab	
Ammonia, total as N	mg/L	Effluent	1/Week	Grab	0.05
Nitrate + Nitrite	mg/L	Effluent	1/Week	Grab	0.01
Nitrogen, total	mg/L	Effluent	1/Week	Grab	--
Phosphorus, total	mg/L	Effluent	1/Week	Grab	--
Hydrogen Sulfide	mg/L	Effluent	1/Week	Grab	0.001
pH	S.U.	Effluent	1/Week	Grab	--
Arsenic	µg/L	Effluent	1/Week	Grab	3
Chromium, total recoverable	µg/L	Effluent	1/Week	Grab	1
Chromium, hexavalent	µg/L	Effluent	1/Week	Grab	5
Selenium, total recoverable	µg/L	Effluent	1/Week	Grab	1

Footnotes:

1. See Definition section at end of permit for explanation of terms. See monitoring requirements narrative for additional options.
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. EPA method 1664, revision A. Hexane extraction.

Outfall 003, 004 and 005 Monitoring Requirements (cont.)

Parameter	Unit	Sample Location	Sample Frequency	Sample Type ¹	RRV ²
Copper, total recoverable	µg/L	Effluent	Annually	Grab	1
Lead, total recoverable	µg/L	Effluent	Annually	Grab	0.5
Mercury, total recoverable	µg/L	Effluent	Annually	Grab	0.01
Manganese, total recoverable	µg/L	Effluent	Annually	Grab	5
Nickel, total recoverable	µg/L	Effluent	Annually	Grab	10
Total Phenols	µg/L	Effluent	Annually	Grab	10
Anthracene	µg/L	Effluent	Annually	Grab	0.2
Benzene	ug/L	Effluent	Annually	Grab	0.5
Toluene	µg/L	Effluent	Annually	Grab	0.5
Benzo(ghi)perylene	µg/L	Effluent	Annually	Grab	10
Ethylbenzene	µg/L	Effluent	Annually	Grab	0.5
Napthalene	µg/L	Effluent	Annually	Grab	10
Phenanthrene	µg/L	Effluent	Annually	Grab	0.25
Xylene	µg/L	Effluent	Annually	Grab	1.5
Styrene	µg/L	Effluent	Annually	Grab	0.5
Tetrachlorethylene	µg/L	Effluent	Annually	Grab	0.5
Whole Effluent Toxicity, acute ³	% Effluent	Effluent	Annually	Grab	--

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. WET monitoring is required at Outfall 004 only. If there is no discharge from Outfall 004 for the entire calendar year, the annual WET sample may be collected from either Outfall 003 or Outfall 005.

VII. Special Conditions

Standard storm water language regarding the development of a SWPPP and the implementation/maintenance of storm water BMP reports will also be included in the modified permit.



MEMO

TO: Ben Reed, Hearing Examiner
Board of Environmental Review

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

DATE: August 26, 2014

SUBJECT: Board of Environmental Review Case No. BER 2014-06 WQ

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF:
COLUMBIA FALLS ALUMINUM COMPANY'S
(CFAC) APPEAL OF DEQ'S
MODIFICATIONS OF MONTANA POLLUTANT
DISCHARGE ELIMINATION SYSTEM PERMIT
NO. MT0030066, COLUMBIA FALLS,
FLATHEAD COUNTY, MT.

Case No. BER 2014-06 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

Jon Kenning, Bureau Chief
Water Protection Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

c: Catherine A. Laughner, Attorney for Appellant

BER 2014-06 WQ
Filed with the

MONTANA BOARD OF
ENVIRONMENTAL REVIEW
This 22nd day of August 2014
at Bozeman at 11:47 a.m.
By: [Signature]

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Attorneys for Columbia Falls Aluminum Company

STATE OF MONTANA, BOARD OF ENVIRONMENTAL REVIEW

IN THE MATTER OF:

COLUMBIA FALLS ALUMINUM
COMPANY'S APPEAL OF
MONTANA POLLUTANT DISCHARGE
ELIMINATION SYSTEM
PERMIT NO. MT0030066

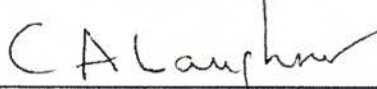
NOTICE OF APPEAL AND
REQUEST FOR HEARING

Applicant Columbia Falls Aluminum Company ("CFAC"), by and through its counsel Catherine A. Laughner and W. John Tietz of the law firm Browning, Kaleczyc, Berry & Hoven, P.C., pursuant to Mont. Code Ann. § 75-5-403 and ARM 17.30.1370(4), hereby appeals the proposed Montana Pollution Discharge Elimination System Permit No. MT0030066 (attached as Exhibit 1), modified by the Montana Department of Environmental Quality on July 25, 2014, and requests a hearing before the Board of Environmental Review. Specifically, CFAC appeals the following elements of the Proposed Permit:

- 1) Changes to the previously designated mixing zones;
- 2) The description of Outfall 006;
- 3) Failure of the permit to account for treatment achieved by the pond system and by attenuation of pollutants by natural soil and groundwater;
- 4) Compliance point for the acute aquatic life standard for total cyanide; and
- 5) Any other elements inconsistent with applicable laws and rules.

Respectfully submitted this 22nd day of August, 2014.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.



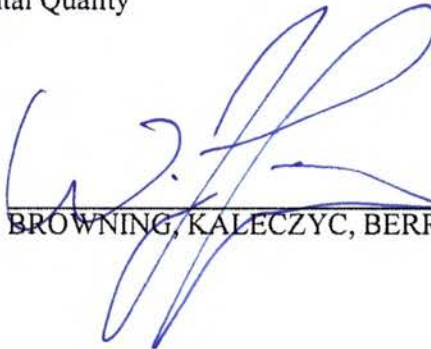
Catherine A. Laughner
W. John Tietz

Attorneys for Columbia Falls Aluminum Company

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of August, 2014, a true copy of the foregoing was mailed by first-class mail, postage prepaid, addressed as follows:

Kurt R. Moser, Legal Counsel
Montana Department of Environmental Quality
1520 E. Sixth Avenue
P. O. Box 200901
Helena, MT 59620-0901



BROWNING, KALECZYC, BERRY & HOVEN, P.C.

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.*,

Columbia Falls Aluminum Company, LLC

is authorized to discharge from its **Columbia Falls Aluminum Company**

located at **2000 Aluminum Drive, Columbia Falls, MT**

to receiving waters named, **ground water discharging to the Flathead River**

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

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

This permit and the authorization to discharge shall expire at midnight, **August 31, 2019.**

FOR THE MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY



Jon Kenning, Chief
Water Protection Bureau
Permitting & Compliance Division

Issuance Date: July 25, 2014

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I. EFFLUENT LIMITATIONS, MONITORING REQUIREMENTS & OTHER CONDITIONS

A. Description of Discharge Points and Mixing Zones

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	Located at:
002 - Anode Paste Plant Briquette Cooling Water (Internal Monitoring Point)		
	Location: Internal monitoring point at tank after end of the main briquette cooling belt, prior to dilution.	48°23'43.9"N latitude, -114°8'9.9"W longitude
	Mixing Zone: None	
	Treatment Works: 0.525 million gallons per day (mgd) average flow. No treatment.	
004 - Aluminum Casting Contact Chilling Water (Internal Monitoring Point)		
	Location: Internal monitoring point at one of three casting pits, prior to dilution.	48°23'34.5"N latitude, -114°8'5.3"W longitude
	Mixing Zone: None	
	Treatment Works: 1.6 mgd average flow. No treatment.	
005 - Domestic Sewage Treatment (Internal Monitoring Point)		
	Location: Internal monitoring point at end of package sewage treatment plant, prior to dilution.	48°23'24.9"N latitude, -114°8'18.1"W longitude
	Mixing Zone: None	
	Treatment Works: 0.062 mgd average flow. Solids removal, aeration, chlorination.	
006 - Ground Water Seep		
	Location: Daylighting of ground water at discrete seep which discharges to Flathead River.	48°23'22"N latitude, -114°8'29"W longitude
	Mixing Zone: Granted chronic dilution of 10%, no acute dilution. (See mixing zone delineation in Figure 1.)	
	Treatment Works: Unknown average flow. No treatment.	
007 - North Ponds		
	Location: At the end of the pipe/ditch discharging into the North Ponds, which ultimately discharges to the Flathead River.	48°23'47.0"N latitude, -114°8'14.1"W longitude
	Mixing Zone: Granted chronic dilution of 10%, no acute dilution. (See mixing zone delineation in Figures 2 & 3.)	
	Treatment Works: 1.81 mgd. No treatment.	

Outfall	Description	Located at:
008 – North Ponds		
	Location: At the end of the pipe/ditch discharging into the North Ponds, which ultimately discharges to the Flathead River.	48°23'46.8"N latitude, -114°8'4.5"W longitude
	Mixing Zone: Granted chronic dilution of 10%, no acute dilution.	
	Treatment Works: 0.009 mgd. No treatment.	
009 – South Ponds		
	Location: At the end of the pipe/ditch discharging into the South Ponds, which ultimately discharges to the Flathead River.	48°23'20.3"N latitude, -114°8'19.3"W longitude
	Mixing Zone: Granted chronic dilution of 10%, acute dilution only for ammonia and chlorine. (See mixing zone delineation in Figures 2&3.)	
	Treatment Works: 2.5 mgd. No treatment other than the sewage treatment plant (Outfall 005).	
010 – West Pond		
	Location: At the end of the pipe/ditch discharging into the West Pond, which ultimately discharges to the Flathead River.	48°23'38.0"N latitude, -114°8'26.0"W longitude
	Mixing Zone: Granted chronic dilution of 10%, no acute dilution.	
	Treatment Works: 0.00012 mgd. No treatment.	
011 – Dry Wells		
	Location: At the end of the pipe/ditch discharging into dry wells, which ultimately discharge to the Flathead River.	48°23'43.7"N latitude, -114°8'6.0"W longitude
	Mixing Zone: Granted chronic dilution of 10%, no acute dilution.	
	Treatment Works: 0.00004 mgd. No treatment.	
012 – Dry Well		
	Location: At the end of the pipe/ditch discharging into a dry well, which ultimately discharges to the Flathead River.	48°23'34.2"N latitude, -114°8'16.6"W longitude
	Mixing Zone: Granted chronic dilution of 10%, no acute dilution.	
	Treatment Works: 0.014 mgd. No treatment.	
013 – Head Tank Cleaning		
	Location: At the end of the pipe discharging to the ground, which ultimately discharges to the Flathead River.	48°23'28.9"N latitude, -114°7'37.6"W longitude
	Mixing Zone: Granted chronic dilution of 10%, acute dilution of 1%. (See mixing zone delineation in Figures 2&3.)	
	Treatment Works: 0.0005 mgd. No treatment.	

B. Effluent Limitations

Outfall 002 - Anode Casting Internal Monitoring Point

The quality of effluent discharged to Outfall 002 shall, as a minimum, meet the limitations as set forth below, depending upon the number of lines in production.

Effluent Limits for Outfall 002			
Parameter and Parameter Code	Units	Daily Max.	Monthly Ave.
Full Production – 5 Potlines			
Benzo(a)pyrene (34247)	kg/day	0.003	0.001
Aluminum, Total Recoverable (01104)	kg/day	0.600	0.207
Antimony, Total Recoverable (01268)	kg/day	0.189	0.066
Nickel, Total Recoverable (01074)	kg/day	0.054	0.028
Fluoride (00949)	kg/day	5.84	2.01
Total Suspended Solids (TSS) (51530)	kg/day	1,846	695
pH (00400)	s.u.	Between 6.0 – 9.0 at all times	
4 Potlines			
Benzo(a)pyrene (34247)	kg/day	0.003	0.00088
Aluminum, Total Recoverable (01104)	kg/day	0.600	0.165
Antimony, Total Recoverable (01268)	kg/day	0.189	0.053
Nickel, Total Recoverable (01074)	kg/day	0.054	0.022
Fluoride (00949)	kg/day	5.84	1.61
Total Suspended Solids (TSS) (51530)	kg/day	1,477	556
pH (00400)	s.u.	Between 6.0 – 9.0 at all times	
3 Potlines			
Benzo(a)pyrene (34247)	kg/day	0.003	0.00066
Aluminum, Total Recoverable (01104)	kg/day	0.600	0.124
Antimony, Total Recoverable (01268)	kg/day	0.189	0.039
Nickel, Total Recoverable (01074)	kg/day	0.054	0.017
Fluoride (00949)	kg/day	5.84	1.21
Total Suspended Solids (TSS) (51530)	kg/day	1,107	417
pH (00400)	s.u.	Between 6.0 – 9.0 at all times	
2 Potlines			
Benzo(a)pyrene (34247)	kg/day	0.003	0.00044
Aluminum, Total Recoverable (01104)	kg/day	0.600	0.083
Antimony, Total Recoverable (01268)	kg/day	0.189	0.026
Nickel, Total Recoverable (01074)	kg/day	0.054	0.011
Fluoride (00949)	kg/day	5.84	0.806
Total Suspended Solids (TSS) (51530)	kg/day	738	278
pH (00400)	s.u.	Between 6.0 – 9.0 at all times	
1 Potline			
Benzo(a)pyrene (34247)	kg/day	0.003	0.00022
Aluminum, Total Recoverable (01104)	kg/day	0.600	0.041
Antimony, Total Recoverable (01268)	kg/day	0.189	0.013
Nickel, Total Recoverable (01074)	kg/day	0.054	0.0056
Fluoride (00949)	kg/day	5.84	0.403
Total Suspended Solids (TSS) (51530)	kg/day	369	139
pH (00400)	s.u.	Between 6.0 – 9.0 at all times	

As the facility is in shutdown mode at the time of renewal, the effluent limits for Outfall 002 are '0.' Any time production changes the facility must provide a 30-day advance notice to DEQ. At that time, the effluent limits for the anode casting plant corresponding to the appropriate level of production will be effective.

Outfall 004 – Aluminum Chilling Internal Monitoring Point

The quality of effluent discharged to Outfall 004 shall, as a minimum, meet the limitations as set forth below for the T-Bar Casting line and the Sow Casting line, depending upon the number of lines in production.

Effluent Limits for Outfall 004 (Internal Monitoring for T-Bar Casting)			
Parameter and Parameter Code	Units	Daily Max.	Ave. Monthly
Full Production – 5 Potlines			
Benzo(a)pyrene (34247)	kg/day	No Discharge	
Aluminum, Total Recoverable (01104)	kg/day	5.00	1.67
Antimony, Total Recoverable (01268)	kg/day	1.58	0.53
Nickel, Total Recoverable (01074)	kg/day	0.45	0.23
Fluoride (00949)	kg/day	48.65	16.27
Total Suspended Solids (TSS) (51530)	kg/day	1,846	695
pH (00400)	s.u.	Between 6.0 – 9.0 at all times	
4 Potlines			
Benzo(a)pyrene (34247)	kg/day	No Discharge	
Aluminum, Total Recoverable (01104)	kg/day	4.00	1.34
Antimony, Total Recoverable (01268)	kg/day	1.26	0.42
Nickel, Total Recoverable (01074)	kg/day	0.36	0.18
Fluoride (00949)	kg/day	38.92	13.01
Total Suspended Solids (TSS) (51530)	kg/day	1,477	556
pH (00400)	s.u.	Between 6.0 – 9.0 at all times	
3 Potlines			
Benzo(a)pyrene (34247)	kg/day	No Discharge	
Aluminum, Total Recoverable (01104)	kg/day	3.00	1.00
Antimony, Total Recoverable (01268)	kg/day	0.95	0.32
Nickel, Total Recoverable (01074)	kg/day	0.27	0.14
Fluoride (00949)	kg/day	29.19	9.76
Total Suspended Solids (TSS) (51530)	kg/day	1,107	417
pH (00400)	s.u.	Between 6.0 – 9.0 at all times	
2 Potlines			
Benzo(a)pyrene (34247)	kg/day	No Discharge	
Aluminum, Total Recoverable (01104)	kg/day	2.00	0.67
Antimony, Total Recoverable (01268)	kg/day	0.63	0.21
Nickel, Total Recoverable (01074)	kg/day	0.18	0.091
Fluoride (00949)	kg/day	19.46	6.51
Total Suspended Solids (TSS) (51530)	kg/day	738	278
pH (00400)	s.u.	Between 6.0 – 9.0 at all times	

Effluent Limits for Outfall 004 (Internal Monitoring for T-Bar Casting)			
Parameter and Parameter Code	Units	Daily Max.	Ave. Monthly
1 Potline			
Benzo(a)pyrene (34247)	kg/day	No Discharge	
Aluminum, Total Recoverable (01104)	kg/day	1.00	0.33
Antimony, Total Recoverable (01268)	kg/day	0.32	0.11
Nickel, Total Recoverable (01074)	kg/day	0.09	0.046
Fluoride (00949)	kg/day	9.73	3.25
Total Suspended Solids (TSS) (51530)	kg/day	369	139
pH (00400)	s.u.	Between 6.0 – 9.0 at all times	

Effluent Limits for Outfall 004 (Internal Monitoring for Sow Casting)			
Parameter and Parameter Code	Units	Daily Max.	Ave. Monthly
2.5 Potline-Equivalents			
Benzo(a)pyrene (34247)	kg/day	No Discharge	
Aluminum, Total Recoverable (01104)	kg/day	2.50	0.84
Antimony, Total Recoverable (01268)	kg/day	0.79	0.27
Nickel, Total Recoverable (01074)	kg/day	0.23	0.11
Fluoride (00949)	kg/day	24.33	8.13
Oil and Grease (00182)	kg/day	4.09	3.08
Total Suspended Solids (TSS) (51530)	kg/day	6.13	3.70
pH (00400)	s.u.	(1)	
Footnotes:			
1. The pH shall be maintained within the range of 7.0 to 10.0 at all times except for those situations when this waste is discharged separately and without commingling with any other wastewater in which case the pH shall be within the range of 6.0 to 10.0 at all times.			

As the facility is in shutdown mode at the time of renewal, the effluent limits for Outfall 004 are '0.' Any time production changes the facility must provide a 30-day advance notice to DEQ. At that time, the effluent limits corresponding to the appropriate level of production will be effective. A total of no more than five pot lines (both T-bar and sow) may be in operation on any day.

Outfall 005 – Sewage Treatment Plant

Effective immediately, the following limits apply after the sewage treatment plant:

Effluent Limits for Outfall 005 – Sewage Treatment Plant Effluent Limits			
Parameter and Parameter Code	Units	Average Weekly Limitation	Average Monthly Limitation
5-day Biochemical Oxygen Demand (BOD ₅) (00310)	mg/L	45	30
Total Suspended Solids (TSS) (51530)	mg/L	45	30
pH (00400)	s.u.	Between 6.0 to 9.0 at all times	

Outfall 006 – Ground Water Seep

Effective immediately and lasting the duration of this permit, the following effluent limits will apply to Outfall 006 at the ground water seep prior to discharge into the Flathead River:

Effluent Limits for Outfall 006			
Parameter	Units	Daily Max	Ave. Monthly
Aluminum, Dissolved	µg/L	143	71
Cyanide	µg/L	22	11

In addition, there shall be no acute toxicity in the effluent discharged by the facility from Outfall 006.

Outfall 007 – North Ponds

Effective immediately and lasting the duration of this permit, the following effluent limits will apply to Outfall 007 at the end of the pipe prior to discharge into the North Pond system:

Effluent Limits for Outfall 007			
Parameter	Units	Daily Max	Ave. Monthly
Aluminum, Dissolved	µg/L	152	49
Cyanide	µg/L	22	11

Outfall 009 – South Ponds

Effective immediately and lasting the duration of this permit, other than ammonia which is effective January 1, 2017, the following effluent limits will apply to Outfall 009 at the end of the pipe prior to discharge into the South Pond system:

Effluent Limits for Outfall 009			
Parameter	Units	Daily Max	Ave. Monthly
Aluminum, Dissolved	µg/L	118	78
Cyanide	µg/L	19	9.5
Ammonia ⁽¹⁾	mg/L	13.5	6.7
Footnote:			
1. The ammonia limits become effective January 1, 2017.			

Outfall 013 – Head Tank Cleaning

Effective immediately and lasting the duration of this permit, the following effluent limits will apply to Outfall 013 at the end of the pipe prior to discharge onto the ground: TRC will be limited to <0.1 mg/L.

C. Monitoring Requirements

1. Effluent 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; samples or measurements shall be representative of the volume and nature of the monitored discharge. 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.

All analytical procedures must comply with the specifications of 40 CFR Part 136 and the analysis must meet any Required Reporting Values (RRVs) listed in Circular DEQ-7 unless otherwise specified. Samples shall be collected, preserved and analyzed in accordance with approved procedures listed in 40 CFR 136.

Outfall 002 - Anode Casting Internal Monitoring Point

Outfall 002 - Summary of Monitoring Requirements			
Parameter	Units	Monitoring Frequency ⁽¹⁾	Type
Flow	mgd	Continuous	Instantaneous
Duration of Discharge	# days	Daily	Calculated
Aluminum, Total Recoverable	µg/L	Monthly	Composite
	kg/day	Monthly	Calculated
Antimony, Total Recoverable	µg/L	Monthly	Composite
	kg/day	Monthly	Calculated
Nickel, Total Recoverable	µg/L	Monthly	Composite
	kg/day	Monthly	Calculated
Benzo(a)pyrene	µg/L	Monthly	Composite
	kg/day	Monthly	Calculated
Fluoride	µg/L	Monthly	Composite
	kg/day	Monthly	Calculated
Total Suspended Solids	mg/L	Monthly	Composite
	kg/day	Monthly	Calculated
pH	s.u.	Monthly	Instantaneous
Cyanide	µg/L	Quarterly	Grab
Footnotes:			
1. Monitoring required only during periods of discharge.			

Outfall 004 – Aluminum Chilling Internal Monitoring Point

Outfall 004 - Summary of Monitoring Requirements			
Parameter	Units	Monitoring Frequency ⁽¹⁾	Type
Flow	mgd	Continuous	Instantaneous
Duration of Discharge	# days	Daily	Calculated
Aluminum, Total Recoverable	µg/L	Monthly	Composite
	kg/day	Monthly	Calculated
Antimony, Total Recoverable	µg/L	Monthly	Composite
	kg/day	Monthly	Calculated
Nickel, Total Recoverable	µg/L	Monthly	Composite
	kg/day	Monthly	Calculated
Benzo(a)pyrene	µg/L	Monthly	Composite
	kg/day	Monthly	Calculated
Fluoride	µg/L	Monthly	Composite
	kg/day	Monthly	Calculated
Total Suspended Solids	mg/L	Monthly	Composite
	kg/day	Monthly	Calculated
pH	s.u.	Monthly	Instantaneous
Oil & Grease	mg/L	Monthly	Grab
Cyanide	µg/L	Quarterly	Grab
Footnotes:			
1. Monitoring required only during periods of discharge.			

Outfall 005 – Sewage Treatment Plant

Outfall 005 - Summary of Monitoring Requirements			
Parameter	Units	Monitoring Frequency	Type
Flow	mgd	Continuous	Instantaneous
5-Day Biochemical Oxygen Demand (BOD ₅)	mg/L	Monthly	Grab
Total Suspended Solids	mg/L	Monthly	Grab
pH	s.u.	Monthly	Instantaneous

Outfall 006 – Ground Water Seep

Outfall 006 Ground Water Seep - Summary of Monitoring Requirements			
Parameter	Units	Monitoring Frequency ⁽¹⁾	Type
Flow	mgd	Monthly	Estimate
Aluminum, Dissolved	µg/L	Monthly	Grab
Cyanide	µg/L	Monthly	Grab
pH	s.u.	Semi-annual	Instantaneous
Antimony, Total Recoverable	µg/L	Semi-annual	Grab
Benzo(a)pyrene	µg/L	Semi-annual	Grab
Nickel, Total Recoverable	µg/L	Semi-annual	Grab
Fluoride	µg/L	Semi-annual	Grab
WET – Two Species	Pass/Fail	Quarterly ⁽²⁾	Grab
Footnotes:			
1. Monitoring required immediately upon the effective date of this permit.			
2. WET sampling is required starting the first full calendar quarter following the effective date of the permit. If the results for four consecutive quarters of testing indicate no acute toxicity, the permittee may request a reduction to quarterly acute toxicity testing on only one species on an alternating basis.			

Outfall 007 – North Ponds

Outfall 007 North Ponds - Summary of Monitoring Requirements			
Parameter	Units	Monitoring Frequency	Type
Flow ⁽¹⁾	mgd	Continuous	Instantaneous
Duration of Discharge	# days	Daily	Calculated
Aluminum, Dissolved	µg/L	Monthly	Grab
Cyanide	µg/L	Monthly	Grab
Oil & Grease	mg/L	Semi-annual	Grab
pH	s.u.	Semi-annual	Instantaneous
Antimony, Total Recoverable	µg/L	Semi-annual	Grab
Benzo(a)pyrene	µg/L	Semi-annual	Grab
Copper, Total Recoverable	µg/L	Semi-annual	Grab
Nickel, Total Recoverable	µg/L	Semi-annual	Grab
Fluoride	µg/L	Semi-annual	Grab
Footnotes:			
1. Effective immediately, the discharge flow rate for Outfall 007 must be provided by either a monitor or an estimate. Upon initializing production, the discharge flow rate must be provided by monitoring.			

Outfall 008 – North Ponds

Outfall 008 North Ponds - Summary of Monitoring Requirements			
Parameter	Units	Monitoring Frequency	Type
Flow ⁽¹⁾	mgd	Continuous	Instantaneous
Duration of Discharge	# days	Daily	Calculated
TSS	mg/L	Semi-annual	Grab
pH	s.u.	Semi-annual	Instantaneous
Aluminum, Dissolved	µg/L	Semi-annual	Grab
Benzo(a)pyrene	µg/L	Semi-annual	Grab
Cyanide	µg/L	Semi-annual	Grab
Antimony, Total Recoverable	µg/L	Semi-annual	Grab
Copper, Total Recoverable	µg/L	Semi-annual	Grab
Nickel, Total Recoverable	µg/L	Semi-annual	Grab
Fluoride	µg/L	Semi-annual	Grab
Footnotes:			
1. Effective immediately, the discharge flow rate for Outfall 008 must be provided by either a monitor or an estimate. Upon initializing production, the discharge flow rate must be provided by monitoring.			

Outfall 009 – South Ponds

Outfall 009 South Ponds - Summary of Monitoring Requirements			
Parameter	Units	Monitoring Frequency	Type
Flow ⁽¹⁾	mgd	Continuous	Instantaneous
Duration of Discharge	# days	Daily	Calculated
Aluminum, Dissolved	µg/L	Monthly	Grab
Cyanide	µg/L	Monthly	Grab
Ammonia	mg/L	Monthly	Grab
pH	s.u.	Semi-annual	Instantaneous
Oil & Grease	mg/L	Semi-annual	Grab
Chlorine, Total Residual	µg/L	Semi-annual	Grab
<i>E. coli</i> bacteria	cfu/100 mL	Semi-annual	Grab
Antimony, Total Recoverable	µg/L	Semi-annual	Grab
Benzo(a)pyrene	µg/L	Semi-annual	Grab
Copper, Total Recoverable	µg/L	Semi-annual	Grab
Fluoride	µg/L	Semi-annual	Grab
Nickel, Total Recoverable	µg/L	Semi-annual	Grab
Nitrate + Nitrite	mg/L	Semi-annual	Grab
Total Kjeldahl Nitrogen	mg/L	Semi-annual	Grab
Total Nitrogen	mg/L	Semi-annual	Calculated
Total Phosphorus	mg/L	Semi-annual	Grab
Footnotes:			
1. Effective immediately, the discharge flow rate for Outfall 009 must be provided by either a monitor or an estimate. Upon initializing production, the discharge flow rate must be provided by monitoring.			

Outfall 010 – West Pond

Outfall 010 - Summary of Monitoring Requirements			
Parameter	Units	Monitoring Frequency	Type
Flow ⁽¹⁾	mgd	Continuous	Instantaneous
Duration of Discharge	# days	Daily	Calculated
pH	s.u.	Semi-annual	Instantaneous
Aluminum, Dissolved	µg/L	Semi-annual	Grab
Benzo(a)pyrene	µg/L	Semi-annual	Grab
Cyanide	µg/L	Semi-annual	Grab
Antimony, Total Recoverable	µg/L	Semi-annual	Grab
Copper, Total Recoverable	µg/L	Semi-annual	Grab
Iron, Total Recoverable	µg/L	Semi-annual	Grab
Nickel, Total Recoverable	µg/L	Semi-annual	Grab
Fluoride	µg/L	Semi-annual	Grab
Footnotes:			
1. Effective immediately, the discharge flow rate for Outfall 010 must be provided by either a monitor or an estimate. Upon initializing production, the discharge flow rate must be provided by monitoring.			

Outfall 011 – Dry Wells

Outfall 011 - Summary of Monitoring Requirements			
Parameter	Units	Monitoring Frequency	Type
Flow ⁽¹⁾	mgd	Continuous	Instantaneous
Duration of Discharge	# days	Daily	Calculated
pH	s.u.	Semi-annual	Instantaneous
Aluminum, Dissolved	µg/L	Semi-annual	Grab
Benzo(a)pyrene	µg/L	Semi-annual	Grab
Cyanide	µg/L	Semi-annual	Grab
Antimony, Total Recoverable	µg/L	Semi-annual	Grab
Copper, Total Recoverable	µg/L	Semi-annual	Grab
Iron, Total Recoverable	µg/L	Semi-annual	Grab
Nickel, Total Recoverable	µg/L	Semi-annual	Grab
Fluoride	µg/L	Semi-annual	Grab
Footnotes:			
1. Effective immediately, the discharge flow rate from Outfall 011 must be provided by either a monitor or an estimate. Upon initializing production, the discharge flow rate must be provided by monitoring.			

Outfall 012 – Dry Well

Outfall 012 - Summary of Monitoring Requirements			
Parameter	Units	Monitoring Frequency	Type
Flow ⁽¹⁾	mgd	Continuous	Instantaneous
Duration of Discharge	# days	Daily	Calculated
pH	s.u.	Semi-annual	Instantaneous
Aluminum, Dissolved	µg/L	Semi-annual	Grab
Benzo(a)pyrene	µg/L	Semi-annual	Grab
Cyanide	µg/L	Semi-annual	Grab
Antimony, Total Recoverable	µg/L	Semi-annual	Grab
Copper, Total Recoverable	µg/L	Semi-annual	Grab
Nickel, Total Recoverable	µg/L	Semi-annual	Grab
Fluoride	µg/L	Semi-annual	Grab
Footnotes:			
1. Effective immediately, the discharge flow rate From Outfall 012 must be provided by either a monitor or an estimate. Upon initializing production, the discharge flow rate must be provided by monitoring.			

Outfall 013 – Head Tank Cleaning

Outfall 013 - Summary of Monitoring Requirements			
Parameter	Units	Monitoring Frequency	Type
Flow	mgd	Monthly	Estimate
Duration of Discharge	# days	Daily	Calculated
Total Residual Chlorine (TRC)	µg/L	Monthly	Grab
pH	s.u.	Semi-annual	Instantaneous

Unless flow-proportioned sampling is requested in writing, composite samples shall, as a minimum, be composed of four or more discrete aliquots (samples) of equal volume and time collected in a 24 hour period. The aliquots shall be combined in a single container for analysis (simple composite). The time between the collection of the first sample and the last sample shall not be less than six (6) hours nor more than 24 hours.

2. Upstream Monitoring Requirements

The permittee shall monitor the following parameters from a monitoring site upstream of any expected influence from the process wastewater or ground water. The analysis must meet the RRVs as listed in the most recent Circular DEQ-7.

Flathead River Upstream of Facility - Summary of Monitoring Requirements			
Parameter	Units	Monitoring Frequency ⁽¹⁾	Type
Aluminum, Dissolved	µg/L	Semi-annual	Grab
Antimony, Total Recoverable	µg/L	Semi-annual	Grab
Copper, Total Recoverable	µg/L	Semi-annual	Grab
Nickel, Total Recoverable	µg/L	Semi-annual	Grab
Benzo(a)pyrene	µg/L	Semi-annual	Grab
Fluoride	µg/L	Semi-annual	Grab
Cyanide	µg/L	Semi-annual	Grab
Temperature	deg C	Semi-annual	Grab
pH	s.u.	Semi-annual	Instantaneous
Ammonia	mg/L	Semi-annual	Grab
Nitrate + Nitrite	mg/L	Semi-annual	Grab
Total Kjeldahl Nitrogen	mg/L	Semi-annual	Grab
Total Nitrogen	mg/L	Semi-annual	Calculated
Total Phosphorus	mg/L	Semi-annual	Grab

3. Whole Effluent Toxicity (WET) Monitoring at Outfall 006– Acute Toxicity

Starting in the first calendar quarter following the effective date of the permit, the permittee shall, at least once each quarter conduct an acute static replacement toxicity test on a grab sample of discharge from the ground water seep at Outfall 006. Testing will employ two species per quarter and will consist of five (5) effluent concentrations (100, 50, 25, 12.5, 6.25 percent effluent) and a control. Dilution water and the control shall consist of the receiving water.

The static toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of *Methods for Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms*, EPA-600/4-90/027 and the *Region VIII EPA NPDES Acute Test Conditions-Static Renewal Whole Effluent Toxicity*. The permittee shall conduct an acute 48-hour static renewal toxicity test using *Ceriodaphnia sp.* and an acute 96-hour static renewal toxicity test using fathead minnows (*Pimephales promelas*). The control of pH in the toxicity test utilizing CO₂ enriched atmospheres is allowed to prevent rising pH drift. The target pH selected must represent the pH value of the receiving water at the time of sample collection.

Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration. If more than 10 percent control mortality occurs, the test is considered invalid and shall be repeated until satisfactory

control survival is achieved, unless a specific individual exception is granted by DEQ. This exception may be granted if less than 10 percent mortality was observed at the dilutions containing high effluent concentrations.

If acute toxicity occurs in a routine test, an additional test shall be conducted within 14 days of the date of the initial sample. Should acute toxicity occur in the second test, testing shall occur once a month until further notified by DEQ. In all cases, the results of all toxicity tests must be submitted to DEQ in accordance with Part II of this permit. Further, should acute toxicity occur in a routine test and is confirmed as persistent by the additional test, a TIE-TRE shall be undertaken by the permittee as required by Part I.D.1.

The quarterly WET results from the laboratory shall be reported along with the Discharge Monitoring Report (DMR) form submitted for the end of the reporting calendar quarter (e.g., whole effluent results for the reporting quarter ending March 31 shall be reported with the March DMR due April 28th with the remaining quarterly reports submitted with the June, September, and December DMR's). The format for the laboratory report shall be consistent with the latest revision of 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 testing indicate no acute toxicity, the permittee may request a reduction to quarterly acute toxicity testing on only one species on an alternating basis. DEQ 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.

D. Special Conditions

1. Toxicity Reduction Evaluation / Toxicity Identification Evaluation

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

2. Storm Water Management

Storm water effluent quality is typically managed through the implementation of Storm Water Pollution Prevention Plans (SWPPPs) and Best Management Practices (BMPs) and, where necessary, effluent monitoring requirements. The permittee shall operate the facility in accordance with a current SWPPP. The SWPPP shall be updated as soon as possible but no later than January 1, 2015.

- a. The SWPPP and associated documentation, as well as BMPs developed and implemented, must be accomplished using good standard engineering practices.
- b. The SWPPP must be retained onsite.
- c. The SWPPP must be signed in accordance with the signatory requirements stated in the renewed MPDES permit Part IV.G.
- d. The SWPPP must be made available upon request of DEQ staff, such as during inspections.
- e. The permittee must develop and maintain the SWPPP in accordance with the "Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity," MPDES MTR000000, Part 3.1.

The permittee must notify DEQ after the SWPPP has been updated, by no later than January 28, 2015.

E. Compliance Schedule

1. Upstream Monitoring.

Within thirty (30) days of the effective date of this permit, the permittee shall submit both latitude/longitude coordinates and a diagram of the upstream sampling location to DEQ. The submittal shall include a discussion on how the permittee has ensured the monitoring will be representative of the background concentration in Flathead River without any influence from their site.

2. Ammonia.

The Outfall 009 ammonia effluent limits will become effective **January 1, 2017**. Until this date, the permittee shall submit an annual report dated no later than the 28th of January following each year, describing the actions taken in the previous year and proposed for the upcoming year, to ensure compliance with the new limits.

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

A. Representative Sampling

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

B. Monitoring Procedures

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

C. Penalties for Tampering

The Montana Water Quality Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

D. Reporting of Monitoring Results

Monitoring results must be reported on a Discharge Monitoring Report (DMR) EPA form 3320-1. Monitoring results must be submitted in either electronic or paper format and be postmarked no later than the 28th day of the month following the end of the monitoring period. Whole effluent toxicity (biomonitoring) results must be reported with copies of the laboratory analysis report on forms from the most recent version of EPA Region VIII's "Guidance for Whole Effluent Reporting." If no discharge occurs during the reporting period, "no discharge" must be reported on the report form.

Legible copies of these, and all other reports required herein, must be signed and certified in accordance with Part IV.G 'Signatory Requirements' of this permit and submitted to DEQ at the following address:

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

E. Compliance Schedules

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

F. Additional Monitoring by the Permittee

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

G. Records Contents

Records of monitoring information shall include:

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

H. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of DEQ at any time. Data collected on site, copies of Discharge Monitoring Reports, and a copy of this MPDES permit must be maintained on site during the duration of activity at the permitted location.

I. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee shall report any serious incidents of noncompliance as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the Water Protection Bureau at (406) 444-3080 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;
 - 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. DEQ may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Protection Bureau, by phone, (406) 444-3080.
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 DEQ or the Director, or an authorized representative thereof, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance, any substances or parameters at any location.

III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give DEQ or the Regional Administrator advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.

B. Penalties for Violations of Permit Conditions

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

C. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. However, the permittee shall operate, as a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

F. Removed Substances

Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard.

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III.G.2 and III.G.3 of this permit.
2. Notice:
 - a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.
 - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.I of this permit, "Twenty-four Hour Reporting".
3. Prohibition of bypass:
 - a. Bypass is prohibited and DEQ 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. DEQ may approve an anticipated bypass, after considering its adverse effects, if DEQ determines that it will meet the three conditions listed above in Part III.G.3.a of this permit.

H. Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part III.H.2 of this permit are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e. Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations).
2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required under Part II.I of this permit, "Twenty-four Hour Notice of Noncompliance Reporting"; and
 - d. The permittee complied with any remedial measures required under Part III.D of this permit, "Duty to Mitigate".
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

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

J. Changes in Discharge of Toxic Substances

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

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - a. One hundred micrograms per liter (100 µg/L);

- b. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - d. The level established by DEQ in accordance with 40 CFR 122.44(f).
2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
- a. Five hundred micrograms per liter (500 µg/L);
 - b. One milligram per liter (1 mg/L) for antimony;
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - d. The level established by DEQ in accordance with 40 CFR 122.44(f).

IV. GENERAL REQUIREMENTS

A. Planned Changes

The permittee shall give notice to DEQ as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit.

B. Anticipated Noncompliance

The permittee shall give advance notice to DEQ 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 DEQ, within a reasonable time, any information which DEQ 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 DEQ, 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 DEQ, 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 DEQ or the EPA shall be signed and certified.

1. All permit applications shall be signed as follows:

- a. For a corporation: by a responsible corporate officer;

- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
 - c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.
2. All reports required by the permit and other information requested by DEQ 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 DEQ; 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 DEQ prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. Certification. Any person signing a document under this section shall make the following certification:

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

H. Penalties for Falsification of Reports

The Montana Water Quality Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring

reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than \$25,000 per violation, or by imprisonment for not more than six months per violation, or by both.

- I. Availability of Reports
Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of DEQ. 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 DEQ 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. DEQ 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, DEQ may:

1. Impose an additional assessment computed at the rate established under ARM 17.30.201; and,
2. Suspend the processing of the application for a permit or authorization or, if the nonpayment involves an annual permit fee, suspend the permit, certificate or authorization for which the fee is required. DEQ may lift suspension at any time up to one year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments and interest imposed under this subsection. 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, DEQ 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 DEQ and/or EPA for incorporation in this permit.
4. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit.
5. Toxic Pollutants: A toxic standard or prohibition is established under Section 307(a) of the Clean Water Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit.
6. Toxicity Limitation: Change in the whole effluent protocol, or any other conditions related to the control of toxicants have taken place, or if one or more of the following events have occurred:

- a. Toxicity was detected late in the life of the permit near or past the deadline for compliance.
- b. The TRE/TIE results indicated that compliance with the toxic limits will require an implementation schedule past the date for compliance.
- c. The TRE/TIE results indicated that the toxicant(s) represent pollutant(s) that may be controlled with specific numerical limits.
- d. Following the implementation of numerical controls on toxicants, a modified whole effluent protocol is needed to compensate for those toxicants that are controlled numerically.
- e. The TRE/TIE revealed other unique conditions or characteristics which, in the opinion of DEQ, justify the incorporation of unanticipated special conditions in the permit.

V. DEFINITIONS

1. **"Act"** means the Montana Water Quality Act, Title 75, chapter 5, MCA.
2. **"Administrator"** means the administrator of the United States Environmental Protection Agency.
3. **"Acute Toxicity"** occurs when 50 percent or more mortality is observed for either species (See Part I.C of this permit) at any effluent concentration. Mortality in the control must simultaneously be 10 percent or less for the effluent results to be considered valid.
4. **"Arithmetic Mean" or "Arithmetic Average"** for any set of related values means the summation of the individual values divided by the number of individual values.
5. **"Average Monthly Limitation"** means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.
6. **"Bypass"** means the intentional diversion of waste streams from any portion of a treatment facility.
7. **"Chronic Toxicity"** means when the survival, growth, or reproduction, as applicable, for either test species, at the effluent dilution(s) designated in this permit (see Part I.C.), is significantly less (at the 95 percent confidence level) than that observed for the control specimens.
8. **"Composite samples"** means a sample composed of 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.
9. **"Daily Discharge"** means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
10. **"Daily Maximum Limit"** means the maximum allowable discharge of a pollutant during a calendar day. Expressed as units of mass, the daily discharge is cumulative mass discharged over the course of the day. Expressed as a concentration, it is the arithmetic average of all measurements taken that day.

11. **"Department"** means the Montana Department of Environmental Quality (DEQ). Established by 2-15-3501, MCA.
12. **"Director"** means the Director of the Montana Department of Environmental Quality.
13. **"Discharge"** means the injection, deposit, dumping, spilling, leaking, placing, or failing to remove any pollutant so that it or any constituent thereof may enter into state waters, including ground water.
14. **"EPA"** means the United States Environmental Protection Agency.
15. **"Federal Clean Water Act"** means the federal legislation at 33 USC 1251, *et seq.*
16. **"Grab Sample"** means a sample which is taken from a waste stream on a one-time basis without consideration of flow rate of the effluent or without consideration for time.
17. **"Instantaneous Maximum Limit"** means the maximum allowable concentration of a pollutant determined from the analysis of any discrete or composite sample collected, independent of the flow rate and the duration of the sampling event.
18. **"Instantaneous Measurement"**, for monitoring requirements, means a single reading, observation, or measurement.
19. **"Minimum Level"** (ML) of quantitation means the lowest level at which the entire analytical system gives a recognizable signal and acceptable calibration point for the analyte, as determined by the procedure set forth at 40 CFR 136. In most cases the ML is equivalent to the Required Reporting Value (RRV) unless other wise specified in the permit. (ARM 17.30.702(22))
19. **"Mixing zone"** means a limited area of a surface water body or aquifer where initial dilution of a discharge takes place and where certain water quality standards may be exceeded.
20. **"Nondegradation"** means the prevention of a significant change in water quality that lowers the quality of high-quality water for one or more parameters. Also, the prohibition of any increase in discharge that exceeds the limits established under or determined from a permit or approval issued by DEQ prior to April 29, 1993.
21. **"Regional Administrator"** means the administrator of Region VIII of EPA, which has jurisdiction over federal water pollution control activities in the state of Montana.
22. **"Severe property damage"** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be

expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- 23. **"TIE"** means a toxicity identification evaluation.
- 24. **"TMDL"** means the total maximum daily load limitation of a parameter, representing the estimated assimilative capacity for a water body before other designated uses are adversely affected. Mathematically, it is the sum of wasteload allocations for point sources, load allocations for non-point and natural background sources, and a margin of safety.
- 25. **"TRE"** means a toxicity reduction evaluation.
- 26. **"TSS"** means the pollutant parameter total suspended solids.
- 27. **"Upset"** means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

Figure 1: CFAC Outfall 006 Surface Water Mixing Zone Delineation

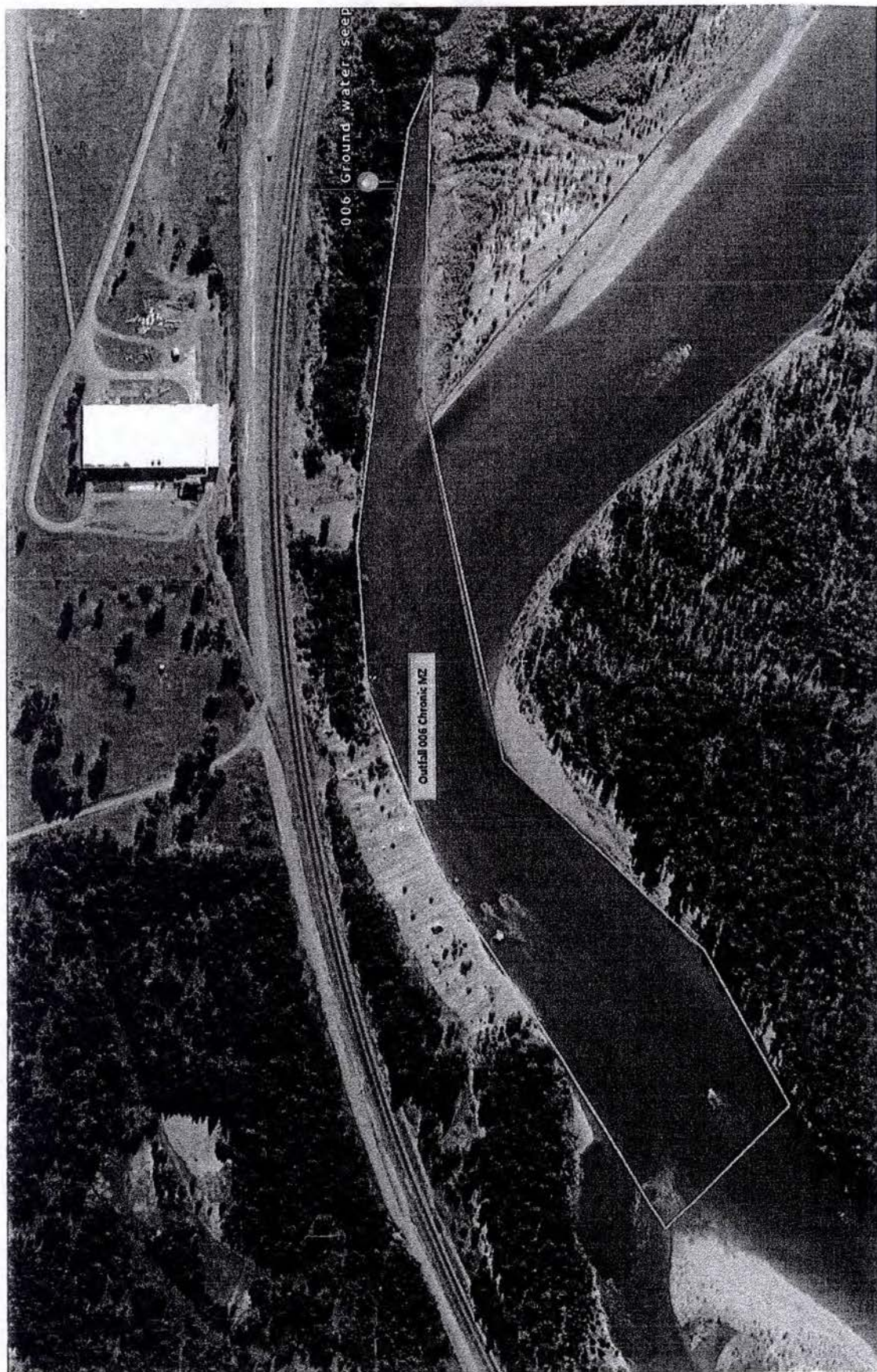


Figure 2: CFAC Surface Water Mixing Zone Delineations

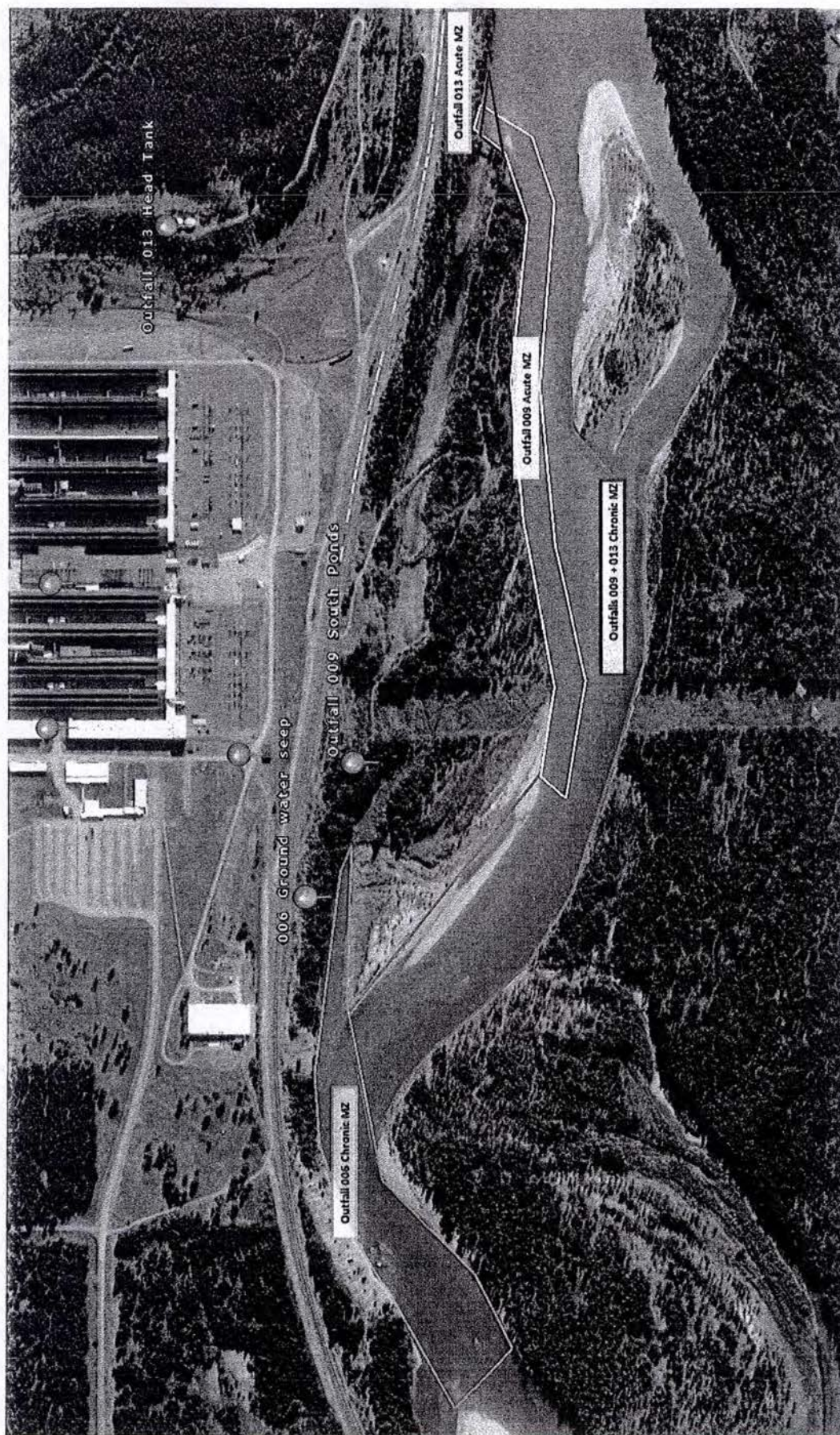
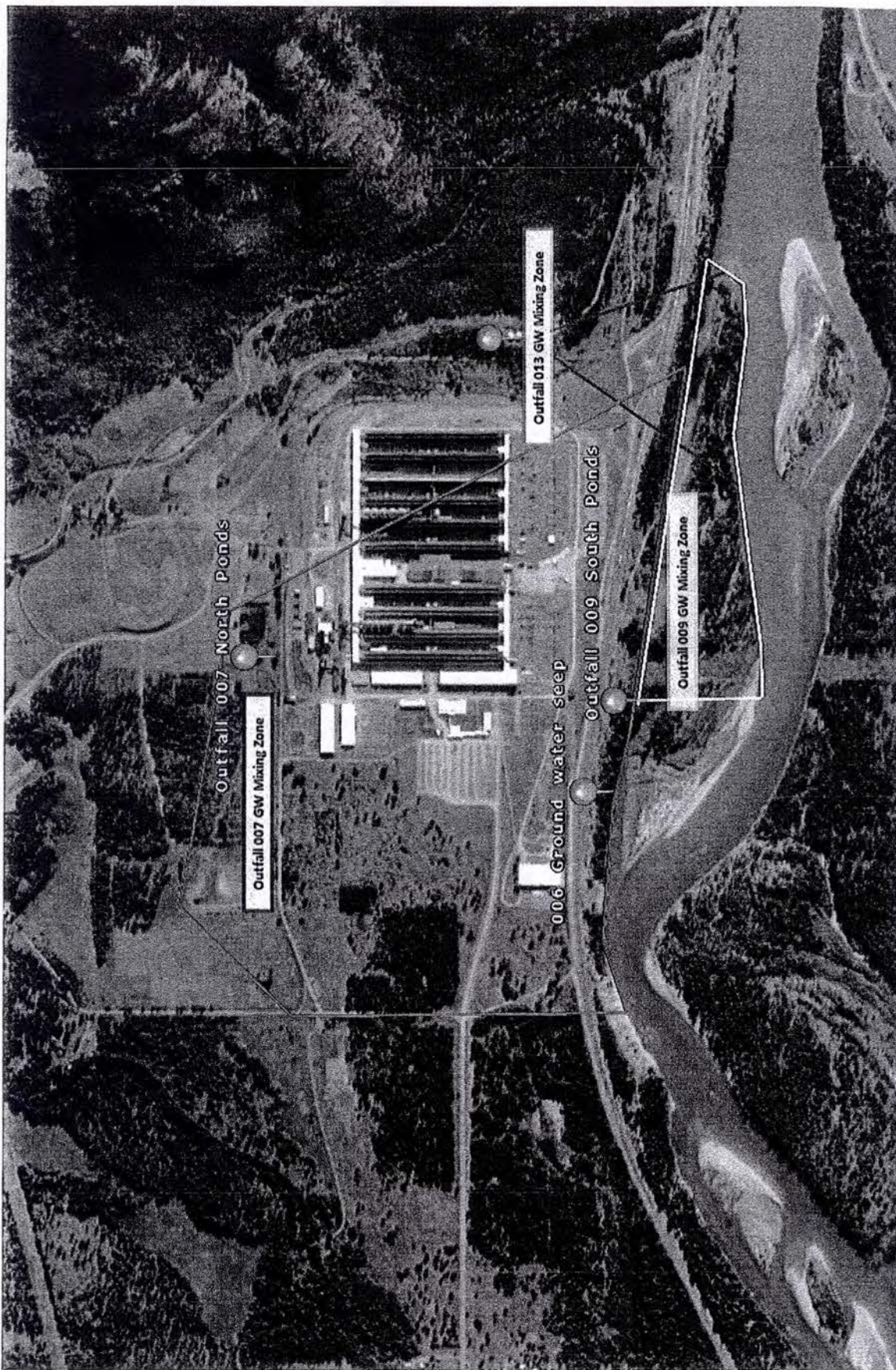


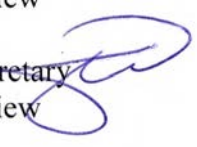
Figure 3: CFAC Ground Water Mixing Zone Delineation





MEMO

TO: Benjamin Reed, Hearing Examiner
Board of Environmental Review

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

DATE: September 2, 2014

SUBJECT: Board of Environmental Review case, Case No. BER 2014-07 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF:
VIOLATIONS OF THE OPENCUT MINING
ACT BY BAY MATERIALS, LLC AT
NORMONT FARMS PIT, TOOLE COUNTY,
MONTANA (OPENCUT NO. 1872; FID
2325; DOCKET NO. OC-14-03)

Case No. BER 2014-07 OC

TITLE

BER has received the attached request for hearing. Also attached is DEQ's administrative document relating to this request (Enforcement Case FID 2325, Docket No. OC-14-03).

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

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

John Arrigo, Administrator
Enforcement Division
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

IN THE MATTER OF:
VIOLATIONS OF THE OPENCUT
MINING ACT BY BAY MATERIALS,
LLC AT NORMONT FARMS PIT,
TOOLE COUNTY, MONTANA
(OPENCUT NO. 1872; FID 2325)

NOTICE OF VIOLATION
AND
ADMINISTRATIVE COMPLIANCE AND
PENALTY ORDER

Docket No. OC-14-03

I. NOTICE OF VIOLATION

Pursuant to the authority of Section 82-4-441, Montana Code Annotated (MCA), the Department of Environmental Quality (Department) hereby gives notice to Bay Materials, LLC (Bay) of the following Findings of Fact and Conclusions of Law with respect to violations of the Opencut Mining Act (the Act), Title 82, chapter 4, part 4, MCA, and the Administrative Rules of Montana (ARM) adopted thereunder, Title 17, chapter 24, sub-chapter 2.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Department makes the following Findings of Fact and Conclusions of Law:

1. The Department is an agency of the executive branch of government of the State of Montana, created and existing under the authority of Section 2-15-3501, MCA.

2. The Department administers the Act.

3. The Department is authorized under Section 82-4-441, MCA, to issue this Notice of Violation and Administrative Compliance and Penalty Order (Order) to Bay to address alleged violations of the Act, the administrative rules implementing the Act, to obtain corrective actions, and to assess penalties for the alleged violations.

4. Bay is a "person" as defined in Section 82-4-403(10), MCA.

5. The Department issued Bay a permit to operate an opencut mine at the Normont Farms Pit (Site) in Toole County, Montana. Bay operates or has operated the Normont Farms Pit opencut

1 mine under Permit No. 1872 (Permit). Bay, therefore, is an "operator" within the meaning of Section
2 82-4-403(8), MCA, and subject to the requirements of the Act and the rules adopted thereunder.

3 6. An operator may amend a permit by submitting an amendment application to the
4 Department. If the amendment application is acceptable, the Department shall issue an
5 amendment to the original permit. See Section 82-4-432(11), MCA.

6 7. ARM 17.24.225 requires an operator to comply with the provisions of its permit,
7 which includes an approved plan of operation (Plan), and the Act.

8 8. Once the Plan is accepted by the Department, it becomes part of the permit. See
9 Section 82-4-434(2), MCA.

10 9. The Department approved Bay's application to amend the Permit and issued
11 Amendment #1 (Amendment) on July 6, 2012. The Amendment was approved for Bay to
12 conduct opencut operations on 42.3 acres, of which 32.5 acres were bonded. The Amendment
13 states "The Operator must provide revised information and an updated bond approved by the
14 DEQ before commencing Opencut operations on any part of the 9.8 acres of "Non-Bonded" area
15 included in the permit." See No. 11 of the Amendment.

16 10. The Permit and Amendment are collectively referred to herein as the "Permit."

17 11. On March 14, 2014, Bay submitted a *Request to Commence Operations in a*
18 *Non-Bonded Area* (Request) and a revised bond to the Department.

19 12. On April 16, 2014, the Department conducted a compliance inspection at the Site
20 (April Inspection).

21 13. On April 24, 2014, the Department sent Bay a violation letter (April Violation
22 Letter) for conducting opencut operations in violation of the Act. The Department provided Bay
23 with a copy of the April Inspection report.

24 //

1 14. On May 28, 2014, Bay submitted to the Department an application to amend the
2 Permit (2nd Amendment) to increase the total permitted acreage at the Site from 42.7 [sic] acres
3 to 63.7 [sic] acres, of which 51.4 [sic] acres were bonded.

4 15. On June 2, 2014, the Department sent a letter informing Bay that the 2nd
5 Amendment application was incomplete and the Department was unable to process the
6 application until Bay submitted the required information listed in the Department's letter.

7 16. On July 18, 2014, Bay resubmitted the 2nd Amendment application to the
8 Department.

9 17. On July 22, 2014, the Department sent a letter informing Bay that the 2nd
10 Amendment application was complete and stated that, "In accordance with the Act and its
11 implementing rules, the statutory time period for the Program to identify deficiencies in the
12 application is 45 days from the date of this notice. If the Program notes any deficiencies, you will
13 receive a detailed letter identifying the deficiencies you must respond to before further
14 processing of the application can occur. If no deficiencies are identified you will receive the
15 approved permit."

16 18. On July 23, 2014, the Department conducted a site inspection (July Inspection) in
17 response to Bay's 2nd Amendment application.

18 19. On August 12, 2014, the Department provided Bay with a copy of the July
19 Inspection report via email. The July Inspection report noted that "Due to active operations that
20 were occurring at the site and for safety reasons, only the south side of the currently permitted
21 area was inspected along with the proposed amendment for this site inspection (7/23/14).
22 Therefore, many of the violations identified during the April 16, 2014, site inspection were only
23 verified in the southern portion of the permitted area and not verified in any other portions of the
24 permitted area during this site inspection."

1 20. As of August 15, 2014, the Department has not approved the Request or the 2nd
2 Amendment.

3 ***Violation 1: Conducting opencut operations in non-bonded area***

4 21. The Permit and specifically the Plan requires Bay, prior to commencing opencut
5 operations in areas permitted as undisturbed "until bonded," to submit a Request form and post
6 additional bond on the nonbonded and undisturbed area. No opencut operations, including
7 equipment parking, or stockpiling can begin on acreage described on the Request until the form,
8 bond, and map are approved by the Department. See Section F2. of the Plan.

9 22. The Request that was signed and submitted by Brian Midboe, the owner of Bay
10 Materials, on March 14, 2014, prominently displays notification language that provides in
11 pertinent part, that operations "cannot commence until DEQ's acceptance of the revised bond..."

12 23. On March 24, 2014, the Department sent a letter acknowledging receipt of Bay's
13 Request and informed Bay that the Request would be reviewed by the Program in accordance
14 with the Opencut Mining Act (Act) and its implementing rules. The Department's letter displays
15 notification language in bolded and large font that provides: "No opencut operations can be
16 conducted in the currently non-bonded area at this site until the Program finishes reviewing your
17 request, determines it is acceptable, and you receive notification of the approved request to
18 change the non-bonded area at the site."

19 24. As part of its review of the Request, the Department obtained and reviewed an
20 aerial photograph of the Site dated July 19, 2013, and observed that opencut operations had
21 apparently commenced in the non-bonded area before Bay submitted the Request dated March
22 14, 2014. Based on the information contained in the July 19, 2013 aerial photograph, the
23 Department conducted the April 2014 Compliance Inspection. During the April 2014
24 Compliance Inspection, the Department observed that Bay had conducted opencut operations on

1 approximately 6.4 acres outside the bonded area of the Site. The April Inspection report
2 contained the notation "Cease all Opencut activities in non-bonded areas."

3 25. The April Violation Letter informed Bay that opencut activities occurred on 6.4
4 acres outside the bonded portion of the Site in violation of the Act. In the letter, the Department
5 acknowledged Bay's Request and bond submittal stating "that the application has not been
6 approved," while the April Inspection confirmed that "Opencut operations were already being
7 conducted on 6.4 acres outside the bonded area..."

8 26. During the July Inspection, the Department observed that Bay had continued to
9 conduct, and were actively conducting, opencut operations in the non-bonded portion of the Site.

10 27. By conducting opencut operations on the non-bonded portion of the Site, Bay
11 failed to comply with the requirements of F2. of the Plan and the Permit.

12 28. Bay violated Section 82-4-434(2), MCA, and ARM 17.24.225 by conducting
13 opencut operations in the non-bonded area of the Site prior to receiving Department approval of
14 Bay's Request.

15 ***Violation 2: Failure to strip soils and protect soil stockpiles***

16 29. Section 82-4-434(3)(c), MCA, requires that soil and other suitable overburden be
17 salvaged.

18 30. ARM 17.24.219(1)(b)(i) requires that the operator will strip soil before opencut
19 operation disturbances occur and that stockpiled soils be protected from erosion, contamination,
20 compaction, and unnecessary disturbance. ARM 17.24.219(2) requires the operator to comply
21 with all commitments required by that rule.

22 31. Section D3.3.a. of the Plan states in part that "Soil and overburden will be
23 stripped and stockpiled at the beginning of operations and as needed throughout the life of the
24 operation."

1 32. The Department's April Inspection report explained the Department's
2 observations that Bay failed to strip soil in advance of mining, that the soil stockpiles were not
3 protected, and that the soil stockpiles were unstable and eroding.

4 33. The Department's July Inspection verified that on the south side of the Site, Bay
5 failed to strip available soil and that the soil stockpiles were not protected.

6 34. By failing to strip soil in advance of mining and protect soil by placing it into stable
7 stockpiles, Bay failed to comply with the requirements of Section D3.3.a. of the Plan.

8 35. Bay violated Section 82-4-434(3)(c), MCA, ARM 17.24.219(1) and (2), and
9 ARM 17.24.225(1) by failing to strip and salvage soils, and protect the soil stockpiles in
10 accordance with Section D3.3.a. of the Plan.

11 ***Violation 3: Failure to maintain required 10-foot buffer***

12 36. ARM 17.24.219(1)(b)(i) requires that an operator maintain at least a 10-foot
13 buffer stripped of soil and needed overburden along the edges of highwalls.

14 37. Section D4.1.f. of the Plan states the operator will maintain a minimum 10-foot
15 wide buffer zone stripped of soil along the edge of high walls.

16 38. During the April Inspection, the Department observed that Bay failed to maintain
17 a 10-foot buffer between the highwalls and unstripped soil.

18 39. The April Violation Letter informed Bay that the failure to maintain a 10-foot
19 buffer in some areas between the highwalls and unstripped soil was a violation of the Act.

20 40. The Department's July Inspection verified that Bay failed to maintain a 10-foot buffer
21 between the highwalls and unstripped soils in some areas on the south side of the Site.

22 41. Bay failed to comply with the requirements of Section D4.1.f. of the Plan.

23 //

24 //

42. Bay violated ARM 17.24.219(1)(b)(i), ARM 17.24.225(1), and Section 82-4-434(2), MCA, by failing to maintain at least a 10-foot buffer stripped of soil and overburden along the edges of the highwalls.

Violation 4: Exceeding permitted highwall length and height

43. Section D3.6.b of the Plan states "i. The maximum length of highwall on-site at any given time will be: 1300 linear feet" and "ii. The maximum height of highwall on-site at any given time will be: 15 feet."

44. During the April Inspection, the Department observed that Bay had a highwall measuring approximately 3,000 linear feet long and 20 feet high at the Site.

45. The April Violation Letter informed Bay that having a highwall more than 1,300 linear feet long and 15 feet high was a violation of the Act.

46. Bay failed to comply with the requirements of Section D3.6.b of the Plan.

47. Bay violated Section 82-4-434(2), MCA, and ARM 17.24.225 by exceeding the permitted length and height for highwalls at the Site.

Violation 5: Failure to mark permit boundary

48. ARM 17.24.218(1)(a) requires that the Plan must include certain site preparation, mining, and processing plan commitments and information, including the placement and maintenance of permit boundary markers. ARM 17.24.218(2) requires the operator to comply with all commitments required by that rule.

49. Section C6. of the Plan requires Bay to clearly mark the permit area boundary, including the boundary between the bonded and non-bonded portions of the Site.

50. The Department's April Inspection observed that the boundaries between the bonded and non-bonded areas of the Site were not adequately marked.

//

1 51. The April Violation Letter informed Bay that failing to adequately mark the
2 bonded and non-bonded areas of the Site was a violation of the Act

3 52. The Department's July Inspection verified that the bonded and non-bonded areas
4 as well as the Amendment 2 area were not adequately marked.

5 53. Bay failed to comply with the requirement of Section C6. of the Plan.

6 54. Bay violated ARM 17.24.218(1) and (2) and ARM 17.24.225(1) by failing to
7 maintain boundary markers as required in the Plan.

8 ***Administrative penalty***

9 55. Pursuant to Section 82-4-441(2), MCA, the Department may assess an
10 administrative penalty not to exceed \$1,000 for a violation of the Act and no more than \$1,000
11 for each day during which a violation continues.

12 56. The Department has calculated an administrative penalty in the amount of
13 \$73,280 for the violations cited herein. *See* Section 82-4-1001, MCA, and ARM 17.4.301
14 through 17.4.308. Violation 3 and Violation 4 are combined for the purposes of calculating the
15 penalty amount. *See* the Penalty Calculation Worksheet that is enclosed and incorporated by
16 reference herein.

17 57. In the event that Bay exercises its right to administrative review as explained in
18 Paragraph 64, by no later than the date given for exchange of exhibits or another date ordered by
19 the Board, the Department shall notify Bay whether it will seek to prove, based on information
20 obtained from Bay or through discovery or subsequent inspections of the Site, an increase or
21 decrease in the number of days of any violation described in the Penalty Calculation Worksheet.

22 **III. ADMINISTRATIVE ORDER**

23 This Order is issued to Bay pursuant to the authority vested in the State of Montana,
24 acting by and through the Department under the Act and administrative rules adopted thereunder,

1 ARM Title 17, chapter 24, sub-chapter 2. Based on the foregoing Findings of Fact and
2 Conclusions of Law and the authority cited above, the Department hereby ORDERS Bay to do
3 the following:

4 58. Upon service of this Order, Bay shall comply with all provisions of the Permit
5 and cease all opencut operations in the non-bonded portions of the Site until Bay's reclamation
6 bond and 2nd Amendment are approved by the Department.

7 59. Bay shall respond to deficiencies in the 2nd Amendment application within such
8 deadline as may be set in the Department's Deficiency Notice (Notice) or, if no deadline is set in
9 the Notice, within 30 days of receipt of that Notice. Bay's response to any Notice must be sent
10 to:

11 Opencut Mining Program
12 Department of Environmental Quality
13 P.O. Box 200901
Helena, MT 59620-0901

14 60. No later than 60 days after service of this Order, Bay shall pay to the Department
15 the administrative penalty in the amount of \$73,280 for the violations cited herein. The penalty
16 must be paid by check or money order, made payable to the "Montana Department of
17 Environmental Quality," and sent to:

18 John L. Arrigo, Administrator
19 Enforcement Division
20 Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

21 61. Failure to comply with the requirements of this Order by the specified deadlines, as
22 ordered herein, may result in the Department seeking a court order assessing civil penalties of not
23 more than \$5,000 for each day the violation continues pursuant to Section 82-4-441(3), MCA.

24 //

62. None of the requirements in this Order are intended to relieve Bay from complying with all applicable state, federal, and local statutes, rules, ordinances, orders, and permit conditions.

63. The Department may take any additional enforcement action against Bay including the right to seek injunctive relief, civil penalties, and other available relief, for any violation of, or failure or refusal to comply with, this Order.

64. The terms of this Order are satisfied when the Department acknowledges in writing that all corrective actions required under this Order have been completed.

IV. NOTICE OF APPEAL RIGHTS

65. Bay may appeal this Order under Section 82-4-441, MCA, by having your attorney file a written request for a hearing before the Montana Board of Environmental Review no later than 30 days after service of this Order. Any request for a hearing must be in writing and sent to:

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

66. Hearings are conducted as provided in the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA. Hearings are normally conducted in a manner similar to court proceedings, with witnesses being sworn and subject to cross-examination. Proceedings prior to the hearing may include formal discovery procedures, including interrogatories, requests for production of documents, and depositions. Because Bay is not an individual, Bay may not appear on its own behalf through an agent other than an attorney. *See* ARM 1.3.231(2) and Section 37-61-201, MCA.

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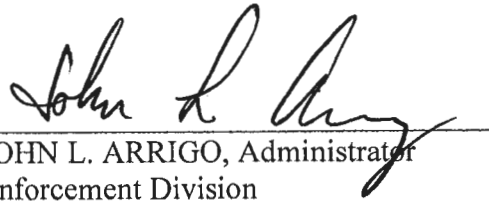
1 67. If a hearing is not requested within 30 days after service of this Order, the
2 opportunity for a contested case appeal is waived.

3 68. This Order becomes effective on the date of service. Service by mail is complete
4 three business days after mailing.

5 IT IS SO ORDERED:

6 DATED this 19th day of August, 2014.

7 STATE OF MONTANA
8 DEPARTMENT OF ENVIRONMENTAL QUALITY

9 
10 JOHN L. ARRIGO, Administrator
11 Enforcement Division
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**Department of Environmental Quality - Enforcement Division
Penalty Calculation Worksheet**

Responsible Party Name:	Bay Materials, LLC (Bay) at Normont Farms (Site)
FID:	2325 Permit No. 1872
Statute:	Opencut Mining Act (Act)
Maximum Penalty Authority:	\$1,000.00
Date:	8/12/2014
Name of Employee Calculating Penalty:	Daniel R. Kenney

Penalty Calculation #1

Description of Violation:

Bay violated Administrative Rules of Montana (ARM) 17.24.225(1) and Section F2. of the Plan of Operation (Plan) by conducting opencut operations outside the bonded area at the Site. During its April 16, 2014 and July 23, 2014 site inspections, the Department observed that Bay already conducted mining operations outside the bonded portion within the Permit boundary. The Department had not yet approved Bay's March 14, 2014 *Request to Commence Operations in a Non Bonded Area* (Request) or bond at the time of the inspection.

I. BASE PENALTY

Nature

Explanation:

Conducting opencut operations in non-bonded portions within the Site's permitted boundary prior to receiving Department approval of the Request has an adverse impact on the Department's ability to fulfill its statutory duties and responsibilities. If the Request has not been reviewed and/or approved by the Department prior to conducting opencut operations in non-bonded areas within the Site's permitted boundary, the Department is unable to determine if the bond is adequate or if there are adequate resources available to reclaim the affected land. The nature of the violation is Harm.

Potential to Harm Human Health or the Environment	X
Potential to Impact Administration	

Gravity and Extent

Gravity Explanation:

Pursuant to ARM 17.4.303(5)(b), the Department has determined that failing to operate in accordance with a permit has a moderate gravity.

Extent Explanation:

The Department's expectation is that an opencut operator will not conduct opencut operations in non-bonded portions of a site until the Department determines that the operator has provided an adequate reclamation bond and approves an operator's *Request to Commence Operations in a Non Bonded Area*. The Department has determined that the fact that Bay conducted opencut operations on approximately 9.8 acres non-bonded acres prior to receiving Department approval constitutes a major deviation from the regulatory requirement. Therefore, Extent is Major.

Harm to Human Health or the Environment

Gravity

Extent	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor: 0.70

Impact to Administration

Gravity

Major	Moderate	Minor	
0.50	0.40	0.30	Gravity Factor:

BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor):

\$700.00

II. ADJUSTED BASE PENALTY

A. Circumstances (up to 30% added to Base Penalty)

Explanation:

As a permitted entity engaged in opencut mining, Bay should have been knowledgeable about the Permit and that the Department must approve the Request and ensure that adequate bond was submitted prior to commencing opencut activity in the non-bonded portion within the Site's permitted boundary. Bay had control over the circumstances surrounding the violation and should have foreseen that the failure to comply with Permit and Plan requirements would result in a violation. Further, the Department's April 2014 Inspection Report stated "'Cease all Opencut activities in non-bonded areas.'" Therefore, an upward adjustment of 30% to the base penalty for circumstances is appropriate.

	Circumstances Percent:	0.30
Circumstances Adjustment (Base Penalty x Circumstances Percent)		\$210.00

B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)

Explanation:

Bay did not promptly report or voluntarily disclose facts related to the violation to the Department. Therefore, no reduction in the Base Penalty is calculated for Good Faith and Cooperation.

	Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)		\$0.00

C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)

Explanation:

The Department is not aware of any amounts voluntarily expended by Bay to mitigate the violation or its impact beyond what was necessary to come into compliance; therefore, no reduction is being allowed.

	AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)		\$0.00

ADJUSTED BASE PENALTY SUMMARY

Base Penalty	\$700.00
Circumstances	\$210.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
ADJUSTED BASE PENALTY	\$910.00

III. DAYS OF VIOLATION

Explanation:

Section 82-4-441(2), MCA, provides, in part, that the Department may assess an administrative penalty for the violation and an additional administrative penalty for each day the violation continues. The Department conducted site inspections on April 16, 2014 and July 23, 2014 and observed that Bay was conducting opencut operations in the non-bonded portion of the site. Estimating that Bay only conducted operations Mondays through Fridays, the Department calculated that Bay operated in the non-bonded area for at least 65 days. Therefore, the Department is using 65 days of violation to calculate this penalty.

	Number of Days:	65
ADJUSTED BASE PENALTY x NUMBER OF DAYS:		\$59,150.00

IV. OTHER MATTERS AS JUSTICE MAY REQUIRE

Explanation:

Not applicable.

OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:	\$0.00
--	---------------

V. ECONOMIC BENEFIT**Explanation:**

Bay submitted a Request to Commence Operations in a Non Bonded Area form, and a bond, to the Department on March 14, 2014. As Bay submitted the bond, even though not approved by the Department prior to the April 16, 2014 Inspection, the Department determined that any economic benefit realized by Bay is negligible and is not adding any economic benefit to the penalty.

ECONOMIC BENEFIT REALIZED: \$0.00

Responsible Party Name:	Bay Materials, LLC (Bay) at Normont Farms (Site)		
FID:	2325	Permit No. 1872	
Statute:	Opencut Mining Act (Act)		
Maximum Penalty Authority:	\$1,000.00		

Penalty Calculation #2	
Description of Violation:	
Bay violated the Permit and Plan by failing to protect stockpiled soils from erosion, contamination, compactions and unnecessary disturbance, and failing to strip and salvage soil. Section D3.3.a. of the Plan as approved by the Permit, states the operator will strip and salvage soil before conducting opencut operations on undisturbed land. During the April 2014 and July 2014 inspections, the Department observed that Bay failed to strip all available soil and that the soil stockpiles were not protected as they were unstable and eroding.	

I. BASE PENALTY

Nature

Explanation:	
The Department requires operators to submit a Plan, which details how they intend to mine and conduct reclamation. This Plan includes the salvage and storage of soil and is incorporated as part of the Permit. Adequate soil is necessary for successful reclamation. Bay failed to protect stockpiled soil and salvage soil as required by its Plan. This failure may result in insufficient soils being available to complete reclamation as set forth in the Plan. The failure to adequately salvage and store topsoil poses a serious potential to harm human health and the environment.	
Potential to Harm Human Health or the Environment	X
Potential to Impact Administration	

Gravity and Extent

Gravity Explanation:	
Pursuant to ARM 17.4.303(5)(b), the failure to construct or operate in accordance with a permit or approval has a moderate gravity.	
Extent Explanation:	
The extent of deviation for this violation is moderate. The expectation is that the operator will protect salvaged soils from contamination to make them available for reuse and not conduct opencut operations on undisturbed land.	

Harm to Human Health or the Environment

Gravity

Extent	Major	Moderate	Minor		
Major	0.85	0.70	0.55		
Moderate	0.70	0.55	0.40		
Minor	0.55	0.40	0.25	Gravity and Extent Factor:	0.55

Impact to Administration

Gravity

Major	Moderate	Minor		
0.50	0.40	0.30	Gravity Factor:	

BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor):

\$550.00

II. ADJUSTED BASE PENALTY

A. Circumstances (up to 30% added to Base Penalty)

Explanation:

Bay had control over the circumstances surrounding the violation and should have foreseen that by not following the Plan by failing to protect the stockpiled soils and not conducting opencut operations on undisturbed land would result in a violation. As a permitted entity, Bay should be knowledgeable about the requirements of the Act, its Permit and the Plan. Therefore, an upward adjustment of 20% to the base penalty for circumstances is appropriate.

	Circumstances Percent:	0.20
Circumstances Adjustment (Base Penalty x Circumstances Percent)		\$110.00

B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)

Explanation:

Bay did not promptly report or voluntarily disclose facts related to the violation to the Department. Therefore, no reduction in the Base Penalty is calculated for Good Faith and Cooperation.

	Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)		\$0.00

C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)

Explanation:

The Department is not aware of any amounts voluntarily expended by Bay to mitigate the violation or its impact beyond what was required to come into compliance; therefore, no reduction is being allowed.

	AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)		\$0.00

ADJUSTED BASE PENALTY SUMMARY

Base Penalty	\$550.00
Circumstances	\$110.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
ADJUSTED BASE PENALTY	\$660.00

III. DAYS OF VIOLATION

Explanation:

The Department has determined that Bay violated the Permit and the Plan by failing to protect stockpiled soils and strip and salvage soil for at least six days, the day before, the day of, and the day after the Department's April 16, 2014 and July 23, 2014 inspections. Therefore, the Department is calculating a penalty based on six days of violation.

	Number of Days:	6
ADJUSTED BASE PENALTY x NUMBER OF DAYS:		\$3,960.00

IV. OTHER MATTERS AS JUSTICE MAY REQUIRE

Explanation:

Not applicable.

OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:	\$0.00
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V. ECONOMIC BENEFIT

Explanation:

The Department has determined that Bay did not gain a significant economic benefit by failing to comply with a Permit requirement and the Plan for the three days of violation. Therefore, the Department is not seeking economic benefit for the violation.

ECONOMIC BENEFIT REALIZED:	\$0.00
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Responsible Party Name:	Bay Materials, LLC (Bay) at Normont Farms (Site)		
FID:	2325	Permit No. 1872	
Statute:	Opencut Mining Act (Act)		
Maximum Penalty Authority:	\$1,000.00		

Penalty Calculation #3

Description of Violation:
Bay violated the Permit and Plan by failing to maintain a 10-foot buffer stripped of soil and overburden along the edges of the highwalls in violation of ARM 17.24.219(1)(b)(i) and Section D4.1.f of the Plan. Further, Bay violated the Plan, Section D3.6.b, by having highwalls measuring greater than 1,300 feet long and 15 feet high. During the April 16, 2014 inspection, the Department observed that Bay had highwalls measuring approximately 3,000 linear feet long and 20 feet high and had not maintained a 10-foot buffer between the highwalls and unstripped soil in some areas of the Site. During the July 23, 2014 Inspection, the Department observed that Bay had not maintained a 10-foot buffer between the highwalls and unstripped soil in some areas of the Site.

I. BASE PENALTY

Nature

Explanation:	
The failure to comply with Permit requirements (including the Plan) poses the potential to harm the environment. Because Bay failed to provide a 10-foot buffer stripped of soil and overburden along the edges of the highwall, Bay risked losing topsoil and overburden as the highwall is mined or erodes. Further, by having more than the permitted 1,300 linear feet of highwall, Bay increased the danger that the failure of the non-permitted highwall poses to employees and the public.	
Potential to Harm Human Health or the Environment	X
Potential to Impact Administration	

Gravity and Extent

Gravity Explanation:
Pursuant to ARM 17.4.303(5)(b), the Department has determined that the failure to construct or operate in accordance with a permit or approval has a moderate gravity.
Extent Explanation:
Pursuant to ARM 17.303(4)(a), a violation has a major extent if it constitutes a major deviation from the applicable requirements. Bay's failure to maintain a 10-foot buffer zone from the highwalls and in exceeding the permitted limit for highwalls by approximately 1,700 linear feet, as outlined in the Plan, is a major deviation from Permit requirements.

Harm to Human Health or the Environment

Gravity

Extent	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor: 0.70

Impact to Administration

Gravity

Major	Moderate	Minor	
0.50	0.40	0.30	Gravity Factor:

BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor):

\$700.00

II. ADJUSTED BASE PENALTY

A. Circumstances (up to 30% added to Base Penalty)

Explanation:

Bay had control over the circumstances surrounding the violation and should have foreseen that failing to comply with a Permit requirement and the Plan would result in a violation. As a permitted entity, Bay should be knowledgeable about the requirements of the Act. Therefore, an upward adjustment of 20% to the base penalty for circumstances is appropriate.

Circumstances Percent:	0.30
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$210.00

B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)

Explanation:

Bay did not promptly report or voluntarily disclose facts related to the violation to the Department. Therefore, no reduction in the Base Penalty is calculated for Good Faith and Cooperation.

Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$0.00

C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)

Explanation:

The Department is not aware of any amounts voluntarily expended by Bay to mitigate the violation or its impact beyond what was required to come into compliance; therefore, no reduction is being allowed.

AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

ADJUSTED BASE PENALTY SUMMARY

Base Penalty	\$700.00
Circumstances	\$210.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
ADJUSTED BASE PENALTY	\$910.00

III. DAYS OF VIOLATION

Explanation:

The Department has determined that Bay violated the Permit and the Plan for at least six days, the day before, the day of, and the day after the Department's April 16, 2014 inspection and July 23, 2014 inspection. Therefore, the Department is calculating a penalty based on six days of violation.

Number of Days:	6
ADJUSTED BASE PENALTY x NUMBER OF DAYS:	\$5,460.00

IV. OTHER MATTERS AS JUSTICE MAY REQUIRE

Explanation:

Not applicable.

OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:	\$0.00
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V. ECONOMIC BENEFIT

Explanation:

The Department has determined that Bay did not gain a significant economic benefit by failing to comply with a Permit requirement and the Plan for the three days of violation. Therefore, the Department is not seeking economic benefit for the violation.

ECONOMIC BENEFIT REALIZED:	\$0.00
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Responsible Party Name:	Bay Materials, LLC (Bay) at Normont Farms (Site)		
FID:	2325	Permit No. 1872	
Statute:	Opencut Mining Act (Act)		
Maximum Penalty Authority:	\$1,000.00		

Penalty Calculation #4	
Description of Violation:	
Bay violated ARM 17.24.218(2) and 17.24.225(1) by failing to install and maintain permit and bonded area boundary markers as required by the approved Plan and Permit.	

I. BASE PENALTY

Nature

Explanation:	
The failure to install and maintain permit and bonded area boundary markers poses a potential to harm human health or the environment. The failure to mark the boundaries of the permitted and bonded area raises a very real possibility that opencut operations may stray into unpermitted areas, the impacts of which have not been reviewed by the Department and are not bonded.	
Potential to Harm Human Health or the Environment	X
Potential to Impact Administration	

Gravity and Extent

Gravity Explanation:	
Pursuant to ARM 17.4.303(5)(b), the Department has determined that the failure to construct or operate in accordance with a permit or approval has a moderate gravity.	
Extent Explanation:	
The extent of deviation for this violation is moderate. The expectation is that the operator will install and maintain permit area boundary markers to ensure that opencut operations are not conducted outside the permit or bonded boundaries. Bay failed to install adequate boundary markers. Specifically, the bonded and non-bonded areas were not adequately marked.	

Harm to Human Health or the Environment

Gravity

Extent	Major	Moderate	Minor		
Major	0.85	0.70	0.55		
Moderate	0.70	0.55	0.40		
Minor	0.55	0.40	0.25	Gravity and Extent Factor:	0.55

Impact to Administration

Gravity

	Major	Moderate	Minor		
	0.50	0.40	0.30	Gravity Factor:	

BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor): **\$550.00**

II. ADJUSTED BASE PENALTY

A. Circumstances (up to 30% added to Base Penalty)

Explanation:

As a regulated entity that conducts opencut operations in Montana, Bay should be aware of the requirement not to violate the accepted work plan by failing to install and maintain boundary markers. Bay had control of the violation and should have realized that the failure to install and maintain boundary markers would result in a violation. Therefore, an upward adjustment of 20% to the base penalty for circumstances is appropriate.

Circumstances Percent:	0.20
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$110.00

B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)

Explanation:

Bay did not promptly report or voluntarily disclose facts related to the violation to the Department. Therefore, no reduction in the Base Penalty is calculated for Good Faith and Cooperation.

Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$0.00

C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)

Explanation:

The Department is not aware of any amounts voluntarily expended by Bay to mitigate the violation or its impact beyond what was required to come into compliance; therefore, no reduction is being allowed.

AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

ADJUSTED BASE PENALTY SUMMARY

Base Penalty	\$550.00
Circumstances	\$110.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
ADJUSTED BASE PENALTY	\$660.00

III. DAYS OF VIOLATION

Explanation:

The Department has determined that Bay violated the Permit and the Plan for at least six days, the day before, the day of, and the day after the Department's April 16, 2014 inspection and July 23, 2014 inspection. Therefore, the Department is calculating a penalty based on six days of violation.

Number of Days:	6
ADJUSTED BASE PENALTY x NUMBER OF DAYS:	\$3,960.00

IV. OTHER MATTERS AS JUSTICE MAY REQUIRE

Explanation:

Not applicable.

OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:	\$0.00
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V. ECONOMIC BENEFIT

Explanation:

Bay gained a delayed economic benefit by failing to install and maintain boundary markers. The Department however considers the amount of savings that Bay gained by not installing and maintaining boundary markers to be minimal, as operators generally drive steel fence posts at locations on the perimeter of the permitted and bonded areas to mark the boundary. The Department estimates these costs to be less than two hundred dollars. Because Bay will need to bear these costs in any event, the Department is not adding an amount for economic benefit.

ECONOMIC BENEFIT REALIZED:	\$0.00
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Responsible Party Name:	Bay Materials, LLC (Bay) at Normont Farms (Site)	
FID:	2325	Permit No. 1872
Statute:	Opencut Mining Act (Act)	

VI. HISTORY

Explanation:

Bay has incurred four violations documented in an order within the past three years. Use of all of these historical violations in the calculation of Total History Percent would exceed the 30% maximum. Therefore, the following three violations from DEQ Docket No. OC-12-15 issued July 13, 2012 were used to calculate History of Violation: (1) Failure to strip and salvage soils and protect stockpiles. Nature = Harm. (2) Failure to maintain 10-foot buffer and exceeding permitted highwalls. Nature = Harm. (3) Failure to install and maintain permit and bonded area boundary markers. Nature = Harm

Historical Violation: Harm to Human Health or the Environment - 10%

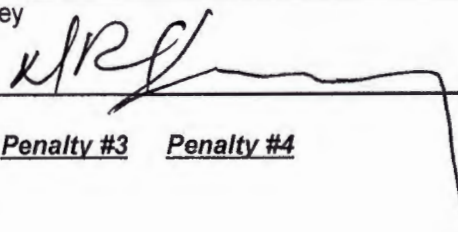
Historical Violation: Impact to Administration - 5%

Historical Violation #1 Percent:	0.10
Historical Violation #2 Percent:	0.10
Historical Violation #3 Percent:	0.10
Total History Percent (cannot exceed 30%):	0.30

Base Penalty #1	\$700.00
Base Penalty #2	\$550.00
Base Penalty #3	\$700.00
Base Penalty #4	\$550.00
Total Base Penalties:	\$2,500.00

HISTORY ADJUSTMENT (Base Penalty x History Percent): \$750.00

Department of Environmental Quality - Enforcement Division
Penalty Calculation Summary

Responsible Party Name:	Bay Materials, LLC (Bay) at Normont Farms (Site)
FID:	2325 Permit No. 1872
Statute:	Opencut Mining Act (Act)
Maximum Penalty Authority:	\$1,000.00
Date:	8/19/14
Signature of Employee Calculating Penalty:	Daniel R. Kenney 

Penalty #1 Penalty #2 Penalty #3 Penalty #4

I. Base Penalty (Maximum Penalty Authority x Matrix Factor)

Maximum Penalty Authority:	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
Percent Harm - Gravity and Extent:	0.70	0.55	0.70	0.55
Percent Impact - Gravity:	0.00	0.00	0.00	0.00
Base Penalty:	\$700.00	\$550.00	\$700.00	\$550.00

II. Adjusted Base Penalty

Base Penalty:	\$700.00	\$550.00	\$700.00	\$550.00
Circumstances:	\$210.00	\$110.00	\$210.00	\$110.00
Good Faith and Cooperation:	\$0.00	\$0.00	\$0.00	\$0.00
Amount Voluntarily Expended:	\$0.00	\$0.00	\$0.00	\$0.00
Adjusted Base Penalty:	\$910.00	\$660.00	\$910.00	\$660.00

III. Days of Violation or

Number of Occurrences	65	6	6	6	
Total Adjusted Penalty:	\$59,150.00	\$3,960.00	\$5,460.00	\$3,960.00	\$72,530.00

IV. Other Matters as Justice May Require

\$0.00	\$0.00	\$0.00	\$0.00
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V. Economic Benefit

\$0.00	\$0.00	\$0.00	\$0.00
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VI. History

Subtotal(s)	\$59,150.00	\$3,960.00	\$5,460.00	\$3,960.00	\$750.00
					<u>\$72,530.00</u>

Total calculated penalty: \$73,280.00

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BER 2014-07 OC

Filed with the

MONTANA BOARD OF

ENVIRONMENTAL REVIEW

This 29th day of August, 2014

at 10:50 a'clock a.m.

By: LUKE CASEY, Attorney
luke.leclaw@gmail.com

August 28, 2014

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

Re: *Notice of Violation and Administrative Compliance and Penalty Order,*
Docket No. OC-14-03, for violations of the Opencut Mining Act.
[Permit No. 1872; FID 2325]

To Whom It May Concern:

On behalf of our client, Bay Materials, LLC ("BM"), we hereby request a hearing before the Board of Environmental Review, pursuant to § 82-4-441(5)(b), MCA, in order to appeal, in its entirety, the Notice of Violation and Administrative Compliance and Penalty Order issued by the Department of Environmental Quality on August 19, 2014.

BM will ask the Board to rescind the Order, including all findings of violations and all imposition of penalties. In addition to challenging all factual and legal bases for the violations and penalties, BM also intends to raise several constitutional concerns implicated by the Order. Specifically, BM believes its rights to due process and equal protection have been violated. BM realizes the Board is not authorized to make any constitutional determinations however, BM raises the same in order to preserve them for judicial review, should it become necessary.

Very truly yours;

LEE LAW OFFICE PC

By: 

Brian D. Lee