



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

AGENDA

FRIDAY, DECEMBER 5, 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

The Board will vote on adopting the September 26, 2014, meeting minutes.

B. SET 2015 MEETING SCHEDULE

The Board will discuss meetings dates for next year.

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 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 tabled taking action on the order until it became clear that the District Court would assume jurisdiction. The parties filed their complaint in the First Judicial District on October 24, 2014.

- c. **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 schedule for this matter has been set, and discovery by the parties is ongoing.
 - d. **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.
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.** This matter continues to be stayed. On November 7, 2014, the Board received a joint Status Report from the attorneys for the parties. The parties have requested more time to finalize a stipulation that will conclude this matter.
 - b. **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. At its September 26 meeting, the Board appointed Mr. Reed as the permanent hearing examiner for this matter.
 - c. **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. At its September 26 meeting, the Board appointed Mr. Reed as the permanent hearing examiner for this matter.
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 stating that a modified permit would 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.** There are currently two motions for summary judgment pending in this case that require resolution before hearing.

B. OTHER BRIEFING ITEMS

1. The department will brief the Board on Legislation.

III. ACTION ITEMS

A. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Amend ARM 17.8.103, ARM 17.8.202, ARM 17.8.204, ARM 17.8.206, and ARM 17.8.230 to reference the latest version of the Montana Ambient Air Quality Program Quality Assurance Project Plan; incorporate applicable federal ambient air quality monitoring rules and guidance by reference; and remove references to certain outdated and/or improperly incorporated federal guidance and/or policy documents. The department is requesting these amendments to establish a single set of quality assurance requirements applicable to all ambient air quality monitoring conducted within the state of Montana.

B. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. In the matter of proposed adoption of amendments to 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 storm water discharges, general permits, and conditions applicable to all permits, and repeal of ARM 17.30.1110, 17.30.1115, and 17.30.1117 pertaining to storm water discharges issued under the Montana Pollutant Discharge Elimination System (MPDES). The Department is requesting that the Board only adopt the amendments to 17.30.1106.

C. NEW CONTESTED CASES

1. **In the matter of violation of the Opencut Mining Act by Somont Oil Company, Inc., at Somont Oil Company gravel pit, Toole County (Permit No. 2597, FID 2326, Docket No. OC-14-021), BER 2014-08 OC.** The Board received the appeal on September 16, 2014. The Board may appoint a permanent hearings examiner or decide to hear the matter.
2. **In the matter of violations of the Public Water Supply Laws by Rene Requa at Highlander Bar and Grill, PWISD MT0004764, Lewis and Clark County (FID 2299, Docket No. PWS-14-08), BER 2014-09 PWS.** The Board received the appeal on October 2, 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
September 26, 2014

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Shropshire at 9:00 a.m., on Friday, September 26, 2014, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Shropshire and Marietta Canty

Board Members Present via phone: Heidi Kaiser, Joe Russell, Larry Mires, and Chris Tweeten

Board Members Absent: Joan Miles

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

Board Secretary Present: Deb Sutliff

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: John North and Norman Mullen – Legal; John DeArment – Permitting & Compliance Division; John Arrigo - Enforcement Division; Jon Dilliard – Public Water Supply & Subdivisions Bureau; Jon Kenning, Tommy Griffeth, Rebecca DeVaney, and Laura Anderson – Water Protection Bureau; Charles Homer, David Klemp, Eric Merchant, Julie Merkel, Hoby Rash, and Rebecca Harbage – Air Resources Management Bureau.

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): None

Chairman Shropshire called the meeting to order and proceeded with roll call.

I.A.1 Review and approved the July 25, 2014, minutes.

Mr. Mires MOVED to approve the July 25, 2014, minutes as written. Ms. Canty SECONDED the motion. The motion CARRIED with a 6-0 vote.

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

II.A.1.b **In the matter of violations of the Sanitation in Subdivisions Act and Public Water Supply Laws by Roger Emery at the Sunrise Motel, Sidney, Richland County, BER 2013-06 SUB.**

Mr. Reed indicated that the Department of Environmental Quality has filed a variety of documents and Mr. Emery has filed nothing. He said the final documents filed by the Department of Environmental Quality is a Motion for Summary Judgment. Mr. Reed said he believed that the department and Mr. Emery have come to some agreement that has not yet been finalized. He also said there will be a final hearing sometime during the second week of October, depending on availability of the parties.

II.A.1.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.**

Mr. Reed said the Board had tabled the matter to see how it would be handled in regard to District Court.

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 the parties in this case are still working through settlement negotiations.

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. North said the matter was remanded with the stipulation that the department and the appellant had reached agreement on an amended permit, that it was put out in June for public comment, that public comment was received, and the department issued the permit on September 8. He noted that the appeal period for the permit runs for 30 days.

- II.A.3.b **In the matter of the notice of appeal for hearing by Montana Environmental Information Center (MEIC) 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.**
- Mr. Reed summarized the matter, noting that DEQ and Signal Peak are using one set of standards for water quality and MEIC is using a second set. He said it does look as if oral argument will be necessary, and further briefing on the matter may be necessary.
- II.B.1 **In the matter of Department reporting, Air Quality Permit Fees that are anticipated for the next calendar year, as required by ARM 17.8.510(1).**
- Mr. Homer explained that the Air Quality Rules require the department to report annually to the Board on the status of Air Quality fees. He provided a summary of the Air Quality fees, and responded to questions from the Board.
- III.A.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.**
- Mr. Homer said the Board initiated rulemaking for the Air Quality fees in May, and a hearing was held in July. He said the department was the only commenter.
- Chairman Shropshire asked if there were any public comments. There was no response.
- Chairman Shropshire called for a motion to accept the Presiding Officer Report and the HB311 and 521 analyses, and adopt the response to comment in the proposed rule amendments with modifications as contained in the attached notice of amendment. Mr. Tweeten so MOVED. Mr. Russell SECONDED the motion. The motion CARRIED with a 6-0 vote.
- III.A.2 **In the matter of final adoption of proposed amendments to ARM 17.8.818 Review of Major Stationary Sources and Major Modifications and 17.8.820 Source Impact Analysis.**
- Mr. Merchant reminded the Board that this action was initiated by the Board in May and that a hearing was held on July 16. He said only one comment was received, but it was outside the scope of rulemaking.
- Chairman Shropshire asked if anyone from the public wanted to comment. There was no response.
- Mr. Merchant and Mr. Klemp responded to questions from the Board.
- Chairman Shropshire called for a motion to accept the Presiding Officer Report and the HB311 and 521 analyses, and adopt the response to comment with the modifications as contained in the notice of amendment. Ms. Canty so MOVED. Mr. Russell SECONDED the motion. The motion CARRIED with a 6-0 vote.

III.B.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.

Chairman Shropshire called for a motion to appoint Mr. Reed permanent hearing examiner. Mr. Mires so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED with a 6-0 vote.

Ms. Canty later recused herself from this matter.

Chairman Shropshire called for a motion to reconsider the vote to appoint Mr. Reed permanent hearing examiner for the New Contested Case, Item III.B.1. Mr. Tweeten so MOVED. Mr. Mires SECONDED. The motion CARRIED with a 5-0 vote.

III.B.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.

Mr. Arrigo said the department and Columbia Falls Aluminum Company are working on negotiating an Administrative Order on Consent to address State Superfund issues. He also said the department is talking to Columbia Falls Aluminum Company about disposal of the pot liners that are at the facility.

Ms. Canty and Ms. Kaiser recused themselves from this matter (Ms. Canty also recused herself from item III.B.1 at this time.)

Chairman Shropshire requested a motion to appoint Mr. Reed as the permanent hearing examiner for the New Contested Case III.B.2. Mr. Tweeten so MOVED. Mr. Mires SECONDED. The motion CARRIED with a 4-0 vote.

III.B.3 In the matter if violations of the Opencut Mining Act by Bay Materials, LLC at Normont Farms Pit, Toole County, Montana, BER 2014-07 OC.

Chairman Shropshire called for a motion to appoint Mr. Reed as the permanent hearing examiner in this matter. Ms. Kaiser so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED with a 6-0 vote.

IV. General Public Comment

Chairman Shropshire asked if anyone would like to address the Board. There were no comments.

A brief discussion took place regarding the proposed greenhouse gas rule 111(d).

V.

Adjournment

Chairman Shropshire called for a motion to adjourn. Mr. Tweeten so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The meeting adjourned at 9:42 a.m.

Board of Environmental Review September 26, 2014, minutes approved:

ROBIN SHROPSHIRE
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE

BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR SETTING OF THE 2015 MEETING SCHEDULE

AGENDA # I.B.

AGENDA ITEM SUMMARY - Setting of 2015 Meeting Schedule

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

BACKGROUND - Establishment of a 2015 Board meeting schedule at this meeting will enable Board members, the Department, and the public to plan and schedule matters that involve the Board and other activities far enough in advance to minimize scheduling conflicts and the need for emergency meetings.

HEARING INFORMATION - No hearing is necessary.

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

Considering the factors listed above, the Department has developed a tentative meeting schedule for the Board's consideration. It is:

January 30
March 27
May 29
July 31
October 2
December 4

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

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION

Agenda No. III.A.1.

Agenda Item Summary: The Department requests that the Board initiate rulemaking to amend the air quality rules to reference the latest version of the Montana ambient air quality monitoring Quality Assurance Project Plan and make other changes to clarify the specific rules and regulations that govern ambient air monitoring performed by the department and other entities.

List of Affected Rules: This rulemaking would amend the Administrative Rules of Montana (ARM) 17.8.101, 17.8.103, 17.8.202, 17.8.204, and 17.8.230, and would repeal ARM 17.8.206.

Affected Parties Summary: The proposed rule amendments would affect any person or entity conducting ambient air quality monitoring according to Department or Board direction.

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

Background: The Department requests that the Board initiate rulemaking to amend ARM 17.8.101, 17.8.103, ARM 17.8.202, ARM 17.8.204, ARM 17.8.206, and ARM 17.8.230, as specified in the rule text provided in the attached Proposed Notice of Public Hearing on Proposed Amendment and summarized below. Refer to the attached notice for additional detail.

Proposed revisions to ARM 17.8.101. The proposed revisions would add the definitions of "board" and "department" to this rule because those terms are used throughout chapter 8, and are not defined in the current rules. Terms used in rules need to be defined. Those terms should be defined once, in this rule, for the entire chapter, rather than being defined in each subchapter.

Proposed revisions to ARM 17.8.103. The proposed revisions remove from this rule references to documents that constitute outdated guidance or are already appropriately referenced in the applicable federal regulations incorporated by reference in ARM, Title 17, chapter 8, subchapter 1.

Proposed revisions to ARM 17.8.201. The proposed revisions would add the definitions of "administrator" and "regional administrator", as those terms are used in 40 CFR Part 58, incorporated by reference in ARM 17.8.202, that define both those terms to mean

the department. This would clarify that the department will be the administrator for that regulation. The proposed revisions also delete the definition of "department," which becomes redundant when the term is defined in ARM 17.8.101 for the entire chapter.

Proposed revisions to ARM 17.8.202. In this rule, the proposed revisions incorporate by reference the updated 2013 version of the Montana Ambient Air Monitoring Program Quality Assurance Project Plan (MT QAPP) and remove the outdated 1996 version. The major changes in the 2013 version include monitoring protocols for additional pollutants, substitution of citations to federal regulatory language in place of the actual language in the text, and replacement of references to outdated technologies with references to modern methods. The numerous changes are described in Summary of Changes: 1996 to 2013 QAPP, which is available for review upon request. Annually hereafter, or as needed, the Board will initiate rulemaking to update the version of the MT QAPP that is incorporated by reference in the ARM. Also, the Board is proposing to remove from this rule references to volumes I-IV of the Quality Assurance Handbook for Air Pollution Measurement Systems published by the federal Environmental Protection Agency (EPA) for the same reasons given in the discussion of the proposed amendments to ARM 17.8.103. Finally, the proposed incorporation by reference of "EPA Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD)" would establish requirements for ambient air quality monitoring performed by sources subject subchapter 8, which concerns prevention of significant deterioration of air quality.

Proposed revisions to ARM 17.8.204. The proposed revisions clarify that all monitoring performed in the state of Montana must be performed according to QAPPs that adhere to a single set of federal guidelines, as addressed through the appropriate QAPP document. The proposed revisions eliminate the requirement that entities other than the Department use the MT QAPP, which is adopted in ARM 17.8.202, as described in the revisions to that rule. The MT QAPP is appropriate for the Department to use when conducting ambient monitoring across the state, but is not appropriate for project-specific ambient monitoring by applicants or others because the MT QAPP contains specific processes and procedures required only of regulatory agencies and not within the ability or purview of other entities such as submitting data to federal databases, determining compliance with NAAQS, providing the public with air quality data, and participating in state and federal research efforts.

To address the requirements of quality assurance for project-specific ambient monitoring, the proposed revisions require that the entity proposing to monitor adopt a project-specific QAPP that satisfies the relevant federal regulations. The proposed revisions would require that an entity must submit the project-specific QAPP to the Department for its review and approval.

Proposed repeal of ARM 17.8.206. The Board is proposing to repeal ARM 17.8.206, because the requirements of that rule are already contained in applicable state rules or federal regulations, and are therefore redundant.

Proposed revisions to ARM 17.8.230. The Board is proposing to remove a reference to the semi-automated method for fluoride monitoring in Methods of Air Sampling and Analysis. That document is also being proposed to be removed from incorporation by reference in ARM 17.8.202, as described above. The reason for the proposed amendment is that the method is no longer commonly used and it is difficult to find an accredited laboratory to perform the post-sampling analysis required by the method. Updated methods are available and the board is proposing that the department will determine, on case-by-case basis, the appropriate method to be used.

In summary, the proposed rulemaking would establish a single set of quality assurance requirements applicable to all ambient air monitoring conducted within the state of Montana. More specifically, the proposed rulemaking would remove reference to the 1996 version of the Montana ambient air quality monitoring Quality Assurance Project Plan (QAPP); incorporate the Department's 2013 version of QAPP by reference; establish the applicable federal regulations as the standard by which all ambient air monitoring conducted within Montana must be performed; clarify that a regulated entity required to monitor would develop its own project-specific QAPP, and that the Department will use the 2013 QAPP proposed for incorporation by reference for monitoring conducted by the state of Montana; remove references to certain outdated or improperly incorporated federal guidance and/or policy documents; and incorporate applicable federal regulations and guidance by reference.

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

Board Options: The Board may:

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

DEQ Recommendation: The Department recommends that the Board initiate rulemaking and appoint a hearing examiner to conduct a public hearing, as described in the proposed MAR notice.

Enclosures:

1. Draft Notice of Public Hearing on Proposed Amendment

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.101, 17.8.103, 17.8.201, 17.8.202,)
17.8.204, and 17.8.230 pertaining to)
definitions, incorporation by reference)
and availability of referenced)
documents, definitions, incorporation by)
reference, ambient air monitoring, and)
fluoride in forage and the repeal of ARM)
17.8.206 pertaining to methods and data)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

(AIR QUALITY)

TO: All Concerned Persons

1. On _____, 2015, at __:__.m., the Board of Environmental Review will hold a public hearing [in/at address], Montana, to consider the proposed amendment and repeal 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., _____, 2015, 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:

17.8.101 DEFINITIONS As used in this chapter, unless indicated otherwise in a specific subchapter, the following definitions apply:

(1) through (7) remain the same.

(8) "Board" means the Board of Environmental Review as provided for in 2-15-3502, MCA.

(8) through (11) remain the same, but are renumbered (9) through (12).

(13) "Department" means the Department of Environmental Quality as provided for in 2-15-3501, MCA.

(12) through (42) remain the same, but are renumbered (14) through (44).

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

REASON: The board is proposing to add the definitions of "board" and "department" to this rule because the terms are used throughout Chapter 8. Rather than define the terms in each subchapter, the board is proposing to define them once, in this rule, for the entire chapter.

MAR Notice No. 17-____

17.8.103 INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED DOCUMENTS (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) through (l) remain the same.

(m) section 112(b)(1) of the Federal Clean Air Act (FCAA), as codified in 42 USC 7412(b)(1), pertaining to substances designated as hazardous air pollutants; and

(n) the Montana Source Test Protocol and Procedures Manual (July 1994 ed.), a department manual pertaining to sampling and data collection, recording, analysis, and transmittal requirements; and

~~(o) the Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I: A Field Guide to Environmental Quality Assurance (EPA 600/R-94/038a, revised April 1994); Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II: Part 1 Ambient Air Quality Monitoring Program Quality System Development (EPA 454/R-98/004, revised August 1998); Quality Assurance Handbook for Air Pollution Measurement Systems, Volume III: Stationary Source Specific Methods (EPA 600/R-94/038c, revised September 1994); and Quality Assurance Handbook for Air Pollution Measurement Systems, Volume IV: Meteorological Methods (EPA 600/R-94/038d, revised March 1995), a federal manual pertaining to sampling and data collection, recording, analysis, and transmittal requirements.~~

(2) through (4) remain the same.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

REASON: The board is proposing to delete ARM 17.8.103(1)(o) to remove references to Volumes I through IV of the Quality Assurance Handbook for Air Pollution Measurement Systems published by the federal Environmental Protection Agency (EPA). Volumes I, II, and IV are already appropriately referenced in the applicable federal regulations incorporated by reference in ARM Title 17, chapter 8, subchapter 1, and the reference to Volume III was inappropriate, as it did not address ambient monitoring.

17.8.201 DEFINITIONS In this subchapter, the following words and phrases shall have the following meanings:

(1) "Act" means the Montana Clean Air Act.

(2) "Administrator," as used in 40 CFR Part 58, means the department.

(2) through (5) remain the same, but are renumbered (3) through (6).

~~(6) "Department" means the Department of Environmental Quality.~~

(7) through (25) remain the same.

(26) "Regional administrator," as used in 40 CFR Part 58, means the department.

(26) through (33) remain the same, but are renumbered (27) through (34).

AUTH: 75-2-111, 75-2-202, MCA

IMP: 75-2-202, MCA

REASON: The board is proposing to delete the definition of "department" from this subchapter because it is proposing, as discussed above, to define the term in ARM 17.8.101 for the entire chapter. It is unnecessary to define a term in a subchapter when that term is defined for the entire chapter. The board is proposing to add definitions of "administrator" and "regional administrator," as those terms are used in 40 CFR Part 58, which is incorporated by reference in ARM 17.8.202, that define both those terms to mean the department. This would clarify that the department will be the administrator for that regulation.

17.8.202 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) The Montana Ambient Air Monitoring Program Quality Assurance Project Plan (~~November 1996 ed.~~ 2013), a Department of Environmental Quality ~~department~~ manual ~~specifying that specifies ambient air~~ sampling and data collection, recording, analysis, and transmittal requirements that pertain only to the department's monitoring program;

(b) ~~Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I: A Field Guide to Environmental Quality Assurance, (EPA/600/R-94/038a, revised April 1994); Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II: Part 1 Ambient Air Quality Monitoring Program Quality System Development, (EPA/454/R-98-004, revised August 1998); Quality Assurance Handbook for Air Pollution Measurement Systems, Volume III: Stationary Source Specific Methods, (EPA/600/R-94/038c, revised September 1994); and Quality Assurance Handbook for Air Pollution Measurement Systems, Volume IV: Meteorological Methods, (EPA/600/R-94/038d, revised March 1995), a federal manual specifying sampling and data collection, recording, analysis, and transmittal requirements~~ EPA Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD), EPA-450/4-87-007 (May 1987);

(c) ~~Methods of Air Sampling and Analysis, Third Edition (1989), Method No. 204, determination of fluoride content of the atmosphere and plant tissues (semi-automated method), a nationally recognized document specifying field and laboratory analytic procedures;~~

(d) and (e) remain the same, but are renumbered (c) and (d).

(f) (e) 40 CFR Part 58, including ~~Appendices A through G~~, specifying criteria and requirements for ambient air quality monitoring and reporting.

(2) through (4) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

REASON: The board is proposing to amend ARM 17.8.202(1)(a) to incorporate by reference the updated 2013 version of the Montana Ambient Air Monitoring Program Quality Assurance Project Plan (QAPP) and remove the outdated 1996 version of the QAPP. The major changes in the 2013 version include monitoring protocols for additional pollutants, substitution of citations to federal regulatory language in place of the actual language in the text, and replacement of references to outdated technologies with references to modern methods. For

example, ozone, while a regulated pollutant, was not addressed in the 1996 Montana QAPP and PM_{2.5} was not a regulated pollutant at that time, so was not addressed in the 1996 QAPP. Both pollutants are addressed in the 2013 QAPP. In addition, the 1996 Montana QAPP unnecessarily repeated federal regulatory language and the 2013 version has eliminated that repetition by referencing those requirements instead of repeating them. Numerous other changes address the significant changes in the technologies and methods now used to conduct monitoring compared to those used in 1996. These and other changes are described in Summary of Changes: 1996 to 2013 QAPP. It, and the complete text of the Montana Ambient Air Monitoring Program Quality Assurance Project Plan (2013), are available on the department's web site at <http://deq.mt.gov/airmonitoring/monitoringdocuments.mcp.x>.

Annually hereafter, or as needed, the board will initiate rulemaking to update the version of the QAPP that is incorporated by reference in the ARM. In addition, the board is proposing to remove from this rule references to Volumes I through IV of the Quality Assurance Handbook for Air Pollution Measurement Systems published by EPA for the same reasons given in the discussion of the proposed amendments to ARM 17.8.103. Finally, the board is proposing to incorporate by reference "EPA Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD)" (May 1987). These guidelines are used in ARM 17.8.204 to establish the requirements for monitoring performed by sources subject to subchapter 8, which concerns prevention of significant deterioration of air quality. These guidelines are not adopted in the federal regulations adopted by reference in this chapter, but they provide supplemental information that is important when a company makes PSD monitoring determinations and when the department makes decisions about the quality and acceptability of collected monitoring data. The board is proposing to adopt and require compliance with the guidelines to provide as much consistency and clarity as possible to entities developing a monitoring project. Adoption of these guidelines would conform the rules to match the practices that monitoring entities, other than the department, must already follow to obtain air quality data suitable for use in the PSD review process. The complete text of the guidelines is available at <http://nepis.epa.gov/Exe/ZyPDF.cgi/2000J2Q6.PDF?Dockey=2000J2Q6.PDF>.

17.8.204 AMBIENT AIR MONITORING (1) The requirements of this rule apply to any ambient air monitoring performed by the department or any other entity ~~as required by this chapter, including any ambient air monitoring performed as a result of any condition of any permit issued under subchapters 7 or 8 regardless of the date of issuance, or any other ambient air monitoring by any entity in order to determine compliance with subchapters 2 or 8. that is:~~

- (a) required by this chapter;
- (b) used to demonstrate compliance with this chapter;
- (c) submitted in an application for, or to comply with a condition of, a permit under this chapter; or
- (d) used to satisfy any applicable requirement of Title 75, chapter 2, MCA, or the federal Clean Air Act, 42 USC 7401 through 7671g, or implementing regulations, for which the department has oversight.

~~(2) Except as otherwise provided in this chapter, or unless written approval is obtained from the department for an exemption from a specific part of the Montana Quality Assurance Project Plan, all sampling and data collection, recording, analysis, and transmittal including, but not limited to, site selection, precision and accuracy determinations, data validation procedures and criteria, preventive maintenance, equipment repairs, and equipment selection must be performed as specified in the Montana Quality Assurance Project Plan, incorporated by reference in ARM 17.8.202, except when more stringent requirements are determined by the department to be necessary pursuant to the Quality Assurance Handbook for Air Pollution Measurement Systems, or 40 CFR Part 50 including Appendices A through E, Part 53, and Part 58 also incorporated by reference in ARM 17.8.202, at which time the latter two documents shall be adhered to for the specific exception. Any entity performing ambient air monitoring within the state of Montana for a purpose listed in (1) shall perform it according to a Quality Assurance Project Plan (QAPP) prepared to satisfy the applicable requirements of 40 CFR Parts 50, 53, and 58, and, if performed to comply with subchapter 8 of this chapter, the EPA Ambient Monitoring Guidelines for PSD, which are adopted by reference in ARM 17.8.202.~~

~~(3) If monitoring for a purpose in (1) is performed by:~~

~~(a) the department, it must be performed in compliance with the Montana Ambient Air Monitoring Program Quality Assurance Project Plan; or~~

~~(b) any other entity, it must be performed in compliance with a project-specific QAPP that has been submitted to and approved by the department;~~

~~(3) (4) Failure to comply with this rule is grounds to partially or totally invalidate the appropriate ambient air monitoring data which subsequently could result in: The department may invalidate, in whole or in part, ambient air monitoring data that was not obtained in compliance with this rule. Invalidated data may not be used for the purposes listed in (1).~~

~~(a) a violation of the conditions of a permit issued under subchapters 7 or 8; or~~

~~(b) a determination by the department that a permit application submitted under subchapters 7 or 8 is incomplete; or~~

~~(c) a determination that insufficient ambient air quality data is available to determine compliance with any ambient air quality standard contained in subchapter 2 or a prevention of significant deterioration increment contained in ARM 17.8.804.~~

AUTH: 75-2-111, MCA

IMP: 75-2-201, 75-2-202, MCA

REASON: The proposed amendments to (1) would establish a single, uniform standard by which all regulatory-quality ambient air monitoring must be conducted within the state of Montana, whether performed by the department or any other entity. That standard would require ambient air quality monitoring to comply with ARM 17.8.204, if it is: (a) required by the air quality rules in ARM Title 17, chapter 8 (the rules that implement the Montana Clean Air Act); (b) used to demonstrate compliance with those rules; (c) submitted as part of an air quality permit application or to comply with an air quality permit condition; or (d) used to satisfy any requirement of the Montana Clean Air Act or federal Clean Air Act, or

implementing regulations. These amendments are necessary because the requirements in the current rule that ambient monitoring be performed according to a QAPP are limited to ambient monitoring required by an air quality rule or an air quality permit. These requirements would be retained in the proposed amendments. In addition, the proposed amendments to (1)(c) and (1)(d) would require that ambient monitoring data that may be submitted in a permit application or to satisfy a requirement of the Montana Clean Air Act or the federal Clean Air Act and implementing regulations must comply with a QAPP approved under ARM 17.8.204.

The proposed amendment to (1)(c), which would require that monitoring submitted in an air quality permit application must meet the quality assurance and quality control (QA/QC) requirements of this subchapter, is necessary because that requirement is not in the existing rule, and the requirement would ensure that the data in a permit application are reliable. For example, a new mine or electrical generating plant may be required by ARM 17.8.822(5) and (6) to monitor for a year to develop data concerning wind direction and speed and baseline levels of air pollutants before applying for an air quality permit. The proposed requirement in (1)(c) for such pre-application monitoring to be performed according to the QA/QC provisions of this subchapter would ensure that, when the data is submitted as part of a permit application, it has been collected according to acceptable national standards.

The proposed new language in (1)(d), which would require that monitoring used to satisfy any requirement of the state or federal Clean Air Acts or implementing regulations must meet the QA/QC requirements of this subchapter, is necessary because it is not in the existing rules. The proposed requirement would ensure that monitoring used, for example, to influence a nonattainment designation is reliable. For example, under 42 USC 7407(d), a provision of the federal Clean Air Act, each state must submit, within one year after a new national ambient air quality standard (NAAQS) is adopted in federal regulation, a designation to EPA of the attainment status of all areas in the state for that NAAQS. Private entities conducting ambient monitoring for the subject criteria pollutant may also submit data to the department in support of a specific designation. Such monitoring might not be required by Montana law or rules, federal law or regulations, or an air quality permit. However, if data generated by that monitoring is submitted to influence an attainment or nonattainment designation by the department, the proposed new language in (1)(d) would require that it satisfy the ambient air quality monitoring requirements in this subchapter to the same extent as data generated by the department.

The amendments to (2) would eliminate the requirement that all ambient monitoring must be performed according to the Montana Quality Assurance Project Plan (Montana QAPP) and instead require that all ambient monitoring be performed in compliance with a QAPP prepared in accordance with the federal quality assurance regulations and guidelines. The reason the existing requirement should be eliminated is that it is inappropriate and must be replaced as described below. The existing rule requires entities that conduct ambient air quality monitoring other than the department to use the same QAPP that the department uses, unless an exemption is granted by the department. This is not appropriate because the QAPP used by the department contains specific processes and procedures required only of

regulatory agencies which are not within the ability or purview of other entities, such as submitting data to federal databases, determining compliance with NAAQS, providing the public with air quality data, and participating in state and federal research efforts. On the other hand, a QAPP to be used for project-specific monitoring must be designed for the specific characteristics of the area, such as appropriate siting, topography, wind direction and speed, and specifics of the project, such as pollutants to be emitted. In addition, project-specific monitoring may include PSD monitoring, which is required of industrial sources and cannot be conducted by the department. The reference to the Montana QAPP in the existing rule is inappropriate and, in practice, entities other than the department, that conduct ambient monitoring for the purposes in (1), have submitted and obtained department approval for project-specific QAPPs.

The proposed new language in (2) would add the requirement that all ambient monitoring used for a purpose in (1) must be performed according to a QAPP prepared to satisfy federal regulations concerning QA/QC for such monitoring. Under the proposed amendment, all monitoring to be used for a purpose in (1) would be required to be performed according to a QAPP satisfying 40 CFR Parts 50, 53, and 58, including quality assurance requirements for state or local air monitoring stations (SLAMS), special purpose monitor stations (SPMs), and prevention of significant deterioration (PSD) air monitoring. The reason for the proposed new language is to ensure that all monitoring used for a purpose in (1) is performed in compliance with a single set of federal QA/QC requirements. It is beneficial to the department and other entities, as described above, that all monitoring that may be used for a regulatory purpose meet a consistent, defined level of QA/QC. The federal regulations concerning QA/QC already provide a suitable, nationally standardized and applicable apparatus by which to ensure the accuracy and reliability of such monitoring data. Under the proposed rule, the QAPPs required to be used by the department and private entities would all be subject to this same set of regulations.

The proposed new language in (3)(a) would require that, if the monitoring is performed by the department, it must comply with the Montana Ambient Air Monitoring Program Quality Assurance Project Plan. This is a QAPP that is based on the federal regulations in 40 CFR Parts 50, 53, and 58 and is designed to address matters relevant to ambient monitoring conducted by the state. A renamed and updated version of that QAPP is being proposed for adoption in ARM 17.8.202(1)(a). This would bring the Montana requirement up-to-date with federal regulations for ambient monitoring of such pollutants as PM_{2.5}, for example, which was not a regulated pollutant when the last version of the Montana QAPP was adopted in 1996.

The proposed new language in (3)(b) would incorporate the requirement from 40 CFR Part 58 that a project-specific QAPP be submitted to and approved by the department before monitoring begins. In practice, the department has worked to approve QAPP documents in a timely manner and anticipates publishing guidance to that end. A project-specific QAPP is necessary for the reasons discussed above.

When an entity other than the department performs ambient monitoring before a permit application is submitted or to comply with a permit condition, it is required by existing federal regulations to perform it according to a QAPP that has

been reviewed and approved by the EPA. Under the proposed amendments to ARM 17.8.201(2) and (26) and ARM 17.8.204(2)(b), the department would be the reviewing and approving authority. The department's review and approval of another entity's QAPP for monitoring performed to satisfy other requirements of the state or federal Clean Air Act or implementing regulations is not required by federal regulations. However, department review and approval of a QAPP is necessary to ensure that the monitoring data collected will be reliable and appropriate to use for such actions as proposing designations of whether areas are attaining the NAAQS. The complete text of 40 CFR Part 58 is available at

<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR&searchPath=Title+40%2FChapter+1%2FSubchapter+C%2FPart+58&oldPath=Title+40%2FChapter+1%2FSubchapter+C%2FPart+58@isCollapsed=true&selectedYearFrom=2013&ycord=1652>.

The proposed amendments to (4) would authorize the department to invalidate data submitted for the regulatory purposes described above in (1), if the data was not obtained in compliance with ARM 17.8.204. If invalidated, the department may not use the data for regulatory purposes. While the proposed amendments maintain the department's existing authority to invalidate data, they also authorize the department to exercise discretion not to invalidate data, even if not obtained in compliance with the rule. This amendment would allow the department to determine whether failure to fully comply with the applicable rules and regulations undermines the quality of the data produced. In some cases, substantial compliance may produce data of appropriate quality to be used for a purpose listed in (1). This is consistent with 40 CFR Part 58, Appendix A, the regulation of the federal EPA that governs QAPPs for ambient monitoring. Section 1(a) of that appendix states: "Each monitoring organization is required to implement a quality system that provides sufficient information to assess the quality of the monitoring data. The quality system must, at a minimum, include the specific requirements described in this appendix of this subpart. Failure to conduct or pass a required check or procedure, or a series of required checks or procedures, does not by itself invalidate data for regulatory decision making. Rather, monitoring agencies and EPA shall use the checks and procedures required in this appendix in combination with other data quality information, reports, and similar documents showing overall compliance with Part 58. Accordingly, EPA and monitoring agencies shall use a 'weight of evidence' approach when determining the suitability of data for regulatory decisions." The proposed amendments would also remove language that is unnecessarily repetitive of ARM 17.8.204(1).

17.8.230 FLUORIDE IN FORAGE (1) remains the same.

(2) The following sampling protocol must be applied:

(a) through (g) remain the same.

(h) The composite sample must be thoroughly mixed prior to any chemical analysis. Replicate aliquots are to be taken using a sample splitter or any other unbiased technique, and analyzed chemically for fluoride using the semi-automated a method, as more fully described in Methods of Air Sampling and Analysis, incorporated by reference in ARM 17.8.202, except that the surfaces of the plant material must not be washed, or by an approved equivalent method approved by the

department.

(i) remains the same.

AUTH: 75-2-111, 75-2-202, MCA

IMP: 75-2-202, MCA

REASON: The board is proposing to remove a reference to the semi-automated method for fluoride monitoring in Methods of Air Sampling and Analysis. That document is also being proposed to be removed from incorporation by reference in ARM 17.8.202, as described above. The reason for the proposed amendment is that the method is no longer commonly used and it is difficult to find an accredited laboratory to perform the post-sampling analysis required by the method. Updated methods are available and the board is proposing that the department will determine, on case-by-case basis, the appropriate method to be used.

4. The rule proposed to be repealed is as follows:

17.8.206 METHODS AND DATA (AUTH: 75-2-111, 75-2-202, MCA; IMP, 75-2-202, MCA), located at page 17-272, Administrative Rules of Montana. The board is proposing to repeal ARM 17.8.206 because the requirements of that rule are already contained in applicable state rules or federal regulations and are, therefore, redundant. Specifically, the requirements of that rule are contained in the Montana Ambient Air Monitoring Quality Assurance Project Plan, 40 CFR Parts 50, 53, and 58 and EPA's Quality Assurance Handbook for Air Pollution Measurement Systems, all of which are incorporated by reference in ARM 17.8.202.

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

6. 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.

7. 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.

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

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

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

Certified to the Secretary of State, _____, 2014.

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

AGENDA ITEM NO. III.B.1.

AGENDA ITEM SUMMARY - The department is requesting that the board adopt the amendments to ARM 17.30.1106 governing the issuance of discharge permits under the Montana Pollutant Discharge Elimination System Permit (MPDES).

LIST OF AFFECTED RULES – The initial notice proposed amending 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, and repealing 17.30.1110, 17.30.1115, and 17.30.1117. The department is now requesting the board to amend only ARM 17.30.1106 and is not requesting any repeals or the amendment of the other rules in this rulemaking.

AFFECTED PARTIES SUMMARY – This rulemaking would affect operators of new or existing facilities that discharge storm water or other wastewater into state surface water and are regulated under the Montana Pollutant Discharge Elimination System (MPDES) program, and persons or facilities who wish to obtain a discharge permit.

HEARING INFORMATION – A public hearing was held on August 27, 2014. The Hearing Examiner's Report is attached.

BACKGROUND – The seven largest cities in the state have asked that the rulemaking be postponed and that there be a stakeholder process to reach consensus on rule amendments. The department agrees that will be advantageous for all concerned parties. However, this request does not include the proposed exclusion for oil and gas activities, which is contained in ARM 17.30.1106.

Board Options: The board may:

1. Adopt the rules as proposed;
2. Adopt the rules 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 Repeal and the record in this proceeding; or
3. Not adopt these rules.

DEQ Recommendation – The department recommends that the board adopt the Hearing Examiner's Report, the HB 311 and 521 analyses, the proposed responses to comments, and the amendments to ARM 17.30.1106 and described in the draft Notice of Amendment.

Enclosures:

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

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.30.1101, 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 pertaining to storm water)
discharges)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

(WATER QUALITY)

TO: All Concerned Persons

1. On August 27, 2014, at 9:30 a.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 and repeal 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., August 18, 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:

17.30.1101 PURPOSE AND SCOPE (1) This subchapter is intended to be applied together with ARM Title 17, chapter 30 subchapters 12 and 13 to establish a system for regulating the discharges of potential pollutants from point sources ~~discharges of storm waters into surface~~ to state waters. This subchapter and subchapters 12 and 13 of ARM Title 17, chapter 30, ~~which regulate storm water discharges through Montana pollutant discharge elimination system (MPDES)~~ general permits, permit authorizations, and notices of intent, are intended to be

compatible with the national pollutant discharge elimination system (NPDES) as established by the United States Environmental Protection Agency pursuant to section 402 of the federal Clean Water Act (CWA), 33 USC 1251, et seq. ~~Except as expressly modified in this subchapter, all requirements in ARM Title 17, chapter 30, subchapters 12 and 13 remain effective pertaining to point source discharges of storm water.~~

~~(2) The rules in this subchapter pertain to point source discharges of storm water that do not contain routine process wastewater and that do not contain non-storm water discharges except for the potential non-storm water discharges from MS4s that are listed in ARM 17.30.1111(6)(c)(iii). ARM Title 17, chapter 30, subchapter 13 contains additional requirements pertaining to point source discharges of storm water that routinely contain process wastewater or non-storm water discharges (other than the potential non-storm water discharges for MS4s listed in ARM 17.30.1111(6)(c)(iii)) that are regulated using an individual MPDES permit.~~

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: For the reasons set forth below, the board is proposing to amend (1) to clarify a person's duty to apply for an MPDES permit for any discharge of pollutants to state waters, unless the discharge is excluded under ARM 17.30.1310 or 17.30.1106. The term "discharge of pollutant" is defined in ARM 17.30.1102 and 17.30.1304 and means the addition of any pollutant or combination of pollutants to state waters from any point source. The board is also proposing to remove the term "potential" in reference to pollutants because the discharge of "potential pollutants" is not regulated under state or federal permit requirements. The board is proposing to remove the term "surface water" and replace it with "state water," as defined in 75-5-103, MCA. The board is also proposing to remove text from (1) stating that the requirements in subchapter 11 modify the requirements in subchapters 12 and 13. This change is necessary because subchapters 12 and 13 apply to all MPDES permits and are not modified by subchapter 11.

The board is also proposing to remove (2) to provide consistency between storm water discharge permit requirements and ARM 17.30.1322 (pertaining to all MPDES permit application requirements) and to clarify that storm water discharge permits are subject to the provisions of subchapter 13, which pertain to all MPDES permits. These amendments to (2) are necessary to provide storm water discharge permit requirements that are consistent with the applicable federal regulations and board rules pertaining to all discharge permits.

17.30.1102 DEFINITIONS (1) through (4) remain the same.

~~(5) "Final stabilization" means the time at which all soil-disturbing activities at a site have been completed and a vegetative cover has been established with a density of at least 70% of the pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. Final stabilization using vegetation must be accomplished using seeding mixtures or forbs, grasses, and shrubs that are adapted to the conditions of the site. Establishment of a vegetative~~

cover capable of providing erosion control equivalent to pre-existing conditions at the site will be considered final stabilization.

(6) through (21) remain the same, but are renumbered (5) through (20).

(21) "Significant materials" includes, but is not limited to:

(a) raw materials;

(b) fuels;

(c) materials such as solvents, detergents, and plastic pellets;

(d) finished materials such as metallic products;

(e) raw materials used in food processing or production;

(f) substances designated as hazardous under section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) 42 U.S.C. 9601(14);

(g) any chemical the facility is required to report pursuant to the reporting requirements under section 313 of the federal Emergency Planning and Community Right to Know Act (EPCRA) created under the Superfund Amendments and Reauthorization Act (SARA) also known as SARA Title III, 42 U.S.C. 11001 - 11050;

(h) fertilizers;

(i) pesticides; and

(j) waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

(22) through (27) remain the same.

~~(28) "Storm water discharge associated with construction activity" means a discharge of storm water from construction activities including clearing, grading, and excavation that result in the disturbance of equal to or greater than one acre of total land area. For purposes of these rules, construction activities include clearing, grading, excavation, stockpiling earth materials, and other placement or removal of earth material performed during construction projects. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more.~~

~~(a) Regardless of the acreage of disturbance resulting from a construction activity, this definition includes any other discharges from construction activity designated by the department pursuant to ARM 17.30.1105(1)(f).~~

~~(b) For construction activities that result in disturbance of less than five acres of total land area, the acreage of disturbance does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.~~

~~(c) For construction activities that result in disturbance of five acres or more of total land area, this definition includes those requirements and clarifications stated in (29)(a), (b), (d) and (e).~~

~~(29) (28) "Storm water discharge associated with industrial activity" means a discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.~~

~~(a) remains the same.~~

~~(b) For the categories of industries identified in (e)(ix) of this definition, the term includes only storm water discharges from all the areas (except access roads~~

and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by products, or industrial machinery are exposed to storm water.

(c) remains the same, but is renumbered (b).

~~(d)~~ (c) Industrial facilities, (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in ~~(e)~~ (d)(i) through ~~(ix)~~ and ~~(30)~~ (x), include those facilities designated under the provisions of ARM 17.30.1105(1)(f) (d).

(e) remains the same, but is renumbered (d).

(i) facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (Effluent Guidelines and Standards Part 405-471), (except facilities with toxic pollutant effluent standards that are exempted under category ~~(e)~~ (d)(ix) (x) of this definition);

(ii) remains the same.

(iii) facilities classified as standard industrial classifications 10 through 14 (mineral industry) including active and inactive mining operations, except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or areas of non-coal mining operations that have been released from applicable state or federal reclamation requirements after December 17, 1990; oil and gas exploration, production, processing, or treatment operations; and transmission facilities that discharge storm water by contact with, or that come into contact with, any overburden, raw material, intermediate material, finished products, byproducts, or waste products located on the site of such operations. Inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator. Inactive mining operations do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim;

(iii) remains the same, but is renumbered (iv).

~~(iv)~~ (v) landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition, or under the definitions of "storm water discharge associated with mining and oil and gas activities," and "storm water discharge associated with construction activity" that will result in construction-related disturbance of five acres or more of total land area) including those that are subject to regulation under subtitle D of RCRA;

(v) through (ix) remain the same, but are renumbered (vi) through (x).

(xi) construction activities including clearing, grading, and excavating except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger plan will ultimately disturb five acres or more.

~~(30) "Storm water discharge associated with mining and oil and gas activity" means the same as the definition for "storm water discharges associated with~~

industrial activity" except that the term pertains only to discharges from facilities classified as standard industrial classifications 10 through 14 (mineral industry) that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on the site of such operations. Such facilities include active and inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, and except for areas of non-coal mining operations that have been released from applicable state or federal reclamation requirements after December 17, 1990); and oil and gas exploration, production, processing, or treatment operations; and transmission facilities. "Inactive mining operations" are mining sites that are not being actively mined but that have an identifiable owner/operator, but do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

(29) "Storm water discharge associated with small construction activity" means:

(a) the discharge of storm water from construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The department may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where the conditions given in ARM 17.30.1105(3) are satisfied; and

(b) any other construction activity designated by the department under ARM 17.30.1105, or by the EPA regional administrator, based on the potential of the discharge to contribute to a violation of a water quality standard or to contribute significant pollutants to state surface water.

(31) "Storm water pollution prevention plan (SWPPP)" means a document developed to help identify sources of pollution potentially affecting the quality of storm water discharges associated with a facility or activity, and to ensure implementation of measures to minimize and control pollutants in storm water discharges associated with a facility or activity. The department determines specific requirements and information to be included in a SWPPP based on the type and characteristics of a facility or activity, and on the respective MPDES permit requirements.

(32) "Surface waters" means any waters on the earth's surface including, but not limited to, streams, lakes, ponds, and reservoirs, and irrigation and drainage systems discharging directly into a stream, lake, pond, reservoir, or other surface water. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.

(33) through (35) remain the same, but are renumbered (30) through (32).

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend definitions found in ARM 17.30.1102 to add several new definitions found in 40 CFR 122.26(b), the federal rule defining terms used in the federal storm water regulations, and to remove several definitions that are no longer used in this subchapter. The board is also proposing to modify several definitions to ensure consistency with federal storm water regulations found at 40 CFR 122.26. The board's specific reasons for amending these definitions follow.

The board is proposing to remove the definition of final stabilization as this term does not appear in federal storm water regulations found at 40 CFR 122.26. The General Permit for Storm Water Discharges Associated with Construction Activity (General Permit No. MTR1000000) covers storm water discharges associated with construction activity from initiation of construction-related ground disturbance to "final stabilization" of that disturbance. The term "final stabilization" is defined in Part 5 of General Permit No. MTR1000000, to describe the point at which coverage under General Permit No. MTR1000000 may be terminated, but the term does not appear in subchapter 11.

The board is proposing to add a definition of "significant materials" to define materials that may be discharged with storm water and have the potential to impact human health or the environment. The proposed definition at (21) is consistent with the federal definition of "significant materials" at 40 CFR 122.26(b)(12).

The board is proposing to remove the definition of storm water discharges associated with construction activity at (28) and replace it with two new definitions. The first of these definitions is at proposed (28)(d)(xi) and would place construction activities that disturb more than five acres of total land area under the definition of storm water discharges associated with industrial activity. The second definition pertains to storm water discharges associated with small construction activity at proposed (29), which would include the disturbance of less than five acres of total land area. These amendments are necessary to ensure consistency with the federal definitions of storm water discharge associated with construction activities at 40 CFR 122.26(b).

The board is proposing the amendments at current (29) (proposed to be renumbered (28)) to define the term "storm water discharges associated with industrial activity" to include mining and oil and gas activities, currently defined in (30), and construction activities greater than five acres. The board is also proposing to make other minor editorial changes and to renumber the definitions in this rule. This amendment is necessary to provide consistency with the federal definition of industrial activities at 40 CFR 122.26(b)(14). The board is proposing to delete what is currently numbered (29)(b) as the text is not part of the federal definition of industrial activities in 40 CFR 122.26(b)(14). The board is proposing to amend current (29)(e) (proposed to be renumbered (28)(d)) to make minor editorial changes and to correct internal references. The board is proposing to amend current (29)(e)(i) (proposed to be renumbered (28)(d)(i)) to change the reference to subparts

of this definition. The board is also proposing to amend current (29)(d)(iv) (proposed to be renumbered (28)(d)(v)) to remove language that is no longer necessary due to the inclusion of mining and oil and gas activities that were defined in (30) and are now defined in proposed (28) as amended.

The board is proposing to remove the definition of "storm water discharges associated with mining and oil and gas activities," currently at (30), and to include this category of industrial discharge in proposed (28), along with other similar industrial activities. This amendment will provide consistency between the state and federal definitions of storm water discharge associated with industrial activity.

The board is proposing a new definition in (29) to define "storm water discharges associated with small construction activity" consistent with 40 CFR 122.26(b)(15). This amendment is necessary to maintain consistency with federal regulations defining storm water discharges and different application and permitting requirements for small construction in ARM Title 17, chapter 30, subchapter 13.

The board is proposing to delete the definition of "storm water pollution prevention plan" (SWPPP), currently in (31), as this term is no longer used in this subchapter and does not appear in federal storm water regulations found at 40 CFR 122.26. The General Permit for Storm Water Discharges Associated with Construction Activity (General Permit No. MTR1000000) covers storm water discharges associated with construction activity. In order to achieve compliance with the conditions of General Permit No. MTR1000000, the permittee is required to develop a Storm Water Pollution Prevention Plan (SWPPP). The term "SWPPP" is defined in Part 5 of General Permit No. MTR1000000 to describe a document developed to identify sources of pollution potentially affecting the quality of storm water discharges associated with a facility or activity and to ensure implementation of measures to minimize and control pollutants in storm water discharges associated with a facility or activity. The department determines specific requirements and information to be included in a SWPPP based on the type and characteristics of a facility or activity and on the respective MPDES permit requirements.

The board is proposing to remove the definition of "surface waters," currently at (32), because this definition is unnecessary. Surface waters are included in the definition of state water at 75-5-103, MCA. The provisions of this subchapter apply to discharges of storm water to state water unless excluded under ARM 17.30.1106. The board is proposing to renumber current (33) through (35) as (30) through (32). The proposed amendments to these definitions are necessary to ensure consistency and equivalency with the federal definitions found in 40 CFR 122.2 and 40 CFR 122.26(b) and with the definitions found in the board rules at ARM 17.30.1304 and 17.30.1202.

17.30.1105 PERMIT REQUIREMENT (1) ~~Any person who discharges or proposes to discharge storm water from a point source must obtain coverage under an MPDES general permit or another MPDES permit for discharges. On or after October 1, 1994, operators must obtain an MPDES permit for discharges composed entirely of storm water that are not required by (4) to obtain a permit only if:~~

~~(a) the discharge is associated with small construction activity as defined in ARM 17.30.1102;~~

~~(b) associated with industrial activity;~~

~~(c) associated with mining and oil and gas activity;~~

~~(d) (b) the discharge is from a small municipal separate storm sewer systems that are as identified defined in ARM 17.30.1102 or as designated pursuant to ARM 17.30.1107;~~

~~(e) (c) for which the department determines that storm water controls are needed based on wasteload allocations that are part of TMDLs that address the pollutants of concern; and or~~

~~(f) (d) that the department determines are that the discharge is contributing to a violation of a water quality standard or are is a significant contributors of pollutants to surface waters.~~

~~(2) For point source discharges of storm water identified in (1)(a) through (f) that are routinely composed entirely of storm water, authorization under an MPDES general permit must be obtained pursuant to this subchapter, unless the discharge is covered under an individual MPDES permit that is issued pursuant to ARM Title 17, chapter 30, subchapter 13 to the same owner or operator for other point source discharges.~~

~~(3) For point source discharges of storm water identified in (1)(a) through (f) that are not routinely composed of storm water, and that routinely discharge pollutants, coverage under an individual MPDES storm water permit or under an MPDES general permit must be obtained pursuant to ARM Title 17, chapter 30, subchapter 13.~~

~~(4) remains the same, but is renumbered (2).~~

~~(5) (3) The department may waive the permit requirements in this subchapter for a storm water discharge associated with construction activity that disturbs less than five acres of total land area if either of the following two conditions exist:~~

~~(a) the value of the rainfall erosivity factor ("R" in the revised universal soil loss equation) is less than five during the period of construction activity. The period of construction activity extends through to final stabilization. The rainfall erosivity factor must be determined using a state-approved method. The owner or operator must certify to the department that the construction activity will take place only during a period when the value of the rainfall erosivity factor is less than five. If unforeseeable conditions occur that are outside of the control of the waiver applicant, and which will extend the construction activity beyond the dates initially applied for, the owner or operator shall reapply for the waiver or obtain authorization under the general permit for storm water discharges associated with construction activity. The waiver reapplication or notice of intent must be submitted within two business days after the unforeseeable condition becomes known; or~~

~~(b) remains the same.~~

~~(6) (4) Prior to October 1, 1994, discharges composed entirely of storm water are not required to obtain an MPDES permit except for:~~

~~(a) discharges with respect to which an individual MPDES permit has been issued prior to February 4, 1987; and~~

~~(b) discharges listed in (1)(a), (b), (c), and (f), except that, for discharges listed in (1)(a), this requirement applies only to storm water discharges associated with construction activity that will result in construction-related disturbance of five acres or more of total land area a discharge associated with an industrial activity; or~~

~~(c) a discharge that the department or EPA regional administrator determines~~

contributes to a violation of a water quality standard or is a significant contributor of pollutants to state waters.

(7) (5) For storm water discharges designated by the department under (1) (e) (c) and (f) (d) or (4)(c), the owner or operator shall apply for a permit within 180 days of receipt of the department's notice of designation, unless the department grants a later date.

(8) (6) Except as provided in (9) (7), ~~if not authorized under a storm water general permit, a permit application or notice of intent must be submitted to the department for storm water discharges existing as of any storm water discharge associated with an industrial activity as defined in ARM 17.30.1102 that is not covered under an existing MPDES permit must submit a permit application to the department by October 1, 1992, that are associated with:~~

~~(a) industrial activity;~~

~~(b) mining and oil and gas activity; and~~

~~(c) construction activity that will result in construction-related disturbances of five acres or more of total land area and for which storm water discharges are not authorized by a storm water general permit.~~

(9) (7) The permit requirements in this subchapter are effective beginning March 10, 2003, for discharges identified in (8)(a) through (c) that are not authorized by a general or individual MPDES permit, and which are any storm water discharge associated with industrial activity from a facility, other than an airport, powerplant, or uncontrolled sanitary landfill, that is owned or operated by a municipality with a population of under 100,000; that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill
~~the permit requirements in this subchapter are effective beginning March 10, 2003.~~

(10) and (11) remain the same, but are renumbered (8) and (9).

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend the permit requirements for discharges composed entirely of storm water in ARM 17.30.1105 to maintain consistency with the equivalent federal regulations set forth in 40 CFR 122.26(a) and the permit requirements set forth in ARM Title 17, chapter 30, subchapter 13. The proposed amendments to the definitions of "storm water discharges associated with small construction" and "storm water discharges associated with industrial activity" in ARM 17.30.1102 allow for streamlining and better alignment of this subchapter with the applicable federal regulations and board rules in ARM Title 17, chapter 30, subchapter 13. Under 40 CFR 123.25, the permit requirements in ARM 17.30.1105 are a required element of a delegated state's NPDES permit program. The board is also proposing minor changes to wording, punctuation, formatting, and renumbering the provisions in this rule. The board's specific reasons for proposing these amendments follow.

The board is proposing to amend (1) to maintain consistency with the equivalent federal rules at 40 CFR 122.26(a)(9). This federal rule requires permit coverage for certain discharges that are composed entirely of storm water after October 1, 1994. Permit coverage under this rule is limited to: discharges

associated with small construction activity; discharges from designated small municipal separate storm sewer systems; storm water discharges which require a waste load allocation; and discharges which contribute to a violation of water quality standards or are required by current (6) (proposed to be renumbered (4)) to obtain permit coverage. Unless specifically required by (1) or proposed (4) of this rule, discharges composed entirely of storm water are not subject to permit requirements under this subchapter. The board is proposing to amend (1)(a) to reflect the proposed change in the definition of small construction activity in ARM 17.30.1102, which would include construction activities that are greater than one acre and less than five acres. The board is proposing to delete industrial facilities from (1) since they are addressed in (4). The board is also proposing to delete mining and oil and gas activities from (1) since these activities are proposed to be included in the definition of industrial activity in ARM 17.30.1102. The board is also proposing to amend (1)(d) to make minor wording changes and to renumber it (1)(b).

The board is proposing to delete (2) which requires a storm water discharger to obtain coverage under a general permit unless the discharge is covered under an individual permit because this requirement is not found in equivalent federal rules set forth in 40 CFR 122.21, 122.26, and 122.28. When it qualifies for general permit coverage, a facility may obtain coverage under that general permit unless directed by the department to obtain coverage under an individual permit. A facility may also request to be excluded from coverage under the general permit, in accordance with 40 CFR 122.28(b)(3) or ARM 17.30.1341 and obtain an individual permit.

The board is proposing to delete (3) because the board rules in ARM Title 17, chapter 30, subchapter 13, have been updated to include storm water discharges as well as discharges of process wastewater and other types of wastewater making the requirements set forth in (3) unnecessary. A facility that discharges both storm water and other forms of wastewater must submit the applicable information as specified in a general permit issued under ARM 17.30.1341 or individual permit under ARM 17.30.1322.

The board is proposing to amend (6) and renumber it (4). The proposed amendments reflects changes to the definition of "discharges from small construction activity and industrial activity" proposed in ARM 17.30.1102 and are necessary to maintain consistency with 40 CFR 122.26(a)(1). In order to maintain consistency with the equivalent federal rule at 40 CFR 122.26(a)(i), which does not restrict this permitting requirement to discharges for which individual permits were issued prior to February 4, 1987, the board is proposing to delete the word "individual." The board is also proposing to amend (b) to maintain consistency with 40 CFR 122.26(a)(ii) to reflect the proposed amendment in the definition which will include discharges from mining, oil and gas, and construction activities greater than five acres. The board is also proposing a new (c) to maintain consistency with 40 CFR 122.26(a)(v) which is a federal rule requiring discharges of storm water that contribute to a violation of water quality standards, or are a significant contributor of pollutants, to obtain permit coverage.

The board is proposing to amend (7) to make minor word changes and renumber (7) as (5). This amendment is necessary to incorporate changes in the definitions, to incorporate the proposed deletion and renumbering of two subsections in (1), and to incorporate the proposed addition of (4)(c).

The board is proposing to amend (8) and renumber it as (6). The proposed amendment also deletes (8)(a) through (c), which would no longer be necessary if the amendments are adopted as proposed. The proposed amendments to the definition of "storm water discharges associated with industrial activity" at ARM 17.30.1102 will incorporate the activities described in existing (a) through (c).

The board is proposing to amend (9) and renumber it as (7). The proposed amendments maintains consistency with 40 CFR 122.26(e)(1)(ii), which is a federal rule establishing application deadlines for certain categories of industrial activities.

17.30.1106 EXCLUSIONS (1) In addition to the exclusions stated in ARM 17.30.1310, the following storm water discharges do not require MPDES permits:

(a) remains the same.

(b) existing or new discharges composed entirely of storm water from oil or gas exploration, production, processing, or treatment operations, or transmission facilities, unless the operation or facility:

(i) has had, at any time since November 16, 1987, a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6, 40 CFR 117.21, or 40 CFR 302.6; or

(ii) contributes to a violation of a water quality standard; or

~~(iii) has a storm water discharge associated with construction activity, as defined in this subchapter;~~

(c) ~~existing or new discharges composed entirely of storm water from mining operations, unless the discharge has come into contact with any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations~~ of storm water runoff from mining operations, from oil and gas exploration, production, processing, treatment operations, or transmission facilities, if such existing or new discharges are composed entirely of flows which are from conveyances or systems of conveyances including, but not limited to, pipes, conduits, ditches, and channels, used for collection and conveying precipitation runoff and which have not come into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operation. For purposes of this rule only, "oil and gas exploration, production, processing, treatment operations or transmission facilities" means all field activities or operations associated with exploration, production, processing, or treatment operations or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend ARM 17.30.1106 to maintain consistency with 40 CFR 122.26(c)(1)(iii) and 40 CFR 122.26(a)(2), which are federal rules that exclude field activities or operations associated with oil and gas exploration, production, processing, or treatment from the permit coverage requirements of ARM Title 17, chapter 30, subchapters 11 and 13 for certain

discharges composed entirely of storm water.

The board is proposing to amend (1)(b)(i) and (ii) to make minor editorial changes to reflect the proposed deletion of (1)(b)(iii). The board is proposing to remove (1)(b)(iii) (the exception from the exclusion for oil and gas operations when the activity is associated with construction) because it is not found in the equivalent federal rules at 40 CFR 122.26(c)(1)(iii) and 40 CFR 122.26(a)(2) and the board has determined that it is unnecessary to maintain the exception for construction activities to protect human health and the environment because the proposed rule amendments maintain the authority to require an MPDES permit for storm water discharges associated with oil or gas exploration, production, processing, treatment operations, or transmission facilities when the operation or facility has had a storm water discharge resulting in a reportable quantity for which notification is or was required; or a storm water discharge that contributes to a violation of a water quality standard. These federal rules exclude storm water discharges from mining and from operations associated with oil and gas exploration, production, processing, treatment, or transmission facilities, including construction and other field activities from storm water discharge permit requirements provided these discharges do not come into contact with overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operation.

The board is proposing to amend (1)(c) to expand the scope of this exclusion to oil and gas operations, consistent with 40 CFR 122.26(a)(2) (July 1, 2005) (the later version was vacated by the Ninth Circuit in *NRDC v. U.S. EPA*, 526 F.3d 591 (2008)) and with 33 USC 1342(l)(2) (CWA § 402(l)(2)), which exclude these activities from regulation under the national pollutant discharge elimination system. The board is proposing new (1)(c)(i) to clarify, for the purposes of this exclusion, the meaning of the term "oil and gas exploration, production, processing, treatment operations, or transmission facilities." This definition is consistent with 33 USC 1362(24) (§ 323 of the Energy Policy Act). These amendments are necessary to implement the storm water discharge permitting exclusions for mining and oil and gas activities provided under the federal Clean Water Act.

17.30.1107 DESIGNATION PROCEDURES: SMALL MS4S (1) through (3) remain the same.

(4) The department may designate an MS4 other than those identified in ARM 17.30.1102(23) pursuant to the criteria in ARM 17.30.1105(1) ~~(e)~~ (c) or ~~(f)~~ (d).
(5) through (13) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: The board is proposing to amend ARM 17.30.1107(4) to reflect changes that are proposed in ARM 17.30.1105(1). The changes in ARM 17.30.1105(1) reflect the changes in the definition of storm water discharges associated with industrial activity to include mining, oil and gas activities, and large construction activities. The proposed changes are also necessary to maintain the correct internal cross reference to this rule and to maintain consistency with the federal definitions at 40 CFR 122.26(a)(9) and 122.26(b).

17.30.1111 APPLICATION PROCEDURES, PERMIT REQUIREMENTS:

SMALL MS4S (1) Owners or operators of small MS4s shall ~~apply for authorization under an MPDES permit as provided in ARM 17.30.1110 and this rule obtain coverage under an MPDES general or individual permit and are subject to the following requirements:~~

(a) and (b) remain the same.

(2) Small MS4s shall ~~complete an application for authorization~~ a notice of intent in accordance with the requirements ~~in ARM 17.30.1110~~ specified in a general permit issued pursuant to ARM 17.30.1341 or submit an application for an individual permit and comply with the application requirements set forth in (19). The application general permit must, also include at a minimum, require the following information:

(a) through (18) remain the same.

(19) An operator of a small MS4 that does not obtain coverage under a general permit must obtain coverage by the dates established in (1) and submit an application for an individual permit that includes the required permit application information specified in 40 CFR 122.26(d).

(20) The board adopts and incorporates by reference 40 CFR Part 122.26(d) (July 1, 2013), which sets forth application requirements for large or medium municipal separate storm sewers or for municipal separate storm sewers that are designated subject to permit requirements, as part of the Montana pollutant discharge elimination system. Copies of these federal regulations may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend the application procedures in ARM 17.30.1111 to reflect proposed changes in the general permit rule in ARM 17.30.1341, the proposed repeal of ARM 17.30.1110, and to maintain consistency with the federal regulations related to permit applications for small MS4s at 40 CFR 122.33. This federal rule sets forth application procedures and timeframes for small MS4s and is a required element of a delegated state's permit program as required by 40 CFR 123.25(a)(42). The proposed amendments are necessary to correct citations to the appropriate state regulation governing the application requirements for general permits. The permit requirements for small MS4 operators given in this rule remain unchanged. The board's specific reasons for proposing these amendments follow.

The board is proposing to amend (1) to provide that an operator of an MS4 must obtain permit coverage under a general permit or an individual permit and to remove the reference to ARM 17.30.1110 which is proposed for repeal. The proposed amendment is necessary to maintain consistency with 40 CFR 122.28(b), which sets forth the general administrative requirements for all general permits.

The board is proposing to amend (2) to provide that the operator of a small MS4 may submit a notice of intent to be covered under the general permit or submit

an application for an individual permit and that the application requirements are found in new (19). ARM 17.30.1341 and the federal rule at 40 CFR 122.28(b) require the contents of the notice of intent to be specified in the general permit. The board is also proposing to amend (2) to clarify that the general permit must at minimum contain the elements in (a) through (c). These amendments are necessary to maintain consistency with the equivalent federal rule related to permit applications for small MS4s found at 40 CFR 122.33 and 122.34, which are required by 40 CFR 123.25(42) to be part of a delegated state's permit program.

The board is proposing to add new (19) to the application requirements for a small MS4 to maintain consistency with the equivalent federal rule found at 40 CFR 122.33, which is required by 40 CFR 123.25(42) to be part of a delegated state's permit program.

The board is proposing new (20) to incorporate 40 CFR 122.26(d) and the federal application requirements applicable to large or medium MS4s, or to small MS4s that are either designated or choose to obtain a permit for their discharges in order to retain state primacy under the federal Clean Water Act.

17.30.1341 GENERAL PERMITS (1) The department may issue general permits for the following categories of point sources which the board has determined are appropriate for general permitting under the criteria listed in 40 CFR 122.28 as stated in ARM 17.30.1105 in accordance with the following:

- ~~(a) cofferdams or other construction dewatering discharges;~~
- ~~(b) ground water pump test discharges;~~
- ~~(c) fish farms;~~
- ~~(d) placer mining operations;~~
- ~~(e) suction dredge operations using suction intakes no larger than four inches in diameter;~~
- ~~(f) oil well produced water discharges for beneficial use;~~
- ~~(g) animal feedlots;~~
- ~~(h) domestic sewage treatment lagoons;~~
- ~~(i) sand and gravel mining and processing operations;~~
- ~~(j) point source discharges of storm water;~~
- ~~(k) treated water discharged from petroleum cleanup operations;~~
- ~~(l) discharges from public water supply systems, as determined under Title 75, chapter 6, MCA;~~
- ~~(m) discharges to wetlands that do not contain perennial free surface water;~~
- ~~(n) discharges from road salting operations;~~
- ~~(o) asphalt plant discharges;~~
- ~~(p) discharges of hydrostatic testing water;~~
- ~~(q) discharges of noncontact cooling water;~~
- ~~(r) swimming pool discharge;~~
- ~~(s) septic tank pumper disposal sites; and~~
- ~~(t) pesticide application.~~

(a) The general permit must be written to cover one or more categories or subcategories of discharges or facilities described in the permit under (b), except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries such as:

(i) designated planning area under sections 208 and 303 of the federal Clean Water Act;

(ii) sewer districts or sewer authorities;

(iii) city, county, or state political boundaries;

(iv) state highway systems;

(v) standard metropolitan statistical areas as defined by the federal Office of Management and Budget;

(vi) urbanized areas as designated by the U.S. Bureau of Census; or

(vii) any other appropriate division or combination of boundaries.

(b) the general permit may be written to regulate one or more categories or subcategories of discharges or facilities, within the area described in (1)(a), where the sources within a covered subcategory of discharges are either:

(i) storm water point sources; or

(ii) one or more categories or subcategories of point sources, other than storm water point sources, if the sources within each category or subcategory all:

(A) involve the same or substantially similar types of operations;

(B) discharge the same types of wastes;

(C) require the same effluent limitations or operating conditions;

(D) require the same or similar monitoring; and

(E) in the opinion of the department, are more appropriately controlled under a general permit than under individual permits.

(c) Where sources within a specific category or subcategory of discharges are subject to water quality-based limits imposed pursuant to 40 CFR 122.44, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

(d) The general permit must clearly identify the applicable conditions for each category or subcategory of discharges covered by the permit.

(e) The general permit may exclude specified sources or areas from coverage.

(2) Although MPDES general permits may be issued for a category of point sources located throughout the state, they may also be restricted to more limited geographical areas. General permits may be issued, modified, revoked and reissued, or terminated by the department in accordance with applicable requirements of ARM 17.30.1363 through 17.30.1365, and ARM 17.30.1370 through 17.30.1378. Unless EPA comments upon, objects to, or makes recommendations with respect to a proposed general permit in accordance with 40 CFR 123.44, the effective date of an MPDES general permit is 90 days after the receipt of the proposed permit by EPA.

(3) Prior to issuing a MPDES general permit, the department shall prepare provide a public notice which includes the equivalent of information listed in ARM 17.30.1372(6) and shall publish the same as follows: in accordance with the requirements of ARM 17.30.1372 and shall adhere to the requirements of ARM 17.30.1373 through 17.30.1377 regarding public comments and public hearings. The department shall provide a copy of the public notice

(a) prior to publication, notice to the U.S. Environmental Protection Agency;

(b) direct mailing of notice to the Water Pollution Control Advisory Council and to any persons who may be affected by the proposed general permit;

~~(c) publication of notice in a daily newspaper in Helena and in other daily newspapers of general circulation in the state or affected area;~~

~~(d) after publication, a hearing must be held and a 30-day comment period allowed as provided in ARM 17.30.1372 through 17.30.1377 and 17.30.1383.~~

~~(4) A person owning or proposing to operate a point source who wishes to operate obtain coverage under a MPDES general permit shall complete submit to the department a standard MPDES application or written notice of intent form available from the department for the particular to be covered by the general permit. A discharger who fails to submit a written notice of intent in accordance with the terms of the general permit may not discharge under the permit. A complete and timely notice of intent to be covered in accordance with general permit requirements fulfills the requirements for permit application for purposes of ARM 17.30.1023, 17.30.1105, 17.30.1313, and 17.30.1322. Except for notices of intent, the department shall, within 30 days of receiving a completed application, either issue to the applicant an authorization to operate under the MPDES general permit, or shall notify the applicant that the source does not qualify for authorization under a MPDES general permit, citing one or more of the following reasons as the basis for denial:~~

~~(a) the specific source applying for authorization appears unable to comply with the following requirements:~~

~~(i) effluent standards, effluent limitations, standards of performance for new sources of pollutants, toxic effluent standards and prohibitions, and pretreatment standards;~~

~~(ii) water quality standards established pursuant to 75-5-301, MCA;~~

~~(iii) prohibition of discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;~~

~~(iv) prohibition of any discharge which the secretary of the army acting through the chief of engineers finds would substantially impair anchorage and navigation;~~

~~(v) prohibition of any discharges to which the regional administrator has objected in writing;~~

~~(vi) prohibition of any discharge which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Act; and~~

~~(vii) any additional requirements that the department determines are necessary to carry out the provisions of 75-5-101, et seq., MCA.~~

~~(b) the discharge is different in degree or nature from discharges reasonably expected from sources or activities within the category described in the MPDES general permit;~~

~~(c) an MPDES permit or authorization for the same operation has previously been denied or revoked;~~

~~(d) the discharge sought to be authorized under a MPDES general permit is also included within an application or is subject to review under the Major Facility Siting Act, 75-20-101, et seq., MCA;~~

~~(e) the point source will be located in an area of unique ecological or recreational significance. Such determination must be based upon considerations of Montana stream classifications adopted under 75-5-301, MCA, impacts on fishery resources, local conditions at proposed discharge sites, and designations of wilderness areas under 16 USC 1132 or of wild and scenic rivers under 16 USC~~

1274.

~~(5) Where authorization to operate under a MPDES general permit is denied, or a notice of intent under ARM 17.30.1115 is not applicable, the department shall proceed, unless the application or notice of intent is withdrawn, to process the application or notice of intent through the individual MPDES permit requirements under this subchapter. Subject to (a) and (b), the contents of the written notice of intent must be specified in the general permit and must contain information necessary for adequate program implementation including, at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). A notice of intent must be signed in accordance with ARM 17.30.1323. In addition to these general requirements, the following specific provisions apply:~~

(a) Subject to the department's approval, a general permit for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative information and meet notice of intent requirements.

(b) Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information required in the Notice of Intent for MPDES Application for New and Existing Concentrated Animal Feeding Operation (CAFO Notice of Intent) provided by the department and the information specified in 40 CFR 122.21(i)(1), including a topographic map of the area in which the CAFO is located.

~~(6) Every MPDES general permit must have a fixed term not to exceed five years. Except as provided in (10), every authorization to operate under a MPDES general permit expires at the same time the MPDES general permit expires. Each general permit must specify the deadline for submitting notices of intent to be covered and the dates(s) when a discharger is authorized to discharge under the permit.~~

(7) A general permit must specify, by one of the following methods, whether a discharger that has submitted a complete and timely notice of intent to be covered under the general permit is authorized to discharge under the permit:

(a) upon receipt of the notice of intent by the department;

(b) after a waiting period specified in the general permit;

(c) on a date specified in the general permit; or

(d) upon receipt of written notification of authorization from the department.

~~(7) (8) Where authorization to operate discharge under a MPDES general permit is denied solely because the source is already issued to, or a notice of intent received from, a point source covered by an individual MPDES permit, the department owner or operator may request shall, upon issuance of the authorization to operate or receipt of the notice of intent under termination of the MPDES individual general permit, terminate the individual MPDES permit and coverage for that point source under the general permit. Upon termination of the individual permit, the general permit applies to the source.~~

(8) (9) Any person authorized or eligible to operate discharge under a MPDES general permit may at any time, upon providing reasons supporting the request or application, apply for an individual MPDES permit according to the

procedures in this subchapter. Upon issuance of the individual MPDES permit, the department shall terminate any MPDES general permit authorization or notice of intent held by such person authorization to discharge under the general permit automatically terminates.

~~(9)~~ (10) The department, on its own initiative or upon the petition of any interested person, may modify, suspend, or revoke in whole or in part a MPDES general permit or an authorization or notice of intent to operate under a MPDES general permit during its term in accordance with the provisions of ARM 17.30.1361 for any cause listed in ARM 17.30.1361 or require any discharger authorized by a general permit to obtain an individual permit for under any of the following causes circumstances:

(a) the approval of a water quality management plan has been approved that contains containing requirements applicable to categories or subcategories of discharges or facilities point sources covered in the MPDES a general permit;

(b) determination by the department has determined that the discharge from any the authorized source is a significant contributor to pollution as determined by the factors set forth in 40 CFR 122.26(c)(2) 122.28(b)(3) including the location of the discharge, the size of the discharge, the quantity and nature of the pollutants discharged, and other relevant factors; or

(c) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to a the source or to a category of sources or subcategory of discharges or facilities;

(d) occurrence of one or more of the following circumstances: the discharger is not in compliance with the conditions of the general permit;

(i) violation of any conditions of the permit; or

(ii) obtaining an MPDES permit by misrepresentation or failure to disclose fully all relevant facts;

(e) circumstances have changed since the time of the request to be covered by the general permit so that the discharger is no longer appropriately controlled under the general permit;

(f) effluent limitations guidelines (ELGs) have been promulgated for the source, or a category or subcategory of discharges or facilities covered under the general permit; or

~~(iii)~~ (g) there is a change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge authorized under the general permit; or

(iv) a failure or refusal by the permittee to comply with the requirements of 75-5-602, MCA.

(10) (11) The department may reissue an authorization to operate under a MPDES general permit provided that the requirements for reissuance of MPDES permits specified in ARM 17.30.1322 are met. The department may require any owner or operator authorized to discharge under a general permit to apply for an individual permit as provided in (10) only upon written notice to the owner or operator that an individual permit application is required. This notice must include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual permit the general permit as it applies to the

individual permittee will automatically terminate. The department may grant additional time upon request of the applicant.

~~(11)~~ (12) The department shall maintain and make available to the public a register of all sources and activities authorized to discharge operate, or with notices of intent to discharge, under each MPDES general permit, including the location of such sources and activities, and shall provide copies of such registers upon request.

(12) remains the same, but is renumbered (13).

~~(13)~~ (14) For purposes of this rule, the board adopts and incorporates by reference the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620-0901:

~~(a) 40 CFR 122.28 (July 1, 2012), which sets forth criteria for selecting categories of point sources appropriate for general permitting;~~

~~(b) 40 CFR 124.10(d)(1) (July 1, 2012), which sets forth minimum contents of public notices; and~~

~~(c) (a) 40 CFR 122.23(h) (July 1, 2012), which sets forth procedures for CAFOs seeking coverage under a general permit;~~

~~(b) 40 CFR 122.44 (July 1, 2013), which sets forth procedures for establishing limitations, standards, and other permit conditions;~~

~~(c) 40 CFR 123.44(a)(2) (July 1, 2013), which sets forth timeframes for EPA to object to general permits; and~~

~~(d) 40 CFR 122.21(i)(1) (July 1, 2013), which sets forth application requirements for new and existing concentrated animal feeding operations.~~

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend the general permit requirements in ARM 17.30.1341 in order to maintain consistency with the federal requirements set forth in 40 CFR 122.28 and provide a uniform rule for the issuance and administration of general permits under both the MPDES and ground water pollution control system (GWPCS) programs. The board is proposing to adopt these federal requirements because they are required elements of a delegated state's permit program and are required to implement the federal Clean Water Act's national pollutant discharge elimination system (NPDES) program. See 40 CFR 123.25. In general, the proposed amendments add criteria for coverage and administrative requirements, clarify public notice and public hearing requirements, and update incorporations by reference to applicable federal rules. The board's specific reasons for adopting the federal requirements into various sections of ARM 17.30.1341 follow. The proposed amendments also make minor changes to wording and punctuation to conform to standard practices for rule formatting.

The board is proposing to amend (1) by adding, consistent with 40 CFR 122.28(a)(1) and (2), criteria with which the department can issue general permits and by removing the specific categories of discharges, which had been listed in (1), as general permits were not developed for some of those categories and some of the categories are not subject to permits such as discharges from road salting and septic systems. Categories of discharges currently listed may still be covered by a

general permit provided they meet the criteria now proposed in (1).

The board is proposing new language in (2) to provide that general permits are subject to the same requirements for issuance, modification, revocation and reissuance, and termination as set forth in ARM Title 17, chapter 30, subchapter 13 except that the issuance date is delayed for 90 days to allow EPA to review and object to state-issued general permits. The amendment is necessary to maintain consistency with 40 CFR 123.44(a)(2), which is the equivalent federal rule. Existing text in (2) that is redundant with the requirements and categories for issuing general permits given in (1) and in ARM Title 17, chapter 30, subchapter 13 is proposed to be stricken.

It is necessary to amend the public notice requirements for general permits, as the board proposed in (3), in order for the rules in subchapter 11 to reference the public comment and public hearing provisions in subchapter 13 and to be consistent with the board's public notice rules in ARM 17.30.1372 through 17.30.1377, which set forth procedures for responding to public comment and for holding public hearings. After these amendments become effective, permits issued under subchapter 11 will follow the public comment and public hearing provisions in subchapter 13. The board is proposing to retain the requirement in (3) that notice of the general permit be provided to the Water Pollution Control Advisory Council (WPCAC) and to any person affected by the general permit.

The board is proposing to amend the requirements to obtain coverage under a general permit, set forth in (4), to be consistent with the federal rule at 40 CFR 122.28(b)(2). The proposed amendments are necessary to remove the requirement that an owner or operator submit a complete application form because these proposed amendments will instead require an owner or operator wishing to obtain coverage under a general permit to submit a notice of intent. Standardizing the format and procedure serves an objective of general permitting, which is to expedite permitting and lessen the department's administrative burden for groups of similar discharges. The board is also proposing to remove the current rule's requirement to cite one of several specifically listed reasons when coverage is denied. Many of these "reasons" appear in 40 CFR 122.4 and ARM 17.30.1311 and are not specific to general permits. Federal regulations at 40 CFR 122.28 do not include any such requirements for denial of general permit coverage. Instead, conditions for requiring an individual permit, the equivalent of denial of coverage under a general permit, are given in (11), as amended.

The board proposes amendments to (5) to set forth the contents of a notice of intent that are necessary for the program to identify the owner or operator and the discharging facility, properly implement the storm water program, and specify that the signatory requirements for a notice of intent are given in ARM 17.30.1323. It is also necessary that the board propose removal of language regarding denial of general permit coverage as coverage under a general permit is not denied, rather the discharger is required to obtain individual permit coverage. Proposed (5)(a) is necessary to address specific situations where alternative notice of intent requirements may be necessary for certain storm water discharges from inactive facilities on federally owned lands. Proposed (5)(b) is necessary to provide that notices of intent to obtain coverage under a general permit for concentrated animal feeding operations (CAFOs) must be consistent with the federal rule at 40 CFR

122.21(i)(1).

The board is proposing to amend (6) to remove duplicative language and the condition that all authorizations expire on the date the general permit expires and replace it with new language to clarify that the general permit must specify the deadline for submitting a notice of intent and when permit coverage begins. ARM 17.30.1346 specifies that all MPDES permits are effective for a fixed term not to exceed five years, which applies to general permits as well. ARM 17.30.1313 addresses the continuation of expiring permits. The new language is necessary to maintain consistency with the federal requirements at 40 CFR 122.28(b)(2)(iii).

The board is proposing new (7) to specify the method in the general permit by which the permittee will be informed that it is authorized to discharge. The four methods for informing a permittee that it is authorized to discharge under a general permit are: upon receipt of the notice of intent; after a waiting period specified in the permit; on a specific date; or upon written notification by the department. These provisions are necessary to maintain consistency with 40 CFR 122.28(b)(2)(iv).

The board is proposing to amend (7) and renumber it as (8). The proposed amendments remove language that is specific to MPDES permits in order to include and accommodate ground water permits and to remove language that refers to a notice of intent, because that requirement is not consistent with the federal or state regulations governing individual permits and adds nothing to the intent of the rule, which is to provide a process for transferring coverage from an individual to a general permit. The board is also proposing to change the term 'operate' to 'discharge' to clarify that permits only authorize the discharge of pollutants and do not control other aspects of the facilities operations. These provisions are necessary to maintain consistency with the federal requirements for transferring coverage from an individual permit to a general permit in 40 CFR 122.28(b)(3)(v).

The board is proposing to amend (8) and renumber it as (9). The proposed amendments are necessary to remove language specific to MPDES permits, remove language referring to receipt of a notice of intent, and add a requirement that the permittee submit the reasons for requesting an individual permit along with the permit application. Such a requirement for "reasons" is consistent with 40 CFR 122.28 (b)(3)(iii), which provides a process for an owner or operator to request exclusion from the coverage of a general permit by applying for an individual permit. The request will be granted by issuing an individual permit if the reasons cited by the owner or operator are adequate to support the request. This provides the department reasonable discretion to deny coverage under an individual permit in the case where a discharger is already properly covered by a general permit. An objective of general permitting is to ease the department's administrative burdens. Therefore, dischargers should not be able to routinely opt out of coverage by requesting an individual permit. The new language also specifies that the authorization to discharge under the general permit is terminated upon issuance of the individual permit.

The board is proposing to amend (9) and renumber it as (10). The proposed amendments are necessary to remove language that allows the department, on its own initiative or upon request by any interested person, to modify, suspend, or revoke, in whole or in part, a general permit, an authorization, or notice of intent to operate under a general permit. In accordance with (2), general permits are issued,

modified, revoked and reissued, or terminated in accordance with applicable provisions of ARM Title 17, chapter 30, subchapter 13. The proposed language in (10) is consistent with the federal rule at 40 CFR 122.28(b)(3), which specifies the conditions under which an individual discharger authorized under a general permit may be required to obtain an individual permit. The result of the proposed change to (10) is that interested persons may petition the department to require that a discharger, covered by a general permit, be required to obtain an individual permit where the conditions in (10)(a) through (g) are present. These provisions are necessary to maintain consistency with the federal requirements in 40 CFR 122.28(b)(3) for requiring a discharger authorized by a general permit to obtain an individual permit.

The board is proposing to amend (10) and renumber it as (11). The proposed amendments are necessary to remove provisions related to reissuance of an authorization to discharge under a general permit when the requirements of ARM 17.30.1322 are met. This proposed amendment is necessary because ARM 17.30.1322 establishes extensive application requirements for MPDES permits, but excludes "persons covered by general permits under ARM 17.30.1341" from the application requirements. The equivalent federal rule at 40 CFR 122.28(b)(2)(i) states that "[a] complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications." The equivalent language is proposed in the amendments to (4). The board is proposing new language in (11) that will require written notification from the department when a discharger under a general permit is required to submit an application for an individual permit. This notification must include the basis for the decision, appropriate application form(s), and timeframes for submittal of the individual permit application. The new language also specifies that coverage under the general permit terminates upon the effective date of the individual permit. This requirement is consistent with 40 CFR 122.28(b)(3)(ii) for EPA-issued permits.

The board is proposing to amend (11) and renumber it as (12). This amendment is necessary to make technical corrections, to remove language referring to the notice of intent, and to remove language specific to MPDES permits.

The board is proposing to amend (13) and renumber it as (14). The amendments are necessary to incorporate by reference federal rules that support ARM 17.30.1341 and are proposed for incorporation by reference. Two of the federal rules currently incorporated by reference are no longer necessary to support this rule and will be deleted because the criteria for categories of point sources appropriate for general discharge permits are now set forth in (1) and the criteria for public notice in subchapter 13 will apply to general permits. In order to maintain state primacy, the board is proposing to incorporate by reference the following federal rules: 40 CFR 122.44, which sets forth procedures for establishing limitations, standards, and other permit conditions necessary to support the categories of general permits in proposed (1)(c); 40 CFR 123.44(a)(2), which sets forth timeframes for EPA to object to state-issued general permits necessary to support general permit actions by the department under proposed (2); and 40 CFR 122(i)(1), which sets forth application requirements for CAFOs necessary to define notice of intent requirements for such facilities in proposed (5)(b).

17.30.1342 CONDITIONS APPLICABLE TO ALL PERMITS (1) The following conditions described in this rule apply to all MPDES permits. Additional conditions applicable to MPDES permits are set forth in ARM 17.30.1343

17.30.1344. All conditions applicable to MPDES permits must be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these rules must be given in the permit.

(1) (2) The permittee shall comply with all standard conditions in 40 CFR 122.41 and 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 denial of a permit renewal application.

(a) (3) The permittee shall comply with effluent standards or prohibitions established under the Act and rules adopted thereunder including limitations ARM 17.30.1206 for toxic pollutants in ARM 17.30.1206 and is required by federal law to comply with technology-based effluent limitations for solids, sludge, and other pollutants removed in the course of wastewater treatment set forth in ARM Title 17, chapter 30, subchapter 12 within the time provided in the rules that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(b) (4) The Act provides that any person who violates a permit condition or limitation is subject to a civil penalty not to exceed ~~\$10,000~~ 25,000 per day ~~of such~~ for each violation. Any person who willfully or negligently violates 75-5-605, MCA, including a permit condition or limitation, is subject to a fine criminal penalties not to exceed \$25,000 per day of violation, or imprisonment for not more than one year, or both. In the case of a second or subsequent conviction for a willful or negligent violation, a person is subject to a fine of not more than \$50,000 per day of violation, imprisonment of not more than two years, or both. The Act provides that any person who violates a permit condition or limitation may be assessed an administrative penalty by the department not to exceed \$10,000 per violation per day, with the maximum penalty assessed not to exceed \$100,000 for any related series of violations.

(2) remains the same, but is renumbered (5).

(3) (6) It ~~may~~ is 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.

(4) through (8) remain the same, but are renumbered (7) through (11).

(9) (12) The permittee shall allow the department, or an authorized representative, including an authorized contractor acting as a representative of the department, upon the presentation of credentials and other documents as may be required by law, to:

(a) through (d) remain the same.

(10)(a) (13) Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

(b) (14) Except for records and monitoring information required by this permit that are related to the permittee's sewage sludge use and disposal activities, which must be retained for a period of at least five years, or longer, 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.

~~(e)~~ Records of monitoring information must include:

(i) through (vi) remain the same, but are renumbered (a) through (f).

~~(d)~~ (15) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless ~~other test procedures have been specified in this permit~~ another method is required under 40 CFR 503.8 or Subchapter N.

(16) The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$25,000, imprisonment for not more than six months, or both.

~~(11)~~ (17) All applications, reports, or information submitted to the department must be signed and certified. ~~(See ARM 17.30.1323.)~~ as required by ARM 17.30.1323.

~~(12)(a)~~ (18) 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:~~

(i) ~~(a)~~ the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in ARM 17.30.1340(2); or

(ii) remains the same, but is renumbered (b).

(b) remains the same, but is renumbered (19).

~~(e)~~ (20) This permit is not transferable to any person, except after notice to the department. The department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act. ~~(See ARM 17.30.1360; in some cases, modification or revocation and reissuance is mandatory.)~~ or mandatory, as required by ARM 17.30.1360 and the Act.

~~(d)~~ (21) Monitoring results must be reported at the intervals specified elsewhere in this permit and subject to the following requirements:

(i) remains the same, but is renumbered (a).

(ii) ~~(b)~~ If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136, ~~or as using procedures specified in the permit for any pollutant for which an analytical method is not established by 40 CFR Part 136, or by another method required for an industry-specific waste stream under 40 CFR 503.8 or 40 CFR subchapter N,~~ the results of such monitoring must be included in the calculation and reporting of the data submitted in the DMR.

(iii) ~~(c)~~ Calculations for all limitations, which require averaging of measurements, must utilize an arithmetic mean unless otherwise specified by the department in the permit.

~~(e)~~ (22) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.

~~(f)(i)~~ (23) The permittee shall report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours

from the time the permittee becomes aware of the circumstances. A written submission must also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

~~(ii)~~ (24) The following must be included as information which must be reported within 24 hours under this rule:

(A) and (B) remain the same, but are renumbered (a) and (b).

~~(C)~~ (c) violation of a maximum daily discharge limitation for any of the pollutants listed by the department in the permit to be reported within 24 hours ~~(see ARM 17.30.1344 and as required by 40 CFR 122.44(g) and 40 CFR 122.41).~~

~~(iii)~~ (25) The department may waive the written report on a case-by-case basis for reports under ~~(ii)~~ (24), above if the oral report has been received within 24 hours.

(g) (26) The permittee shall report all instances of noncompliance not reported under ~~(a)~~ (18)(a), ~~(d)~~ (21), ~~(e)~~ (22), and ~~(f)~~ (23), at the time monitoring reports are submitted. The reports must contain the information listed in ~~(f)~~ (23).

(h) remains the same, but is renumbered (27).

~~(13)(a)~~ (28) 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 ~~(b) and (c)~~ (29)(a) and (30).

(29) Bypasses are subject to the following notification requirements:

~~(b)~~ (a) If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the department, if possible at least ten days before the date of the bypass. ~~The permittee shall submit notice of an unanticipated bypass as required in (12)(f) (24-hour notice).~~

(b) The permittee shall submit notice of an unanticipated bypass as required in (23), except as provided in (28).

~~(e)~~ (30) Except as provided in (29), Bypass is prohibited, and the department may take enforcement action against a permittee for bypass, unless:

(i) and (ii) remain the same, but are renumbered (a) and (b).

~~(iii)~~ (c) the permittee submitted notices as required under ~~(e)~~ (30).

~~(d)~~ (31) 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 ~~(e)(i)~~ (30)(a).

~~(14)(a)~~ (32) An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of ~~(b)~~ (33) 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.

~~(b)~~ (33) A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) and (ii) remain the same, but are renumbered (a) and (b).

- ~~(iii)~~ (c) the permittee submitted notice of the upset as required in ~~(12)(f)(ii)(B)~~ (24)(b) (24-hour notice); and
- ~~(iv)~~ (d) the permittee complied with any remedial measures required under ~~(4)~~ (7).

(c) remains the same, but is renumbered (34).

~~(15)~~ (35) The board hereby ~~adopts and incorporates herein by reference (see ARM 17.30.1303 for complete information about all materials incorporated by reference)~~ adopts and incorporates by reference the following federal regulation as part of the Montana pollutant discharge elimination system. Copies of these federal regulations may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901:

(a) 40 CFR Part 136 (July 1, 2013), which is ~~a series of federal agency rules setting~~ sets forth guidelines establishing test procedures for the analysis of pollutants; ~~and~~

(b) 40 CFR 122.41 (conditions applicable to all discharge permits);

~~(b)~~ (c) 40 CFR 122.44(g) (July 1, 2013), which is ~~a federal agency rule sets~~ forth notification requirements requiring 24-hour notice of any violation of maximum daily discharge limits for toxic pollutants or hazardous substances;

(d) 40 CFR 503.8 (July 1, 2013), which ~~sets forth sampling and analytical methods for sewage sludge that are approved for use in NPDES permits; and~~

(e) 40 CFR Subchapter N (July 31, 2013), which sets forth technology-based effluent limitations and specific analytical methods applicable to these limitations.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend the conditions applicable to all permits in ARM 17.30.1342 in order to make the rule consistent with the equivalent federal requirements set forth in 40 CFR 122.41 and the Montana Water Quality Act. ARM 17.30.1342 defines and establishes certain conditions which apply to all MPDES permits and must be incorporated into the permits either expressly or by reference. The proposed amendments update the standard permit language to incorporate changes in the Montana Water Quality Act for assessment of civil and administrative penalties for noncompliance with permit conditions. The proposed amendments make minor changes to wording and punctuation to conform to standard practices for rule formatting. The board's specific reasons for deletions and amendments to ARM 17.30.1342 follow. The board has also renumbered the rule to simplify the rule and make it more readable.

The board is proposing to amend the language in new (1) to correct the reference for additional conditions applicable to certain categories of permits from ARM 17.30.1344 to 17.30.1343. ARM 17.30.1343 is the board's rule that is equivalent to 40 CFR 122.42 in federal rule, which contains the additional conditions that are applicable to certain categories of permits. This amendment is necessary to maintain consistency with the federal rule at 40 CFR 122.41 and to correct formatting.

The board is proposing to amend current (a) to add language requiring compliance with the limitations and timeframes for toxic pollutants and for sewage

sludge use and disposal in the Act and rules adopted thereunder, to provide that failure to comply with these standards and limitations is a violation of the permit even if the permit has not been modified to include these requirements, and to renumber (a) to (1)(a)(i). The federal CWA requires the administrator of the EPA to identify and promulgate effluent standards for toxic pollutants and to periodically revise and update the list of toxic pollutants and applicable standards for each listed toxic pollutant. Section 405(d) of the federal CWA requires the administrator of the EPA to develop and promulgate regulations governing the use and disposal of sewage sludge and identify and regulate toxic pollutants which may be present in such material. The state incorporates these requirements as standard permit conditions by incorporating 40 CFR 122.41 by reference. The permittee must comply with both of these federal provisions even if the permit has not been modified to incorporate these requirements. This amendment is necessary to maintain consistency with the federal requirements and standard conditions at 40 CFR 122.41(a)(1) and to correct formatting. Current (a) is proposed to be renumbered (3).

The board is proposing to amend current (b), regarding a permittee's duty to comply with the Montana Water Quality Act (the Act) and all permit conditions, by clarifying what civil, criminal, and administrative penalties may result from noncompliance with the permit or the applicable requirements under the Act or administrative rules and by renumbering. These changes are necessary to provide notice of penalties for noncompliance with permit conditions, the Act, and rules and to correct erroneous language. The board is also proposing to add language addressing administrative penalties that may be assessed under 75-5-611, MCA, for permit violations or violations of the Act. Administrative penalties may be assessed in the amount of up to \$10,000 per day for each violation, but not exceed \$100,000 for a series of related violations. These amendments are necessary to maintain consistency with the Act and 40 CFR 122.41(a) and 123.27(a). Current (b) is proposed to be renumbered (4).

The board is proposing to amend current (3), regarding compliance responsibilities for permittees, to make a minor word change and to renumber (3) to (6).

The board is proposing to amend current (9), which adopts and incorporates federal requirements regarding inspection and entry of permitted facilities by the department, to authorize a contractor, who presents appropriate credentials and is acting as a representative of the department, to access a permittee's premises and inspect and perform sampling to determine permit compliance. This amendment is necessary to maintain consistency with the federal rule at 40 CFR 122.41(i). Current (9) is proposed to be renumbered (12).

The board is proposing to amend current (10)(a), which incorporates federal requirements regarding monitoring and records, and to renumber (10)(a) to (13). The board is proposing to amend current (10)(b) to include language requiring monitoring records related to sludge use and disposal to be kept for five years and to renumber (10)(b) to (14). This amendment is necessary to maintain consistency with 40 CFR 122.41(j). The board is proposing a minor word change to current (10)(c) and is proposing to renumber (i) through (vi) as (a) through (f). The board is also proposing to amend current (10)(d), which specifies approved testing procedures to include methods specified in 40 CFR 503.8 and subchapter N, which

are federal regulations governing sewage sludge monitoring requirements and technology-based effluent limitation guidelines, respectively. This amendment is necessary to maintain consistency with 40 CFR 122.41(j). Current (10)(d) is proposed to be renumbered (15). The board is also proposing to add a new (16) to establish penalties that are consistent with 75-5-633, MCA, for falsifying, tampering with, or knowingly altering monitoring equipment or test methods causing inaccurate monitoring results. This amendment is necessary to maintain consistency with 40 CFR 122.41(j)(5).

The board is proposing to amend current (11), regarding signatory requirements, to make minor editorial changes, and renumber (11) to (17).

The board is proposing to amend current (12)(a), regarding the permittee's reporting and notification requirements, to correct minor changes to wording and punctuation, and to renumber (12)(a) to (18). The board is proposing to clarify when the permittee is required to notify the department of alterations or additions to permitted facilities and to correct formatting. Current (12)(a)(i) is proposed to be renumbered (18)(a) and the reference to ARM 17.30.1340(2), regarding new sources, is corrected to make the reference applicable to the entire rule. The board is also proposing to modify current (12)(c) and (12)(d) to make minor editorial changes and to renumber (12)(c) to (20) and (12)(d) to (21). The board is also proposing to amend current (12)(d)(ii) to include analytical results obtained using test methods that are specified in 40 CFR 136, the permit, 40 CFR 503.8, or 40 CFR subchapter N in permit calculations that are reported to the department in the DMR. Current (12)(d)(ii) is proposed to be renumbered (21)(b). Federal regulations at 40 CFR 136, 40 CFR 503.8, and 40 CFR subchapter N address effluent limitations that are adopted by the board at ARM 17.30.1207 and are required to be included in all MPDES permits issued by the department. In some cases, the effluent limitations given in these subchapters require specific analytical methods that are not included in 40 CFR 136, but are applicable to a specific industrial category. The board is proposing to make minor editorial changes to current (12)(d)(iii), (12)(e), (12)(f)(i), and (12)(f)(ii) and renumber them to (21)(c), (22), (23), and (24), respectively. The board is also proposing to modify current (12)(f)(ii)(C) to eliminate language directing permittees to ARM 17.30.1344, because the discharge limitations requiring 24-hour reporting are not contained in ARM 17.30.1344, and to renumber (12)(f)(ii)(C) to (24)(c). This provision requires permittees to report exceedances or violations, within 24 hours, of maximum daily discharge limitations for pollutants, which are listed by the department in an MPDES permit. 40 CFR 122.44(g) places the burden on the department to list those pollutants in an MPDES permit for which this 24-hour reporting requirement must be required. ARM 17.30.1344 adopts by reference 40 CFR 122.44(g). For clarification, the board is proposing text which points the permittee directly to 40 CFR 122.44(g). The board is also proposing to amend current (12)(f)(iii) and (12)(g) to correct internal references and to renumber (12)(f)(iii) to (25) and (12)(g) to (26).

The board is proposing to make minor amendments to current (13)(a), regarding bypass reporting requirements, to make editorial changes, correct formatting, correct internal references, and to renumber (13)(a) to (28). Bypass is the intentional diversion of waste streams from any portion of a treatment facility, as defined in ARM 17.30.1303 and 40 CFR 122.41(m). These proposed changes are

necessary to maintain consistency with 40 CFR 122.41(m). The board is proposing a new (29) to describe the department's bypass notification requirements. Current (13)(b), renumbered (29)(a), is proposed to be amended to provide notification requirements for anticipated bypass. New (29)(b) is being proposed to provide notification requirements for unanticipated bypass. These amendments are being proposed to make the rule consistent with the federal rule. The board is also proposing to amend current (13)(c)(iii) and (13)(d) to correct internal cross references and to renumber (13)(c)(iii) to (30)(c) and (13)(d) to (31).

The board is proposing to make minor amendments to current (14)(a) regarding upset requirements to make editorial changes, correct formatting, and to renumber (14)(a) to (32). An upset occurs when there is unintentional and temporary noncompliance with technology-based effluent limitations due to factors beyond the reasonable control of the permittee and is defined in ARM 17.30.1303 and 40 CFR 122.41(n). These changes are necessary to maintain consistency with 40 CFR 122.41(n) and to correct formatting.

In (33)(c), the board is proposing to reference the general 24-hour notice provision for permit noncompliance.

The board is proposing to incorporate and update all applicable federal rules necessary to support the provisions in ARM 17.20.1342 in proposed amendments to current (15), which is proposed to be renumbered (35). These amendments will also correct formatting and provide consistency with other MPDES rules. The proposed amendments to current (15)(a), proposed to be renumbered (35)(a), incorporate the most recent federal guidelines establishing testing procedures for the analysis of pollutants as given in 40 CFR 136 and the proposed amendments to current (15)(b), proposed to be renumbered (35)(b), clarify the notification requirements for permittees under this rule. The board is further proposing to add a new (35)(c) incorporating 40 CFR 503.8, which addresses additional analytical methods for sewage sludge and new (35)(d), which incorporates analytical methods that are assigned to specific technology-based limitations in 40 CFR subchapter N. The board has adopted federal technology-based effluent limitations as permit requirements in ARM 17.30.1207.

4. The rules proposed for repeal are as follows:

17.30.1110 APPLICATION PROCEDURES: GENERAL (AUTH: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA), located at pages 17-2871 and 17-2872, Administrative Rules of Montana. The board is proposing to repeal ARM 17.30.1110, which sets forth application procedures for storm water discharges other than storm water discharges associated with construction activity. This rule is no longer necessary because application procedures for all individual MPDES permits, including storm water, are found in ARM 17.30.1322. The procedures for issuing and administering MPDES general permits, including storm water general permits, are found in ARM 17.30.1341, as amended. These procedures require filing a notice of intent for coverage under a general permit and are common to all general permits issued under the MPDES rules. ARM 17.30.1322 and 17.30.1341 are equivalent to federal regulations set forth at 40 CFR 122.21, 122.26(c), for individual permits, and 122.28, for general permits. Repeal of ARM 17.30.1110 will eliminate

duplication and potential conflicts between this rule and other rules adopted by the board in ARM Title 17, chapter 30, subchapters 11 through 13 and provide a uniform system for the administration of general permits.

17.30.1115 NOTICE OF INTENT PROCEDURES: CONSTRUCTION ACTIVITY (AUTH: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA), located at pages 17-2883 and 17-2884, Administrative Rules of Montana. The board is proposing to repeal ARM 17.30.1115, which sets forth application procedures for construction activity. This rule is no longer necessary because application procedures for all MPDES individual permits, including storm water, are found in ARM 17.30.1322. The procedures for issuing and administering MPDES general permits, including procedures for filing a notice of intent for coverage under a general permit, are found in ARM 17.30.1341, as amended. ARM 17.30.1322 and 17.30.1341 are equivalent to federal regulations set forth at 40 CFR 122.21, 122.26(c), for individual permits, and 122.28, for general permits. Repeal of ARM 17.30.1115 will eliminate duplication and potential conflicts between this rule and other rules adopted by the board in ARM Title 17, chapter 30, subchapters 11 through 13 and provide a uniform system for the administration of general permits.

17.30.1117 TRANSFER OF PERMIT COVERAGE (AUTH: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA), located at page 17-2884.4, Administrative Rules of Montana. The board is proposing to repeal ARM 17.30.1117, which sets forth procedures for transferring permit coverage for storm water discharges regulated under subchapter 11. This rule is not necessary because storm water permits are MPDES permits and may be transferred in accordance with the applicable provisions of ARM Title 17, chapter 30, subchapter 13, specifically ARM 17.30.1360. Repeal of ARM 17.30.1117 will eliminate duplication and potential conflicts between this rule and other rules adopted by the board in ARM Title 17, chapter 30, subchapters 11 through 13 and provide a uniform system for the administration of general permits.

5. 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., September 4, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. 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.

7. 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.

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

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment and repeal 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, July 28, 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 17.30.1101, 17.30.1102,**
6 **17.30.1105, 17.30.1106, 17.30.1107,**
7 **17.30.1111, 17.30.1341 and 17.30.1342**
8 **pertaining to Montana pollutant**
9 **discharge elimination system (MPDES)**
10 **permits, purpose and scope, definitions,**
11 **permit requirements, exclusions,**
12 **designation procedures: small**
13 **municipal separate storm sewer systems**
14 **(MS4s), application procedures, permit**
15 **requirements, general permits and**
16 **conditions applicable to all permits and**
17 **repeal of ARM 17.30.1110, 17.30.1115**
18 **and 17.30.1117 application procedures:**
19 **general, notice of intent procedures, and**
20 **transfer of permit coverage pertaining**
21 **to storm water discharges**

PRESIDING OFFICER REPORT

14 **INTRODUCTION**

15 1. On August 27, 2014, the undersigned presided over and conducted the
16 public hearing held in Room 111 of the Metcalf Building, Helena, Montana, to take
17 public comment on the above-captioned proposed amendments of existing rules.
18 The amendments propose to amend Montana pollutant discharge elimination system
19 (MPDES) permits, purpose and scope, definitions, permit requirements, exclusions,
20 and designation procedures: small municipal separate storm sewer systems (MS4s),
21 application procedures, permit requirements, general permits and conditions
22 applicable to all permits and repeal of ARM 17.30.1110, 17.30.1115 and 17.30.1117
23 application procedures: general, notice of intent procedures, and transfer of permit
24 coverage pertaining to storm water discharges.

25 2. On August 7, 2014, the Board of Environmental Review published
26 MAR Notice No. 17-365 regarding a Notice of Public Hearing on Proposed
27 Amendment, Repeal and Adoption of the above-stated rules at page 1667, 2014

1 Montana Administrative Register, Issue Number 15. A copy of the notice is
2 attached to this report. (Attachments are provided in the same order as they are
3 referenced in this report.)

4 3. The hearing began at 10:45 a.m. The hearing was transcribed by
5 Ms. Cheryl Romsa of Helena, MT. The undersigned announced that persons at the
6 hearing would be given an opportunity to submit their data, views, or arguments
7 concerning the proposed action, either orally or in writing. At the hearing, the
8 undersigned also identified and summarized the MAR notice, stated that copies of
9 the MAR notice were available in the hearing room, and read the Notice of Function
10 of Administrative Rule Review Committee as required by Mont. Code Ann. § 2-4-
11 302(7)(a). The rulemaking interested persons list and the opportunity to have names
12 placed on that list was addressed. Also referenced was the authority to make the
13 proposed rule amendments as well as the opportunity to present matters at the
14 hearing or in writing, as stated in the MAR notice.

15 SUMMARY OF HEARING

16 4. Mr. Tom Reid, Supervisor of the Water Protection Bureau with the
17 Montana Department of Environmental Quality presented written and oral testimony
18 explaining the rule amendments. He recommended that the rule amendments be
19 adopted as proposed in the MAR notice. (Mr. Reid's comments are attached.)

20 5. There were no members of the public who presented testimony as
21 proponents at the hearing.

22 6. Dave Mumford, Director of Public Works for the City of Billings,
23 presented testimony requesting that the change from "surface waters" to "state
24 waters" proposed in ARM 17.30.1101 be reversed; the exclusion given to mining,
25 oil, and gas proposed in ARM 17.30.1106 be extended to MS4 discharges; and that
26 the permitting process contemplated for alterations in MS4 storm drain systems in
27 ARM 17.30.1323 be lifted.

1 7. Ron Alles, City Manager of the City of Helena, presented testimony
2 that echoed that of Mr. Mumford, underscored the size and scope of the system of
3 storm water retention, and suggested that the EPA allowed the State to regulate
4 those systems less stringently than was proposed.

5 8. Randall Camp, Public Works Director for the City of Helena,
6 presented testimony stating that the definition of "state waters" was nebulous, and
7 that the reasons and impacts for the changes proposed were unclear. Further, he
8 stated that it was unclear whether the term "drainage system" properly applied to
9 storm water systems. Finally, he stated that ARM 17.30.1323 was impractical
10 because development rendered the storm water system in a constant state of change.

11 SUMMARY OF WRITTEN MATERIALS

12 9. After the hearing, written comments were timely received from
13 various parties. These are attached hereto.

14 10. Mr. Dave Mumford, on behalf of himself, Bruce Bender, Chief
15 Administrative Officer of the City of Missoula, and Jim Rearden, Craig Woolard,
16 Randall Camp, Dave Schultz, and Susie Turner, Directors of Public works for Great
17 Falls, Bozeman, Helena, Butte-Silver Bow, and Kalispell, respectively. They
18 commented that the storm water runoff exemption in ARM 17.30.1106 for mining
19 and oil and gas operations should be extended to municipal separate storm sewer
20 systems (MS4s) so that discharges to conveyance systems (pipes, conduits, ditches,
21 and channels) do not require permit coverage.

22 10. Tamara J. Johnson, Executive Director of the Montana Mining
23 Association, had concerns that, under 17.30.1102, the new definition of "final
24 stabilization" will cause a mineral operation/operator concern that a portion of the
25 bond associated with a mineral operation will not be released. As well, the MMA
26 had concerns that the change in ARM 17.30.1102 would make regulated community
27 and the Montana DEQ subject to arbitrary decisions made by the EPA, where

1 Montana should retain authority. Finally, the MMA was concerned that ARM
2 17.30.1105 would give EPA authority over "state waters" including groundwater
3 they believe is not authorized.

4 11. Brian Sugden, Forest Hydrologist for Plum Creek Timber, commented
5 that ARM 13.30.1341 would allow that general permits be denied in "areas of
6 unique ecological or recreational significance," which standard was subjective, and
7 would make permitting a subjective decision, and thus an uncertain prospect.

8 12. Guy Alsentzer of Upper Missouri Waterkeeper, Inc. commented that
9 the proposed language in 17.30.1341 will "standardize" the permitting process and
10 require a simple Notice of Intent (NOI) to obtain coverage, which will be less robust
11 in terms of providing data concerning the proposed use, its impacts, and relevant
12 types of mitigation or monitoring that may/should be required than a full application
13 packet. The NOI may harm the ability of stakeholders to read and comment on
14 applications for activities that may pose direct, negative impacts on their legally
15 protected interests. UMW is also concerned that proposed change from "state water"
16 to "surface water" will be clear enough to in fact provide adequate coverage to
17 Montana's waters. Finally, they were concerned that the standards and conditions of
18 "final stabilization" procedures would allow permitted works to continue to
19 discharge pollutants long after the expiration of a permit term if there are no long
20 term mechanisms, such as post-construction BMPs among other items, required.

21 13. Robert G. Richards, Environmental Engineer with the 341st Missile
22 Wing of the Dept. of the Air force, commented that the proposed changes were
23 uncertain as to time and scope; that the motivations for the changes were unclear;
24 that the changes seemed to be biased against individual permits; and that the
25 changes actively discouraged research.

26 14. The Department also submitted a memorandum from DEQ staff
27 attorney, Ms. Kirsten Bowers, with HB 521 and HB 311 reviews of the proposed

1 amendments together with a Private Property Assessment Act Checklist.

2 Ms. Bowers' memorandum is attached to this report.

3 15. Ms. Bowers concluded that, because the proposed rule amendments
4 and proposed repeal of MPDES rules will maintain consistency with comparable
5 federal requirements, no HB 521 findings are necessary for these amendments.

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

13 17. The period to submit comments ended at 5 p.m. on September 14th,
14 2014.

15 HEARING OFFICER COMMENTS

16 18. The Board and the Department have jurisdiction to adopt and amend,
17 the amendments and rules referenced in this rulemaking pursuant to Mont. Code
18 Ann §§ 75-5-201 and 75-5-401.


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

21 20. The Board may adopt the proposed rule amendments or reject them, or
22 adopt the rule amendments and new rule with revisions not exceeding the scope of
23 the public notice.

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

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Dated this 24 day of November, 2014.


BENJAMIN REED
Hearing Officer

MEMORANDUM

To: Board of Environmental Review

From: Kirsten H. Bowers *KHB*
DEQ Attorney

Re: HB 521 Analysis and Takings Checklist

MAR Notice No. 17-365

In the matter of the amendment of 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; and the repeal of ARM 17.30.1110, 17.30.1115, and 17.30.1117 pertaining to Montana pollutant discharge elimination system (MPDES) permits.

Date: August 25, 2014

HB 521 Analysis

The Board's authority to adopt the proposed rules is found in the Montana Water Quality Act (MWQA) at § 75-5-401, MCA. Pursuant to House Bill 521, codified at § 75-5-203, MCA, the Board may not adopt a rule that is more stringent than comparable federal regulations or guidelines that address the same circumstances, unless the Board makes certain written findings establishing the need for the rule.

The proposed amendments to 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 include amendments to the purpose and scope of rules and to definitions related to MPDES permits, to MPDES permit requirements, to exclusions from MPDES permit requirements, to procedures for designating small municipal separate storm sewer systems (MS4s), to application procedures and permit requirements for MS4s, to general MPDES permit requirements, and to conditions applicable to all MPDES permits. The proposed amendments to ARM 17.30.1101, 17.30.1102, 17.30.1105, 17.30.1106, and 17.30.1107 are intended to clarify State storm water discharge permit requirements and to make these requirements consistent with other MPDES permit requirements found at ARM Title 17, Chapter 30, subchapters 11, 12, and 13; and with federal NPDES permit requirements found at 40 CFR 122.26, 40 CFR 122.28, and 40 CFR 122.33. The proposed amendments to ARM 17.30.1341 are intended to update and amend general MPDES requirements to maintain

consistency with equivalent federal rules at 40 CFR 122.28, and to provide a uniform rule for issuance and administration of general discharge permits under the MPDES and the Ground Water Pollution Control System (GWPCS) permit programs. The proposed amendments to ARM 17.30.1342 are intended to incorporate federal requirements for a delegated State MPDES program at 40 CFR 123.25, and to incorporate federal requirements at 40 CFR 122.41, 40 CFR 123.27, 40 CFR 503.8 (subchapter N pertaining to sewage sludge), 40 CFR 122.44 (reporting requirements), and 40 CFR 136 (procedures for the analysis of pollutants). The proposed repeal of ARM 17.30.1110, 17.30.1115, and 17.30.1117 will repeal rules related to application procedures for certain non-construction storm water discharges and procedures for submitting a notice of intent for storm water discharges related to construction activity, and will repeal rules related to transfer of permit coverage for storm water discharges. The rules proposed for repeal are no longer necessary because the rules set forth in ARM Title 17, Chapter 30, subchapter 13 provide permit application procedures, and rules governing transfer of discharge permits. Repeal of ARM 17.30.1110, 17.30.1115, and 17.30.1117 will eliminate duplication and potential conflict between the rules in Title 17, chapter 30, subchapter 11 and in Title 17, Chapter 30, subchapter 13 and result in a uniform system of administration of general discharge permits. Because the proposed rule amendments and proposed repeal of MPDES rules will maintain consistency with comparable federal requirements, no HB 521 findings are necessary for these amendments.

Private Property Assessment Act

The Montana Private Property Assessment Act at §§ 2-10-101 – 2-10-112, MCA, requires that, prior to adopting a proposed rule that has taking or damaging implications for private real property, an agency must prepare a taking or damaging impact statement. An "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 2-10-103(10), MCA.

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. A completed Attorney General checklist for the proposed rules is attached. Based on the guidelines provided by the Attorney General, the proposed rule amendments do not constitute an "action with taking or damaging implications" in violation of the United States or Montana Constitutions.

Attachment: Attorney General HB 311 Checklist.

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

MAR Notice No. 17-365

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

YES

NO

- | | | | |
|--------------------------|-------------------------------------|-----|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 1. | Does the action pertain to land or water management or environmental regulation affecting private real property or water rights? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 2. | Does the action result in either a permanent or indefinite physical occupation of private property? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 3. | Does the action deprive the owner of all economically viable uses of the property? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 4. | Does the action deny a fundamental attribute of ownership? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 5. | 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 5a and 5b and continue with question 6.] |
| <input type="checkbox"/> | <input type="checkbox"/> | 5a. | Is there a reasonable, specific connection between the government requirement and legitimate state interests? |
| <input type="checkbox"/> | <input type="checkbox"/> | 5b. | Is the government requirement roughly proportional to the impact of the proposed use of the property? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 6. | Does the action have a severe impact on the value of the property? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 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 through 7c.] |
| <input type="checkbox"/> | <input type="checkbox"/> | 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 implication exist if YES is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if NO is checked in response to questions 5a or 5b.

Kristin Bowers
(Signature)

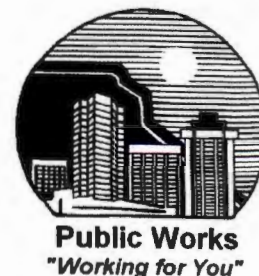
8/26/2014
(Date)



CITY OF BILLINGS

PUBLIC WORKS ADMINISTRATION

2224 Montana Avenue
Billings, Montana 59101
(406) 657-8230



August 26, 2014

Montana Board of Environmental Review
Montana DEQ
1520 E. 6th Avenue
Helena, MT 59620

Re: MAR Notice No. 17-365 – Notice of Public Hearing on Proposed Amendment and Repeal of MPDES Permits

Dear Board Members:

As permittees in the MS4 permit renewal process, the Cities of Billings, Missoula, Great Falls, Bozeman, Helena, Butte, and Kalispell impacted by rulemaking about water quality rules and definitions.

In new rule 17.30.1101, MDEQ is proposing to change the applicability of these rules from surface water to state waters. This is a significant change given the vast differences in the definitions of state waters and surface waters. In the reason section of the proposed rule, MDEQ has not provided any reasoning for making this change. Given, the significant nature of this change in language, we request that it be removed from the rule package until its underlying implications are fully understood.

In section 17.30.1106 (1)(c), MDEQ adds an exclusion for stormwater runoff from mining operations and oil and gas exploration. This exclusion should be extended to MS4s so discharges to conveyance systems (pipes, conduits, ditches and channels) do not require permit coverage.

In section 17.30.1323 (l) it indicates the permittee shall give notice to the department, any planned alterations to additions to a permitted facility. In the context of an MS4, this requirement is impractical as our systems are constantly being altered and changed. We request an exclusion from this requirement for MS4s.

Yours sincerely,

Dave Mumford, City of Billings Director of Public Works

Bruce Bender, City of Missoula Chief Administrative Officer

Jim Rearden, City of Great Falls, Director of Public Works

Craig Woolard, City of Bozeman, Director of Public Works

Randall Camp, City of Helena Director of Public Works

Dave Schultz, Butte Silver Bow Director of Public Works

Susie Turner, City of Kalispell, Director of Public Works



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 341ST MISSILE WING (AFGSC)

13 August 2014

Robert G. Richards, P.E.
c/o 341 CES/CEIE
39 78th Street North
Malmstrom Air Force Base, MT 59402

Elois Johnson, Paralegal
Montana Department of Environmental Quality
1520 E. 6th Avenue
PO Box 200901
Helena, MT 59620-0901

Dear Ms. Johnson:

The comments and questions below address proposed changes to Administrative Rules of Montana (ARM) 17.30 which pertain to Montana Pollutant Discharge Elimination System permits.

1. The reason for amending ARM 17.30.1102 states that the new definition at (28)(d)(xi) will place construction activities larger than 5 acres under storm water discharges associated with industrial activity (Industrial General Permit). Please see Page 1672, 4th full paragraph. My questions are:

- Why is the Department proposing this change?
- Does the change mean that such projects will no longer be covered under the General Permit for storm water associated with construction activity (Construction General Permit)?
- This change implies that the minimum Storm Water Pollution Prevention Plan (SWPPP) contents identified under the Industrial General Permit must include all the concepts, Best Management Practices (BMP), etc. which relate to construction projects. How does the Department intend to modify the Industrial General Permit to address construction activities? What is the timeline for those modifications?

This change seems redundant and unnecessary because the Construction General Permit and its minimum SWPPP contents already address the issues.

2. The reason given for excluding storm water runoff from mining, oil and gas exploration, etc. (if it hasn't come in contact with overburden, etc.) at ARM 17.30.1106(c) is for consistency with Federal regulations. Federal and Montana statutes, however, specifically allow adoption of regulations that are more strict than the Code of Federal Regulations. It seems entirely appropriate to subject mining, oil, gas, and other extractive industries to stricter regulation given their egregious history of water quality violations in Montana. What is the true reason for this change? If the Montana Board of Environmental Review and the Department have been subject to industry pressure and lobbying, this should be part of the public docket.

3. Proposed ARM 17.30.1341(9) allows a facility apply for an individual permit but does not provide any minimum requirements or guidance. The reason on page 1687 appears to discourage

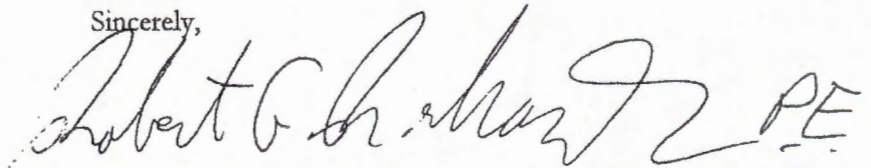
To Deter and Assure

individual permits because General Permits lessen the Department's administrative burden. This reasoning appears to build in an inappropriate bias against individual permits.

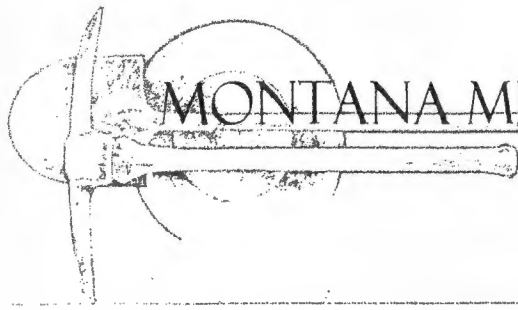
The Department's administrative burden should not be a part of the equation if a General Permit doesn't work for a particular facility. For example, Malmstrom Air Force Base has many difficulties complying with the General Permit for Storm Water Discharge Associated With Small Municipal Separate Storm Sewer Systems (MS4 General Permit). Certain MS4 General Permit concepts, such as adoption of ordinances, creation of enforcement action plans, etc., simply don't apply to the Base. How can the Base be assured an honest evaluation of the potential need for an individual permit without guidance, minimum requirements, etc.?

4. What is the rationale for requiring submittal of all water quality data at ARM 17.30.1342(21)(b), even if the parameter is not required or of interest to the local watershed? This provision actively discourages research.

Sincerely,

A handwritten signature in cursive script, reading "Robert G. Richards, P.E.", with the letters "P.E." written in a larger, more stylized font at the end of the signature.

Robert G. Richards, P.E.
Environmental Engineer



MONTANA MINING ASSOCIATION

Office Address: 25 Ballard Lane, Whitehall, Montana 59759

Mailing Address: P.O. Box 1026, Whitehall, Montana 59759

Telephone: (406) 495-1444

Email: info@montanamining.org

Website: <http://www.montanamining.org>

September 4, 2014

Elois Johnson, Paralegal
Department of Environmental Quality
1520 E. Sixth Avenue
P.O. Box 200901
Helena, Montana 59620-0901
Submitted via Email to: ejohnson@mt.gov

RE: In the matter of the amendment of 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 pertaining to storm water discharges.

Dear Ms. Johnson:

Thank you for the opportunity to submit comments on the above rule package. The Montana Mining Association is a trade association of mineral developers, producers, refiners and vendors located in fifteen states, including Montana, and two Canadian Provinces. The mining industry is a major employer and taxpayer in Montana and we believe the continued viability and growth of our members' operations are significant factors in the economic health of our state and its citizens.

We have some concerns and require some clarification with regard to 17.30.1102 DEFINITIONS and the deletion of the definition of "Final Stabilization". The reasoning for the deletion in the proposed rule states, "The board is proposing to remove the definition of final stabilization as this term does not appear in federal storm water regulations found at 40 CFR 122.26. The General Permit for Storm Water Discharges Associated with Construction Activity (General Permit No. MTR1000000) covers storm water discharges associated with construction activity from initiation of construction-related ground disturbance to "final stabilization" of that disturbance. The term "Final Stabilization" is defined in Part 5 of General Permit No. MTR1000000, to describe the point at which coverage under General Permit No. MTR1000000 may be terminated, but the term does not appear in subchapter 11."

In the specific case of mineral exploration or construction at a mineral operation, a portion of the calculated and required bond includes final stabilization. While many activities related to mineral activity have and will continue to be permitted with a General Permit, some require an individual stormwater discharge permit. How can a mineral operation/operator expect that portion of the bond to be released without the DEQ and the operator being able to rely upon a definition of final stabilization?

Testimony of Tom Reid representing the Department of Environmental Quality
August 27, 2014

Good Morning. My name is Tom Reid and I am with the Water Protection Bureau, Department of Environmental Quality.

The Department is requesting that the Board adopt the proposed amendments to Title 17, Chapter 30, Subchapters 11 and 13 and repeal 3 existing rules in Subchapter 11 as proposed in the Board's August 7, 2014 Notice. These rules along with Subchapters 12 and 14 constitute the Montana Pollutant Discharge Elimination System (MPDES) program. Together these rules regulate the discharge of pollutants to state waters. The Department is requesting these revisions to the permit rules in order to maintain compliance with the federal regulations governing the National Pollutant Discharge Elimination System, or NPDES program. These amendments will also provide for greater consistency between the existing Board rules in Subchapters 11, 12 and 13, and the Montana Water Quality Act.

Subchapter 11 addresses the discharge of storm water from regulated sources, including industrial, municipal and construction activities. The proposed changes to 1102 are necessary to amend existing definitions, add several new definitions, and delete terms which are no longer applicable. The amendments to 1105, 1107, and 1111 clarify that the requirements for issuing general permits are given in 1341, the general permit rule. This amendment will ensure uniformity in the issuance and administration of all general permits under the MPDES program and consistency with the federal rule.

The proposed amendments to 1105 also clarify that only the point sources identified in this rule are required to obtain permit coverage for discharges of storm water. These sources include industrial, municipal and construction activities, as defined in 1102. Amendments to 1107 also set forth an exemption for certain mining and, oil and gas activities from the requirement to obtain coverage under the NPDES program for discharges of storm water under certain conditions. This exemption is found in the federal Clean Water Act and applies to state programs.

The amendments to 1341, the general permit rule, clarify the requirements for issuing general permits including the geographic area, scope of coverage, sources, content, and administrative aspects for all general permits, including storm water. These amendments also remove certain conditions and requirements that are not found in the equivalent federal rule.

The amendments to 1342 are necessary to make the rule consistent with Part 6 of the Montana Water Quality Act which sets forth enforcement, appeal and penalty provisions. This rule lays out standard conditions that are required in all MPDES permits. These amendments include updated penalty provisions for civil, criminal and administrative violations that may result from noncompliance with permit requirements.

Other minor amendments to these rules include updated formatting and cross referencing, and updated incorporation by reference of federal rules where necessary.



September 4, 2014

Via Electronic Mail to jnorth@mt.gov and ejohnson@mt.gov

John North
Chief Legal Counsel
Elois Johnson
Paralegal
Montana Dept. of Environmental Quality
1520 E. 6th Ave
PO Box 200901
Helena, MT 59620-0901

Re: Comments concerning proposed amendment of 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 pertaining to storm water discharges

Dear Sir and Madam,

Please accept the following comments on behalf of Guy Alsentzer, the Upper Missouri Waterkeeper, and supporting membership organization Upper Missouri Waterkeeper, Inc., concerning the aforementioned proposed rule amendments. The Dept. provided notice and solicited public input on the proposed changes in MAR Notice No. 17-365 on August 7, 2014. We appreciate the opportunity to provide the Dept. with comments on its proposed rule changes as we each strive towards ensuring clean water is a reality for communities and waterways of Montana.

Upper Missouri Waterkeeper, Inc. is a membership based, non-profit water advocacy organization dedicated to protecting and improving the ecological and aesthetic quality of Southwest and West-Central Montana's Upper Missouri River Basin. The Upper Missouri Waterkeeper and members of our organization live, work, and recreate in waterways and landscapes throughout Montana, particularly the communities of Southwest and West-Central Montana. We use a combination of strong science, community action, and legal expertise to defend the Upper Missouri River, its tributaries, and communities against threats to clean water and healthy rivers.

Comments

On the whole we applaud BER for updating its regulations to better enunciate clear standards, conditions, and terms regarding stormwater discharges that offer necessary protections

most closely adheres to the federal requirement of a NPDES permit for a 'discharge of a pollutant by a point source to a Water of the United States.' Conversely, state waters' definition focuses syntax concerning irrigation upon a characterization of whether waters are returned to state waters, a more awkward approach that muddies interpretation unnecessarily.

Those points made, we do agree that state waters explicitly provides for a scope of authority over groundwater, something inherently not contemplated by the definition of surface water. For the record we support a holistic review process by BER rules and DEQ staff whereby ground and surface water resources are considered as an interrelated whole on the watershed scale. Doing so best affords scientific integrity to any permitting process.

However, insofar as the USEPA and USACE are currently conducting a rulemaking concerning the regulatory definition of what constitutes "waters of the United States," and whereas the outcome of that regulatory process will impact the federal baseline which Montana is obligated to meet, as a policy matter we urge BER to not finalize any proposed language as regards the scope of authority over water resources. It would be a better use of agency resources to again revisit this particular definitional amendment proposal at such time as the federal baseline is appropriately clarified. Further, doing so would not harm existing interests as there exists a sufficient body of state and federal caselaw enunciating the appropriate scope of authority over types of discharges that require a NPDES, MPDES, or GWPDES permit to clarify any current questions of scope of authority.

We are also confused by the rationale behind BER's proposal to remove standards and conditions regarding "final stabilization." The fact that federal Clean Water Act regulations do not explicitly mention final stabilization does not mean that Montana cannot – or should not – require such conditions in its approvals. Indeed, the federal Clean Water Act is the baseline by which delegated state NPDES programs like Montana's may operate, not the ceiling.

Without requirements obligating permittees to provide for and implement BMPs that address post-project site conditions, we risk implicitly sanctioning, and undermining, the purported purpose of permit conditions that mitigate foreseeable environmental impacts during a project. Put another way, many earthmoving and like projects that require a permit under this section can continue to discharge pollutants long after the expiration of a permit term if there are no long term mechanisms, such as post-construction BMPs among other items, required as part of a "final stabilization" procedures.

As a policy matter, BER should keep final stabilization requirements explicitly in its regulations as final stabilization, in the context of earthmoving activities requiring permits, has been proven time and again by best available science to be a critical component of restoring a site's long-term health and in turn, local waterway health.

Conclusion

Thank you for the opportunity to submit these comments as we each strive towards our mutual goal of protecting water resources of Montana.

Respectfully submitted,

Guy Alsentzer, Esq.

Upper Missouri Waterkeeper, Inc.

Brian D. Sugden
Hydrologist

Plum Creek Timber Company, Inc.
PO Box 1990
500-12th Avenue West
Columbia Falls, MT 59912
406-892-6368 fax: 406-892-6171
brian.sugden@plumcreek.com



Plum Creek

September 4, 2014

Elois Johnson
Montana Department of Environmental Quality
PO Box 200901
Helena, MT 59620-0901

Re: Comment on MAR Notice No. 17-365

Dear Board of Environmental Review:

Please accept these comments on behalf of Plum Creek Timber. In general, we support the proposed rule changes, as they appear to make the regulations more consistent with EPA requirements, provide clarification, and avoid other duplication.

We do have one substantive comment. In ARM 17.30.1341 (4)(e), we see that it is proposed to strike the subsection that general permits may be denied in "...*areas of unique ecological or recreational significance*..." Of course this was the section of Montana regulations that ultimately required Revett Minerals to obtain an Individual Permit for their Rock Creek Mine because a district court judge ruled that Rock Creek constituted such a unique resource.

This decision has caused us concern because of the obvious subjectivity, and uncertainty that this poses for permit applicants. We do not know if this language remains somewhere else in the permit application process, or elsewhere in the regulations. But we have seen that EPA model rules reference something along these lines.

Our recommendation is that if something like this language needs to remain in Montana's rules, that it be limited solely to waters designated by the state as Outstanding Resource Waters under MCA 75-5-315. This creates a very clear criterion for where General Permits are not applicable, and we believe this would be consistent with EPA guidance on the subject.

Thank you for this opportunity to comment.

Sincerely,

Brian D. Sugden
Forest Hydrologist

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of 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 pertaining to storm water)
discharges)

NOTICE OF AMENDMENT

(WATER QUALITY)

TO: All Concerned Persons

1. On August 7, 2014, the Board of Environmental Review published MAR Notice No. 17-365 regarding a notice of public hearing on the proposed amendment and repeal of the above-stated rules at page 1667, 2014 Montana Administrative Register, Issue Number 15.

2. The board has amended ARM 17.30.1106 exactly as proposed. The board has not amended or repealed any of the other rules.

3. The following comments on the proposed amendments to ARM 17.30.1106 were received and appear with the board's responses:

COMMENT NO. 1: The storm water runoff exemption in ARM 17.30.1106 for mining and oil and gas operations should be extended to municipal separate storm sewer systems (MS4s) so that discharges to conveyance systems (pipes, conduits, ditches, and channels) do not require permit coverage.

RESPONSE: The proposed storm water exemption for mining and oil and gas operations in ARM 17.30.1106 is the same as an exemption for the operations under the national pollutant discharge elimination system in the federal Clean Water Act at 33 USC 1342(l)(2) (CWA §402(l)(2)). There is no equivalent exemption for MS4 discharges in the federal statutes or regulations. Exemption of MS4s from the MPDES permit requirement would jeopardize Montana's primacy under the Clean Water Act and expose cities to potential federal regulation.

COMMENT NO. 2: The reason given for excluding storm water runoff from mining and oil and gas activities, in ARM 17.30.1106(c), is for consistency with federal regulations. Federal and Montana statutes specifically allow adoption of regulations that are more stringent than the Code of Federal Regulations. It seems appropriate to subject mining and oil and gas activities, and other extractive industries, to more stringent regulation.

RESPONSE: Mining activities are already exempted in this rule, and proposed amendment would continue that exemption. The amendments would add oil and gas operations, but only if the storm water has not come into contact with overburden, raw material, products or byproducts, or wastes. If pollutants are not coming into contact with the storm water, there is no reason for the operation to obtain a MPDES permit for that conveyance.

4. The board received a number of comments on other rules in this rulemaking. However, the board is not adopting amendments to any rule except ARM 17.30.1106 and the Department of Environmental Quality will be engaging in a stakeholder process regarding the unamended rules. The comments on those rules are, therefore, not addressed in this notice.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

JOHN F. NORTH
Rule Reviewer

By: _____
ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, _____, 2014.

LEE LAW OFFICE PC

158 Main Street
P.O. Box 790
Shelby, Montana 59474

TELEPHONE (406) 434-5244
FAX (406) 434-5246

DON R. LEE, Attorney
don.leelaw@gmail.com

BRIAN D. LEE, Attorney
brian.leelaw@gmail.com

BER 2014 08 oc
Filed with the

MONTANA BOARD OF

ENVIRONMENTAL REVIEW

This 2nd day of October, 2014
at 10:31 o'clock A. m.
By: LUKE CASEY, Attorney
luke.leelaw@gmail.com

September 11, 2014

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

Re: Notice of Violation and Administrative Compliance and Penalty Order, Docket No.
OC-14-02, for violations of the Opencut Mining Act. [Permit No. 2597; FID 2326]

To Whom It May Concern:

On behalf of our client, Somont Oil Company, Inc. ("Somont"), 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 September 9, 2014.

Somont 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, Somont also intends to raise several constitutional concerns implicated by the Order. Specifically, Somont believes its rights to due process and equal protection have been violated. Somont realizes the Board is not authorized to make any constitutional determinations however, Somont raises the same in order to preserve them for judicial review, should it become necessary.

LEE LAW OFFICE PC

By: 

Brian D. Lee

LEE LAW OFFICE PC

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BRIAN D. LEE, Attorney
brian.leclaw@gmail.com

LUKE CASEY, Attorney
luke.leclaw@gmail.com

RECEIVED

SEP 16 2014

**DEQ DIRECTORS
OFFICE**

September 11, 2014

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

Re: Notice of Violation and Administrative Compliance and Penalty Order, Docket No.
OC-14-02, for violations of the Opencut Mining Act. [Permit No. 2597; FID 2326]

To Whom It May Concern:

On behalf of our client, Somont Oil Company, Inc. ("Somont"), 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 September 9, 2014.

Somont 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, Somont also intends to raise several constitutional concerns implicated by the Order. Specifically, Somont believes its rights to due process and equal protection have been violated. Somont realizes the Board is not authorized to make any constitutional determinations however, Somont raises the same in order to preserve them for judicial review, should it become necessary.

LEE LAW OFFICE PC

By: 

Brian D. Lee



Montana Department of
ENVIRONMENTAL QUALITY

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: October 2, 2014

SUBJECT: Board of Environmental Review case, Case No. BER 2014-08 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF:
VIOLATION OF THE OPENCUT MINING ACT
BY SOMONT OIL COMPANY, INC. AT
SOMONT OIL COMPANY GRAVEL PIT,
TOOLE COUNTY, MONTANA (PERMIT NO.
2597; FID 2326; DOCKET NO. OC-14-02]

Case No. BER 2014-08 OC

TITLE

BER has received the attached request for hearing. Also attached is DEQ's administrative document relating to this request (Enforcement Case FID 2326, Docket No. OC-14-02).

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:
VIOLATION OF THE OPENCUT MINING
ACT BY SOMONT OIL COMPANY, INC. AT
SOMONT OIL COMPANY GRAVEL PIT,
TOOLE COUNTY, MONTANA (PERMIT
NO. 2597; FID 2326)

NOTICE OF VIOLATION
AND
ADMINISTRATIVE COMPLIANCE AND
PENALTY ORDER

Docket No. OC-14-02

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 Somont Oil Company, Inc. (Somont) of the following Findings of Fact and Conclusions of Law with respect to a violation of the Opencut Mining Act (Act), Title 82, chapter 4, part 4, MCA, and the Administrative Rules of Montana (ARM) adopted thereunder.

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. "Operator" includes any person conducting opencut operations on affected land that is not covered by a permit. *See* Section 82-4-403(8), MCA.
4. Somont is a "person" as defined in Section 82-4-403(10), MCA.
5. Pursuant to Section 82-4-431(1), MCA, a permit is required for an operator who:
 - (a) conducts an opencut operation that results in the removal of more than 10,000 cubic yards of materials and overburden; (b) conducts more than one opencut operation where each of the operations results in the removal of less than 10,000 cubic yards of materials and overburden but

1 the operations result in the removal of 10,000 cubic yards or more of materials and overburden in
2 the aggregate; or (c) removes materials or overburden at a previously mined site where the
3 removal, combined with the amount of previously mined materials and overburden, exceeds
4 10,000 cubic yards.

5 6. Pursuant to Section 82-4-437, MCA, for each opencut operation, the operator
6 shall file an annual report on a form furnished by the Department and submit a fee of 2.5 cents
7 per cubic yard of material mined (fee) during the period covered by the annual progress report.
8 A person who mines materials without a permit shall submit an annual report and fee. *See*
9 Section 82-4-437, MCA (effective October 1, 2013).

10 7. "Opencut operation" is defined at Section 82-4-403(7), MCA, as activities
11 conducted for the primary purpose of sale or utilization of materials, including: (a) mine site
12 preparation; (b) (i) removing the overburden and mining directly from the exposed natural
13 deposits; or (ii) mining directly from natural deposits of materials; (c) processing of materials
14 mined from the natural deposits, except that processing facilities located more than 300 feet from
15 where materials were mined or are permitted to be mined are not part of the opencut operation;
16 (d) transporting, depositing, staging, and stockpiling of overburden and materials unless the
17 activity occurs more than 300 feet from where the materials were mined or are permitted to be
18 mined; (e) storing or stockpiling of materials at processing facilities that are part of the opencut
19 operation; (f) reclamation of affected land; and (g) parking or staging of vehicles, equipment, or
20 supplies unless: (i) the activity is separated from other opencut operations by at least 25 feet and
21 is connected to the opencut operation by a single road that is no more than 25 feet wide; or (ii)
22 the activity is inside the construction disturbance area shown on a construction project plan.

23 8. On April 16, 2014, the Department conducted an inspection (April Inspection) at
24 an unpermitted gravel pit (Site) located in Section 26, Township 35 North, Range 3 West,

1 latitude 48.76698, longitude -111.95819, in Toole County, Montana. At the time of the April
2 Inspection, Somont had not applied for or obtained an opencut permit to conduct opencut
3 operations at the Site.

4 9. During the April Inspection, the Department observed that approximately 5.6
5 acres at the Site had been disturbed by non-permitted opencut mining operations. The
6 Department estimated that more than 10,000 cubic yards of material had already been mined
7 from the non-permitted opencut operation. Therefore, opencut operations at the Site must be
8 conducted subject to a permit required by Section 82-4-431(1)(b), MCA, and Somont is an
9 "operator" within the meaning of Section 82-4-403(8), MCA.

10 10. On May 8, 2014, the Department sent Somont a violation letter for conducting
11 non-permitted opencut operations at the Site and the failure to submit APR(s) and the fee(s) in
12 violation of the Act. The Department provided Somont with a copy of the April Inspection
13 report.

14 11. On June 16, 2014, Somont submitted an *Opencut Mining Plan of Operation and*
15 *Application* (Application) and reclamation bond to the Department.

16 12. On June 18, 2014, the Department sent a letter notifying Somont that the
17 Application was incomplete and the Department was unable to process the application until all
18 required missing documents were provided. The Department provided a list of documents that
19 Somont failed to provide with the Application.

20 13. On August 4, 2014, Somont resubmitted an Application to the Department.

21 14. On August 11, 2014, the Department issued Somont Opencut Mining Permit No.
22 2597 to conduct opencut operations on 10.3 acres at the Site, to be known as the Somont Gravel Pit.

23 15. Somont violated Section 82-4-431(1), MCA, by conducting opencut operations at
24 the Site without a permit before August 11, 2014.

1 16. Somont violated Section 82-4-437, MCA, by failing to submit an annual report
2 and fee for materials mined during calendar year 2013.

3 ***Administrative penalty***

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

7 18. The Department has calculated an administrative penalty in the amount of \$18,480
8 for the violations cited herein. *See* Section 82-4-1001, MCA, and ARM 17.4.301 through 17.4.308.
9 *See* the Penalty Calculation Worksheet that is enclosed and incorporated by reference herein.

10 19. In the event that Somont exercises its right to administrative review as explained in
11 Paragraph 26, by no later than the date given for exchange of exhibits or another date ordered by the
12 Board, the Department shall notify Somont whether it will seek to prove, based on information
13 obtained from Somont or through discovery or subsequent inspections of the Site, an increase or
14 decrease in the number of days of any violation described in the Penalty Calculation Worksheet.

15 **III. ADMINISTRATIVE ORDER**

16 This Notice of Violation and Administrative Compliance and Penalty Order (Order) is
17 issued to Somont pursuant to the authority vested in the State of Montana, acting by and through
18 the Department under the Act and administrative rules adopted thereunder, ARM Title 17,
19 chapter 24, sub-chapter 2. Based on the foregoing Findings of Fact and Conclusions of Law and
20 the authority cited above, the Department hereby ORDERS Somont to do the following:

21 20. Within 30 days after service of this Order, Somont shall complete and submit an
22 annual report and fee for materials mined during calendar year 2013. The annual progress report
23 must be submitted on the *Annual Progress Report* form attached to this Order as Attachment A
24 and shall be submitted to:

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

21. No later than 60 days after service of this Order, Somont shall pay to the Department the administrative penalty in the amount of \$18,480 for the violations cited herein. The penalty must be paid by check or money order, made payable to the "Montana Department of Environmental Quality," and sent to:

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

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

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

24. The Department may take any additional enforcement action against Somont 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.

25. 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

26. Somont may appeal this Order under Section 82-4-441, MCA, by having Somont's attorney file a written request for a hearing before the Montana Board of

1 Environmental Review no later than 30 days after service of this Order. Any request for a
2 hearing must be in writing and sent to:

3 Board Secretary
4 Board of Environmental Review
5 1520 East Sixth Avenue
6 P.O. Box 200901
7 Helena, MT 59620-0901

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


15 28. If a hearing is not requested within 30 days after service of this Order, the
16 opportunity for a contested case appeal is waived.

17 29. This Order becomes effective on the date of service. Service by mail is complete
18 three business days after mailing.

19 IT IS SO ORDERED:

20 DATED this 9th day of September, 2014.

21 STATE OF MONTANA
22 DEPARTMENT OF ENVIRONMENTAL QUALITY

23 
24 _____
JOHN L. ARRIGO, Administrator
Enforcement Division

Attachment A

DEQ OPENCUT MINING PROGRAM PO BOX 200901 -- HELENA MT 59620-0901 -- PHONE: 406-444-4970 -- FAX: 406-444-4988 -- Email: DEQOpenout@mt.gov

2013 ANNUAL PROGRESS REPORT AND FEE CALCULATION

INSTRUCTIONS:

1. Verify the address shown below.
2. Indicate the current phone number and email address for the operator.
3. For each site listed below, print or type the information requested for the 2013 calendar year.
4. Complete the fee calculation and certification sections at the end of the report.
5. Operators should retain a copy of the completed form for their records as it will not be available online.

NOTE: In accordance with the Opencut Mining Act (MCA 82-4-437) each operator must submit this annual report and fee payment to the Opencut Mining Program by March 1, 2014.

SOMONT OIL CO INC

419 Ferdig Road
Oilmont, MT 59466

Phone : _____

Email * : _____

* I consent to receiving future Opencut rule-making notices via email. ☐ Yes ☐ No

Permit Number	Site Name	County	Year Site Was Last	Number of Cubic Yards Mined in 2013
	SOMONT GRAVEL PIT	TOOLE		

ANNUAL FEE CALCULATION Note: If no material was mined during 2013, the fee due is \$0.	Total Cubic Yards Mined:	
		x \$0.025
	Total Annual Fee Due:	\$

** Indicates Short Form or Limited Opencut Operation site

BY SIGNING BELOW, I CERTIFY THE INFORMATION PROVIDED ON THIS REPORT AND THE FEE CALCULATION ARE COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

Operator Representative: _____

Title : _____

Operator Name: SOMONT OIL CO INC

Date : _____

Department of Environmental Quality - Enforcement Division
Penalty Calculation Worksheet

Responsible Party Name:	Somont Oil Company, Inc. (Somont) at Somont Oil Company Gravel Pit (Site)
FID:	2326 Permit 2597
Statute:	Opencut Mining Act (Act)
Maximum Penalty Authority:	\$1,000.00
Date:	8/21/2014
Name of Employee Calculating Penalty:	Daniel R. Kenney

Penalty Calculation #1
Description of Violation:
Somont violated Section 82-4-431(1), MCA, by conducting opencut operations without a Department-issued permit. During an April 16, 2014 site inspection, the Department observed that approximately 5.6 acres had been disturbed by non-permitted opencut operations.

I. BASE PENALTY

Nature

Explanation:	
Opencut operations that result in the removal more than 10,000 cubic yards of materials and overburden prior to obtaining a permit creates the potential to harm human health or the environment. Unless the Department has reviewed and approved an application for a permit, the public has no assurance that an opencut operation will be conducted in compliance with state law or that it will mitigate impacts to the environment and/or human health. Opencut operations conducted prior to completing the permitting process also circumvents the public's opportunity to provide input into the permitting process and to have any concerns addressed. Finally, if an adequate bond has not been posted, resources may not be available to reclaim the disturbance.	
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)(a), the Department has determined that operating without a permit has major gravity.
Extent Explanation:
The Department's expectation is that an opencut operator will not control or engage in opencut operations without ensuring the site is permitted. The Department has determined that Somont's opencut operations on approximately 5.6 acres without a permit constitutes a major deviation from the regulatory requirement.

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: 0.85

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):

\$850.00

II. ADJUSTED BASE PENALTY

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

Explanation:

Somont had control over the circumstances surrounding the violation and should have foreseen that conducting an opencut operation without a permit would result in a violation. Therefore, an upward adjustment of 20% for circumstances is appropriate.

Circumstances Percent: 0.20

Circumstances Adjustment (Base Penalty x Circumstances Percent) \$170.00

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

Explanation:

Somont 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 Somont 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	\$850.00
Circumstances	\$170.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
ADJUSTED BASE PENALTY	\$1,020.00
Maximum penalty authority	\$1,000.00

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 a site inspection on April 16, 2014 and observed non-permitted opencut operations at the Site. Somont, through its legal counsel, informed the Department on May 12, 2014 that Somont ceased all mining activities. Estimating that Somont only conducted operations Mondays through Fridays, the Department calculated that Somont conducted non-permitted operations for at least 18 days. Therefore, the Department is using 18 days of violation to calculate this penalty.

Number of Days: 18

ADJUSTED BASE PENALTY x NUMBER OF DAYS: \$18,000.00

IV. OTHER MATTERS AS JUSTICE MAY REQUIRE

Explanation:

Not applicable.

OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL: \$0.00

V. ECONOMIC BENEFIT

Explanation:

If Somont had obtained a permit and bonded the 5.6 acres, Somont would have been required to post an estimated bond in the amount of \$25,315. The Department calculates that at the market rate of 2% per year, such a bond would have cost Somont \$506 per year. The Department calculated that Somont received a \$126.50 benefit by delaying the payment of the bond over the four-month period from the time the violation was documented to the date the Department issued Somont a permit. The Department is adding the \$126.50 economic benefit realized by Somont to this penalty calculation.

ECONOMIC BENEFIT REALIZED:	\$126.50
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Responsible Party Name:	Somont Oil Company, Inc. (Somont) at Somont Oil
FID:	2326 Permit 2597
Statute:	Opencut Mining Act (Act)
Maximum Penalty Authority:	\$1,000.00

Penalty Calculation #2

Description of Violation:

Somont violated Section 82-4-437, MCA, by not submitting an annual progress report and severance fees, if any, for calendar year 2013 to the Department on or before March 1, 2014.

I. BASE PENALTY

Nature

Explanation:

The Department relies on operators to self-report on the progress of their mining operations. The Department uses the information to determine whether the operator is in compliance with its reclamation permit. The annual report also provides the Department with a method to update ownership and contact information. The failure to submit an annual progress report impacts administration of the Act because it impairs the Department's ability to identify and promptly deal with violations.

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

Gravity and Extent

Gravity Explanation:

ARM 17.4.303(5)(b)(ii) provides that the gravity for the violation, "a failure to monitor, report, or make records," is moderate.

Extent Explanation:

Extent is not applicable when the violation only impacts Administration.

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:

Impact to Administration

Gravity

Major	Moderate	Minor	
0.50	0.40	0.30	Gravity Factor: 0.40

BASE PENALTY (Maximum Penalty Authority x Gravity Factor):

\$400.00

II. ADJUSTED BASE PENALTY

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

Explanation:	
Somont had control over the circumstances surrounding the violation and failed to submit the report after the Department notified it in writing of the violation and what it needed to do to return to compliance. Therefore, the Department is adding 20% to the base penalty for Circumstances.	
Circumstances Percent:	0.20
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$80.00

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

Explanation:	
The Department is not aware of any actions completed to correct the violation.	
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 to complete the annual report. Therefore, no decrease to the Base Penalty is calculated for Amounts Voluntarily Expended.	
AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

ADJUSTED BASE PENALTY SUMMARY

Base Penalty	\$400.00
Circumstances	\$80.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
ADJUSTED BASE PENALTY	\$480.00

III. DAYS OF VIOLATION

Explanation:	
Somont violated Section 82-4-437, MCA, ARM 17.24.225 and ARM 17.24.214(1) one time by failing to submit the annual progress report and severance fees, if any, for calendar year 2013. Therefore, the Department is calculating one day of violation.	
Number of Days:	1
ADJUSTED BASE PENALTY x NUMBER OF DAYS:	\$480.00

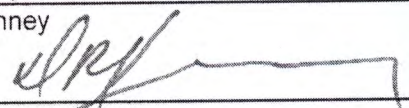
IV. OTHER MATTERS AS JUSTICE MAY REQUIRE

Explanation:	
Not applicable.	
OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:	\$0.00

V. ECONOMIC BENEFIT

Explanation:	
The Department has determined that Somont did not gain a significant economic benefit by delaying submittal of the annual progress report and that the failure to pay the associated 2.5 cent fee is a delayed cost and would not create a significant economic benefit. The Department estimates it would take less than two hours to complete and mail the annual progress report to the Department. The savings Somont gained by delaying compliance is not significant.	
ECONOMIC BENEFIT REALIZED:	\$0.00

Department of Environmental Quality - Enforcement Division
Penalty Calculation Summary

Responsible Party Name:	Somont Oil Company, Inc. (Somont) at Somont Oil Company Gravel	
FID:	2326	Permit 2597
Statute:	Opencut Mining Act (Act)	
Maximum Penalty Authority:		\$1,000.00
Date:	9/8/14	
Signature of Employee Calculating Penalty:	Daniel R. Kenney 	

Penalty #1 Penalty #2

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

Maximum Penalty Authority:	\$1,000.00	\$1,000.00
Percent Harm - Gravity and Extent:	0.85	0.00
Percent Impact - Gravity:	0.00	0.40
Base Penalty:	\$850.00	\$400.00

II. Adjusted Base Penalty

Base Penalty:	\$850.00	\$400.00
Circumstances:	\$170.00	\$80.00
Good Faith and Cooperation:	\$0.00	\$0.00
Amount Voluntarily Expended:	\$0.00	\$0.00
Adjusted Base Penalty:	\$1,020.00	\$480.00
Maximum Per Violation:	\$1,000.00	

III. Days of Violation or

Number of Occurrences	18	1	
Total Adjusted Penalty:	\$18,000.00	\$480.00	\$18,480.00

**IV. Other Matters as Justice
May Require**

\$0.00	\$0.00
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V. Economic Benefit

\$126.50	\$0.00
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VI. History*

			\$0.00
Subtotal(s)	\$18,000.00	\$480.00	<u>\$18,480.00</u>

Total calculated penalty: \$18,480.00

*Somont does not have a prior history of violations of the Opencut Mining Act (Act) documented in either an administrative order, judicial order, or judgment within the last three years.



Norwegian Wood
RANCH | GOLF COURSE

Filed with the

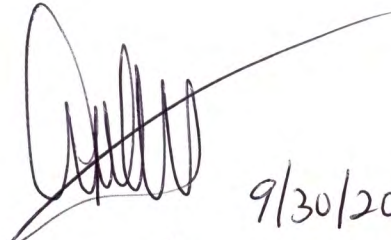
MONTANA BOARD OF
ENVIRONMENTAL REVIEW

This 2nd day of October, 2014
at 11:30 o'clock p.m.
By: Deb Rutledge

9/30/2014

To Whom it concerns,

We Highlander Bar + Grill appeal notice of
violation dated 9/15/2014, and request a hearing
and additional time to comply with this order!
Public water system # PWSID MT 0004764!


9/30/2014
RENE REGAN



Montana Department of
ENVIRONMENTAL QUALITY

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: October 2, 2014

SUBJECT: Board of Environmental Review case, Case No. BER 2014-09 PWS

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF:
VIOLATIONS OF THE PUBLIC WATER
SUPPLY LAWS BY RENE REQUA AT
HIGHLANDER BAR AND GRILL, PWSID
MT0004764, HELENA, LEWIS AND CLARK
COUNTY, MONTANA. [FID 2299; DOCKET
NO. PWS-14-08]

Case No. BER 2014-09 PWS

TITLE

BER has received the attached request for hearing. Also attached is DEQ's administrative document relating to this request (Enforcement Case FID 2299, Docket No. PWS-14-08).

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

Carol Schmidt
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 PUBLIC WATER
SUPPLY LAWS BY RENE REQUA AT
HIGHLANDER BAR AND GRILL, PWSID
MT0004764, HELENA, LEWIS AND CLARK
COUNTY, MONTANA. (FID 2299)

NOTICE OF VIOLATION
AND
ADMINISTRATIVE COMPLIANCE
AND PENALTY ORDER

Docket No. PWS-14-08

I. NOTICE OF VIOLATION

Pursuant to the authority of Section 75-6-109(1), Montana Code Annotated (MCA), the Department of Environmental Quality (Department) hereby gives notice to Rene Requa (Respondent) of the following Findings of Fact and Conclusions of Law with respect to violations of the Public Water Supply Laws (PWSL) (Title 75, chapter 6, part 1, MCA) and the Administrative Rules of Montana (ARM) (Title 17, chapter 38) adopted thereunder.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Department hereby 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 PWSL and the administrative rules adopted thereunder.
3. Respondent owns and operates the public water supply system that serves the customers of Highlander Bar and Grill (System), PWSID MT0004764, in Helena, Lewis and Clark County, Montana. The System regularly serves water to at least 25 persons daily for any 60 or more days in a calendar year. Respondent is therefore a "supplier of water" and subject to the requirements of the PWSL and the rules adopted thereunder. See ARM 17.38.202 and 40 CFR 141.2 as incorporated therein.

1 4. A person may not commence construction, alteration, extension, or operation of a
2 public water supply or water distribution that is intended to be used as a public water supply
3 system before the person submits to the Department necessary maps, plans, and specifications for
4 its review and the Department approves those maps, plans and specifications. *See* Section 75-6-
5 112(1), MCA. A person may not commence or continue the construction, alteration, extension, or
6 operation of a public water supply system or public sewage system until the applicant has
7 submitted a design report along with the necessary plans and specifications for the system to the
8 Department for its review and has received written approval. *See* ARM 17.38.101(4).

9 5. A person may not commence or continue the operation of a public water supply or
10 public sewage system, or any portion of such system, prior to certifying by letter to the
11 Department or a delegated division of local government that the system, or portion of the system
12 constructed, altered, or extended to that date, was completed in accordance with plans and
13 specifications approved by the Department. *See* ARM 17.38.101(12).

14 6. Within 90 days after completion of construction of a public water or wastewater system,
15 a complete set of certified "as-built" drawings must be signed and submitted to the Department. For a
16 system or any portion of a system designed by a professional engineer, the engineer shall sign and
17 submit certified "as-built" drawings to the Department. *See* ARM 17.38.101(13).

18 7. On November 23, 2011, the Department conducted a sanitary survey inspection of
19 Highlander Bar and Grill and documented that Respondent had constructed and was operating
20 the System prior to the submittal of plans and specifications to the Department and the
21 Department's review and approval of plans and specifications.

22 8. On November 28, 2011, the Department sent a letter to notify Respondent that he
23 was in violation of the PWSL for the operation of an unapproved system and to request
24 Respondent to contact the Department within 10 days of receipt of the letter.

1 9. Respondent submitted an undated water system drawing titled "Highlander Bar
2 and Grill" (System Drawings) to the Department for review and approval.

3 10. On January 17, 2012, the Department sent Respondent an invoice for \$1,260 for
4 plan review fees. To date Respondent has not paid those past due fees.

5 11. On February 13, 2012, the Department sent Respondent a letter (February Letter)
6 that identified deficiencies in the System Drawings that must be addressed before the
7 Department can approve the plans.

8 12. On May 15, 2012, the Department sent a First Warning Letter to notify
9 Respondent that he was operating the System in violation of Section 75-6-112(1), MCA, and
10 ARM 17.38.101(4). The First Warning Letter recommended a response to the February Letter
11 within 30 days of receipt.

12 13. On June 3, 2013, the Department sent a Second Warning Letter to notify
13 Respondent that he was in violation of Section 75-6-112(1), MCA, and ARM 17.38.101(4) by
14 operating the System prior to receiving approval from the Department. The Second Warning
15 Letter recommended a response to the February Letter within 30 days of receipt.

16 14. On November 27, 2013, the Department sent a Violation Letter to inform
17 Respondent that the information requested in the February Letter had still not been received and
18 that Respondent continued to be in violation of Section 75-6-112(1), MCA, and ARM
19 17.38.101(4). The Violation Letter recommended a response to the February Letter within 30
20 days of receipt and that the response must include plans and specifications meeting the
21 requirements of Circular DEQ-3 Standards for Small Water Systems.

22 15. Respondent violated Section 75-6-112, MCA, and ARM 17.38.101(4) by commencing
23 construction and operating the System prior to submitting the necessary maps, plans and
24 specifications and receiving Department approval of the necessary maps, plans, and specifications.

1 ***Administrative penalty***

2 16. Pursuant to Section 76-4-109(2)(a), MCA, the Department may assess an
3 administrative penalty not to exceed \$500 for each day of violation of the PWSL.

4 17. The Department has calculated an administrative penalty totaling \$12,000 for the
5 violation alleged herein. *See* Section 75-1-1001, MCA, and ARM 17.4.301 through 17.4.308.
6 The enclosed Penalty Calculation Worksheet is incorporated by reference.

7 **III. ADMINISTRATIVE ORDER**

8 This Notice of Violation and Administrative Compliance and Penalty Order (Order) is
9 issued to Respondent pursuant to the authority vested in the State of Montana, acting by and
10 through the Department under the PWSL, Section 75-6-101, *et seq.*, MCA, and the
11 administrative rules adopted thereunder, ARM Title 17, chapter 38. Based on the foregoing
12 Findings of Fact and Conclusions of Law and the authority cited above, the Department hereby
13 ORDERS Respondent to take the following actions to comply with the PWSL within the
14 timeframes specified in this Order.

15 18. Within 60 days from receipt of this Order, Respondent shall provide a complete
16 response that addresses the deficiencies identified in the Department's February Letter. If
17 Respondent's System is of a complexity that would require a professional engineer, Respondent
18 shall retain a licensed professional engineer to submit the as-built plans and specifications.
19 Respondent should consult with the Department's engineers to determine whether a licensed
20 professional engineer is required for Respondent's System. If the as-built drawings and
21 certification are denied, Respondent shall respond to the Department's denial letter within 30
22 days of the date of the denial letter.

23 19. Within 60 days of receipt of this Order, Respondent shall submit the \$1,260 past
24 due plan review fees described in Paragraph 10.

1 20. Within 60 days of receipt of this Order, Respondent shall submit the following:

2 a. Detailed plans of the distribution system. The information provided must
3 allow evaluation of the system against the requirements of DEQ-3, chapter 8.

4 b. Provide specifications for the hydropneumatic (pressure) tanks (DEQ-3,
5 section 7.1).

6 i. Tanks must be located above the normal ground surface and
7 completely housed (DEQ-3, section 7.1.1). The existing tanks in the pit below
8 normal ground surface will have to be moved or you can apply for a deviation as
9 specified in DEQ-3, section 1.4.

10 ii. Provide system design and sizing information for the
11 hydropneumatic system (DEQ-3, section 7.1.2.a).

12 iii. Show that the piping and appurtenances meet the requirements of
13 DEQ-3, sections 7.1.3 and 7.1.4.

14 c. A diagram of a continuous protection zone and describe how continued
15 protection will be achieved. Continued protection of the well site from potential sources
16 of contamination must be provided either through ownership, zoning, leasing or other
17 means acceptable to the Department. Such protection must extend for at least a 100-foot
18 radius around the well (DEQ-3, section 3.2.3.2).

19 d. Well construction information required by DEQ-3, section 3.2.5. and in
20 particular the following:

21 i. Provide information on upper terminal well construction.

22 Permanent casing for all ground water sources must be in accordance with ARM
23 36.21.647 (DEQ-3, section 3.2.5.6.a). ARM 36.21.647(1) requires the casing head
24 or pitless unit of any water well shall extend not less than 18 inches above the

1 finished ground water surface or pump house floor and not less than 18 inches
2 above the local surface runoff level.

3 ii. Discharge piping. Demonstrate that discharge piping meets the
4 requirements of DEQ-3, section 3.2.7.2.

5 e. Document that source capacity is adequate to meet peak instantaneous demand.

6 Address domestic use, irrigation, and fire flows as appropriate (DEQ-3, section 3.2.1).

7 21. Within 60 days of receipt of the Department's approval of the plans and
8 specifications, commence construction of any changes required in the Department's approval.

9 22. Within 15 days of completing any approved changes, submit, through a
10 professional engineer if required because of the complexity of the System, a letter certifying that
11 the changes were constructed as approved.

12 23. Within 90 days of completing any approved changes to the System, Respondent
13 shall submit final as-built drawings and certification that the System was constructed and/or
14 modified in accordance with Department approved plans and specifications.

15 24. Respondent may not construct, operate or connect any additional connections to
16 the System until as-built drawings are certified in writing that the System was constructed in
17 accordance with the approved designs, pursuant to ARM 17.38.101(12).

18 25. All documentation, submittals, and notifications required in Paragraphs 18, 19,
19 20, 22, and 23 shall be sent to:

20 Patrick N. Johnson, PE
21 Subdivision Review Section
22 Department of Environmental Quality
23 P.O. Box 200901
24 Helena, MT 59120-0901

23 26. Respondent is assessed an administrative penalty of \$12,000 for the violation
24 described in this Order. Based upon the absence of prior violations, the Department will exercise

1 its enforcement discretion and suspend all but \$6,000 of the calculated penalty provided that
2 Respondent fully complies with the requirements of this Order. *See* ARM 17.38.607.

3 27. Within 60 days from receipt of this Order, Respondent shall pay to the
4 Department the \$6,000 administrative penalty. The penalty must be paid by check or money
5 order, made payable to the "Montana Department of Environmental Quality," and shall be
6 sent to:

7 John L. Arrigo, Administrator
8 Enforcement Division
9 Department of Environmental Quality
10 1520 East Sixth Avenue
11 P.O. Box 200901
12 Helena, MT 59620-0901

13 28. In the event that Respondent fails to comply fully with any requirement of this
14 Order, the Department may require Respondent to pay the suspended portion of the total penalty,
15 in part or in full. The amount demanded shall become due and payable in full within 30 days of
16 the date of the Department's written notice of demand for payment.

17 29. Failure to take the required corrective actions and pay the assessed penalty by the
18 specified deadlines, as ordered herein, constitutes a violation of Title 75, chapter 6, part 1, MCA,
19 and may result in the Department seeking a court order assessing civil penalties of up to
20 \$10,000.00 per day of violation pursuant to Section 75-6-114, MCA.

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

24 31. The Department may take any additional enforcement action against Respondent,
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.

1 **IV. NOTICE OF APPEAL RIGHTS**

2 32. Respondent may appeal this Order under Section 75-6-109, MCA, by filing a
3 written request for a hearing before the Montana Board of Environmental Review no later than
4 30 days after service of this Order. Any request for a hearing must be in writing and sent to:

5 Board Secretary
6 Board of Environmental Review
7 P.O. Box 200901
8 Helena, MT 59620-0901

9 33. Hearings are conducted as provided in the Montana Administrative Procedure
10 Act, Title 2, chapter 4, part 6, MCA. Hearings are normally conducted in a manner similar to
11 court proceedings, with witnesses being sworn and subject to cross-examination. Proceedings
12 prior to the hearing may include formal discovery procedures, including interrogatories, requests
13 for production of documents, and depositions. You have the right to be represented by an
14 attorney in all proceedings. *See* ARM 1.3.231(1).

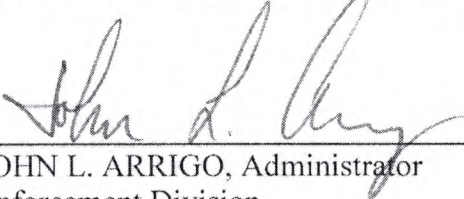
15 34. If a hearing is not requested within 30 days after service of this Order, the
16 opportunity for a contested case appeal is waived.

17 35. This Order becomes effective on the date of service. Service by mail is complete
18 on the date of receipt.

19 IT IS SO ORDERED:

20 DATED this 5th day of September, 2014.

21 STATE OF MONTANA
22 DEPARTMENT OF ENVIRONMENTAL QUALITY

23 
24 _____
JOHN L. ARRIGO, Administrator
Enforcement Division

Department of Environmental Quality - Enforcement Division
Penalty Calculation Summary

Responsible Party Name:	Rene Requa (Respondent) at Highlander Bar and Grill (System)
FID:	2299 MT0004764
Statute:	Public Water Supply Laws (Laws)
Date:	9/5/2014
Name of Employee Calculating Penalty:	Tom Bovington
Maximum Penalty Authority:	\$500.00

Violation #1

Description of Violation:

Respondent violated Sections 75-6-112(1) and 75-6-112(3), MCA, and ARM 17.38.101 by operating an unapproved public water system (System) and operating the System prior to submittal of as-built plans and specifications (Plans and Specs) to the Department.

I. BASE PENALTY

Nature

Explanation:

The law and rules require the submittal of Plans and Specs for a System to show how it will be installed. The Department reviews and approves the Plans and Specs in order to protect human health and the environment. Any part of the System put in use without submittal and approval of Plans and Specs has the 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:

According to ARM 17.4.303(5)(a), the construction or operation of a public water or wastewater system without submittal of Plans and Specs to the Department is a violation with major gravity because of the potential to harm human health and the environment. The System operating without approved Plans and Specs could potentially harm human health and the environment since the System may not be designed, installed, and operated according to Montana's public water supply standards.

Extent Explanation:

Public water and wastewater review considers the way a water system is designed and installed for its proposed use. The construction and use of a public water system without submittal of Plans and Specs is a major deviation from the public water and wastewater approval process. Therefore, according to ARM 17.4.303(4)(a), this violation has a major extent.

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: 0.85

Impact to Administration

Gravity

Major	Moderate	Minor	
.50	.40	.30	Gravity Factor:

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

\$425.00

II. ADJUSTED BASE PENALTY

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

Explanation:

Respondent exhibited culpability by constructing and operating a public water system without submittal and approval of Plans and Specs. As the owner of the System, Respondent should be aware of the requirements of public water systems. Additionally, the Department notified Respondent several times in writing of the violation and Respondent still failed to comply. Respondent is in control of the circumstances that caused the violation. The Department is adding 20% to the base penalty.

Circumstances Percent: 0.20

Circumstances Adjustment (Base Penalty x Circumstances Percent) \$85.00

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

Explanation:

Respondent did not promptly report the violation to the Department or voluntarily disclose facts related to the violation. 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 Respondent to mitigate the violation and/or its impact; 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	\$425.00
Circumstances	\$85.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
ADJUSTED BASE PENALTY	\$510.00
MAXIMUM BASE PENALTY	\$500.00

III. DAYS OF VIOLATION

Explanation:

Section 76-4-109(2)(a), MCA, provides that the Department may assess an administrative penalty for each day of violation. For the purpose of calculating this penalty, the Department is considering each day within the statute of limitations following the February 13, 2012 letter as one day of violation. Respondent has remained in violation for 730 days for operating the public water supply system without approved plans or certification.

Number of Days: 730

ADJUSTED BASE PENALTY x NUMBER OF DAYS: \$365,000.00

Other Matters as Justice May Require Explanation:

Considering that the calculation of a penalty for 730 violations results in a penalty that exceeds the amount necessary to deter future violations, the Department, in exercising its enforcement discretion, will reduce the days of violation to one day per month (24) under Other Matters as Justice May Require to obtain a penalty that is more commensurate with the severity of the violation.

Number of Days: 24

OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL: \$12,000.00

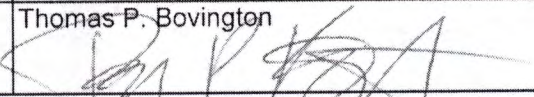
IV. ECONOMIC BENEFIT

Explanation:

Respondent did not realize any significant economic benefit by operating the public water system without approved Plans and Specs by the Department because Respondent delayed costs.

ECONOMIC BENEFIT REALIZED: \$0.00

**Department of Environmental Quality - Enforcement Division
Penalty Calculation Summary**

Responsible Party Name:	Rene Requa (Respondent) at Highlander Bar and Grill (System)
FID:	2299 MT0004764
Statute:	Public Water Supply Laws (Laws)
Date:	9/5/2014
Signature of Employee Calculating Penalty:	Thomas P. Bovington 

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

	Violation #1
Maximum Penalty Authority:	\$500.00
Percent Harm - Gravity and Extent:	0.85
Percent Impact - Gravity:	0.00
Base Penalty:	\$425.00

II. Adjusted Base Penalty

Base Penalty:	\$425.00
Circumstances:	\$85.00
Good Faith and Cooperation:	\$0.00
Amount Voluntarily Expended:	\$0.00
Adjusted Base Penalty:	\$510.00
Maximum Base Penalty:	\$500.00

Totals
\$425.00
\$85.00
\$0.00
\$0.00
\$510.00
\$500.00

**III. Days of Violation or
Number of Occurrences**

730

Adjusted Base Penalty Total \$365,000.00

\$365,000.00

**Other Matters as Justice May
Require**

\$12,000.00

\$12,000.00

IV. Economic Benefit

\$0.00

\$0.00

V. History*

\$0.00

TOTAL PENALTY

\$12,000.00

*Respondent does not have a prior history of violations of the Laws documented in either an administrative order, judicial order, or judgment within the last three years.