



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

## **TELECONFERENCE AGENDA**

FRIDAY DECEMBER 4, 2015

METCALF BUILDING, ROOM 111

1520 EAST 6<sup>th</sup> AVENUE, HELENA, MONTANA

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**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 [hhoule@mt.gov](mailto:hhoule@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 October 16, 2015, meeting minutes.

##### **B. REVIEW AND APPROVE 2016 SCHEDULE**

#### **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 Rene Requa at Highlander Bar and Grill, PWISD MT0004764, Lewis and Clark County (FID 2299, Docket No. PWS-14-08), BER 2014-09 PWS. Proposed Schedule filed on June 30, 2015.**
- b. In the matter of violations of the Water Quality Act by Reflections at Copper Ridge, LLC at Reflections at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105376), BER 2015-01 WQ. On August 25, the parties filed a Stipulation to Stay Scheduling Order. A Status Update is due November 30, 2015.**
- c. In the matter of violations of the Water Quality Act by Copper Ridge Development Corporation at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105377), BER 2015-02 WQ. On August 25, the parties filed a Stipulation to Stay Scheduling Order. A Status Update is due November 30, 2015.**
- d. In the matter of violations of the Water Quality Act by Buscher Construction and Development, Inc., at Poly Vista Estates, Trailhead, and Falcon Ridge II Subdivisions, Billings, Yellowstone County, BER 2015-03 WQ. On November 16, the Hearing Examiner issued a Scheduling Order.**

- a. **In the matter of the notice of appeal and request for hearing by Yellowstone Energy Limited Partnership (YELP) regarding issuance of MPDES Permit NO. MT0030180 for YELP's facility in Billings, MT, BER 2014-01 WQ.** On June 11, attorney for appellant filed Unopposed Motion to Extend Stay and Reporting Deadlines, requesting continuance of the Stay until February 1, 2016. On June 16, 2015, the hearing examiner issued Order Extending Stay / Reporting Deadlines, continuing the Stay until February 1, 2016.
  - 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.** On March 11, 2015, the parties filed a Stipulation to Stay Appeal until December 31, 2017. On March 25, the hearing examiner issued Order approving the stipulation and ordered the parties to comply with the terms or the stipulation.
  - 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.** On November 16, the Hearing Examiner issued an Order on Motion to Amend Scheduling Order.
  - d. **In the matter of the revocation of Montana Air Quality Permit No. MAQP# 2554-05, issued to Eureka Pellet Mills (Inc.), Eureka, Lincoln County, MT, BER 2015-04a AQ; the revocation of Montana Air Quality Permit No. MAQP 3039-02, issued to Eureka Pellet Mills (Inc.), Superior, Mineral County, MT, BER 2015-04b AQ; and the revocation of Montana Air Quality Permit No. MAQP# 4057-00, issued to Montana Renewable Resources (LP), Eureka, Lincoln County, MT, BER 2015-04c AQ.** The Board received the appeals from Patrick Pozzi on August 10, 2015. On September 25, Mr. Pozzi notified the Board's attorney that they had shut the mills down, so the cases should expire. The Board may assign a permanent hearing examiner or decide to hear the matter.
  - e. **In the matter of Heart K Land & Cattle Co.'s appeal of its final 401 Certification with conditions, BER 2015-05 WQ, application No. MT4010948; MWO-2013-00590-MTB-Addendum, issued by DEQ for the Yellowstone River, Park County, MT.** The Board received the appeal on July 17, 2015. On November 19, Hearing Examiner Ben Reed issued a Scheduling Order.
  - f. **In the matter of Westmoreland Resources, Inc.'s, BER 2015-06 WQ, appeal of final MPDES permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT.** The Board received the appeal on September 29, 2015. The Board assigned Ben Reed as the Hearing Examiner in the October 16, 2015, meeting.
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. The case is stayed pending judicial proceedings in District Court and permit modifications.

#### B. OTHER BRIEFING ITEMS

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

### III. ACTION ITEMS

#### A. NEW CONTESTED CASES

1. In the matter of the notice of appeal of final MPDES Permit No. MT0000264 Issued by DEQ for the Laurel Refinery in Laurel, Yellowstone County, Montana, BER 2015-07 WQ. The appeal was filed on October 15, 2015. The Board may assign a permanent hearing examiner or decide to hear the matter.
2. In the matter of termination by DEQ of the application by Payne Logging, Inc. Requesting to move boundaries of the Payne Logging facility in Libby, Lincoln County, Montana, BER 2015-08 JV. The Board received the appeal on October 26, 2015. The Board May assign a permanent hearing examiner or decide to hear the matter.

#### B. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Update Circular DEQ-2. The department is updating wastewater operator certification classes, which are detailed in DEQ-2. Therefore, the DEQ-2 circular needs to be updated to remove the outdated information and to add reference to the new information.
2. Repeal ARM 17.4.201, 17.30.645, 17.30.1386, 17.30.1401, 17.30.1402, 17.30.1405, 17.30.1406, 17.30.1407, 17.30.1410, 17.30.1411, 17.30.1412, 17.30.1413, 17.30.1414, 17.30.1419, 17.30.1420, 17.30.1421, 17.30.1425, 17.30.1426, 17.30.1602, 17.30.2001, 17.30.2003, 17.38.601, 17.38.602, 17.38.603, and 17.38.607. The Department has determined that these rules duplicate statute or rule or are otherwise unnecessary, and the Department will recommend that the Board initiate rulemaking to repeal these rules.

#### C. FINAL ACTION ON CONTESTED CASES

1. **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.** On October 16, the Board considered the Parties' Motions and Oppositions for Summary Judgment and the Proposed Findings of Facts and Conclusion of Law filed by the Parties.

### 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

October 16, 2015

### Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Madam Chair Miles at 9:01 a.m., on Friday, October 16, 2015, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

### Attendance

Board Members Present: Chairman Joan Miles, Chris Tweeten, Marietta Canty, Michele Reinhart Levine, Roy Sayles O'Connor, Dr. Robert Byron

Board Members Absent: Robin Shropshire

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

Board Secretary Present: Hillary Houle

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers – Director; George Mathieus, Deputy Director; John North, Dana David, and Norm Mullen – Legal; Amy Steinmetz, Eric Urban, Eric Makus, and Dean Yashan – Water Quality Planning Bureau; Julie Merkel, Hoby Rash, Brandon McGuire, Liz Ulrich, Rebecca Harbage, Eric Merchant, and Annette Williams – Air Quality Bureau; James Conner and Chris Cronin – Industrial and Energy Minerals Bureau; Christian Schmidt – Planning Prevention and Assistance Division; John Kenning – Water Protection Bureau.

Interested Persons Present: Peggy Trenk – Treasure State Resource Industry Association; DarAnne Dunning, Beth Kaeding, Dawson Dunning, Colin Lauderdale, and Ella Smith – Norther Plains; Steve Muggli – Muggli Bros Inc.; Christy McCann and Steve Wade – Browning Kaleczyc Berry & Hoven P.C.; Mark Fix – Self and Northern Plains Resource Council; Adam Haight – NPRC; Steve Gilbert – Self; Art Hayes and Brenda Lindlief-Hall – Tongue River Water Users Association; Jason Gildea – EPA; Shilo Hernandez – Montana Environmental Information Center, Western Environmental Law Center, and Sierra Club; Anne Hedges and James D. Jensen – Montana Environmental Information Center; Cary Hegreberg – Montana Contractors Association.

Interested Persons Present via Telephone: Heidi Kaiser (self)

Chairman Miles thanked members of the audience for their attendance.

I.A. Review and approve July 31, 2015, Board meeting minutes.

Chairman Miles called for a motion to approve the July 31, 2015, meeting minutes. Dr. Byron MOVED to approve the minutes as submitted. Ms. Canty SECONDED the motion. Chairman Miles added a comment to pass with a correction, changing the Board meeting being called to order by Madam Chair Shropshire to Madam Chair Miles. Chairman Miles called for a vote. The motion CARRIED with CORRECTIONS unanimously.

George Mathieus explained the use of the audio/video equipment in the room to record the meeting, not for publication, but with the eventual plan to live-stream future meetings.

Mr. Mathieus also proposed that the Board tentatively pick their meeting dates for 2016 and adopt them at the December 4, 2015, meeting. The proposed dates are February 5, April 8, June 3, August 5, September 30, and December 9. A brief discussion of potential schedule conflicts followed and the item was tabled until the December 4, 2015, meeting.

II.A.1.a. 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.

Mr. Reed said this matter is stayed pending resolution by the parties.

II.A.1.b. In the matter of violation of the Water Quality Act by Reflections at Copper Ridge, LLC at Reflections at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105376), BER 2015-01 WQ.

Mr. Reed said in this matter the scheduling order has been stayed.

II.A.1.c. In the matter of violations of the Water Quality Act by Copper Ridge Development Corporation at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105377), BER 2015-02 WQ.

Mr. Reed said in this matter the scheduling order has been stayed.

II.A.1.d. In the matter of violations of the Water Quality Act by Buscher Construction and Development, Inc., at Poly Vista Estates, Trailhead, and Falcon Ridge II Subdivisions, Billings, Yellowstone County, BER 2015-03 WQ.

Mr. Reed said a proposed schedule had been filed, and he will be issuing a scheduling order forthwith.

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 reported that the stay in this matter is continuing.

- II.A.2.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, BER 2014-05 WQ.

Mr. Reed said the parties in this matter are complying with the terms of the stipulation.

- II.A.2.c. In the matter of Columbia Falls Aluminum Company's (CFAC) appeal of DEQ's modification of MPDES Permit No. MT0030066, Columbia Falls, Flathead County, BER 2014-06 WQ.

Mr. Reed reported that as far as he is aware the matter is proceeding at pace.

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

Mr. Reed deferred the status report to Mr. North.

Mr. North reported that he believes the status is unchanged. The matter is currently before the Judge for a decision, but the decision hasn't been made yet.

- II.B. Department Briefing on Water Quality Standards, TMDL's and electrical conductivity (EC) and sodium adsorption ratio (SAR) standards for Otter Creek, tributary to the Tongue River.

Mr. Urban provided handouts and briefed the Board in regards to water quality standards for Otter Creek. He responded to questions from the Board.

After Mr. Urban's presentation, comments from the public were heard.

- III.A.1. In the matter of the revocation of Montana Air Quality Permit No. MAQP# 25 54-05, issued to Eureka Pellet Mills (Inc.), Eureka, Lincoln County, MT, BER 2015-04a AQ; the revocation of Montana Air Quality Permit No. MAQP 3039-02, issued to Eureka Pellet Mills (Inc.), Superior, Mineral County, MT, BER 2015-04b AQ; and the revocation of Montana Air Quality Permit No. MAQP# 4057-00, issued to Montana Renewable Resources (LP), Eureka, Lincoln County, MT, BER 2015-04c AQ.

Chairman Miles requested that the Board make motions for each permit separately and that Mr. Reed provide an overview of each permit.

Mr. Reed said the appeal was filed by the chief operating officer, Mr. Pozzi, and that Mr. Pozzi later contacted Mr. Reed stating that they would be withdrawing the appeal for all three permits. Mr. Reed noted that they have not heard anything since Mr. Pozzi indicated they would be withdrawing the appeal; therefore, he is preparing a prehearing order.

Chairman Miles confirmed with Mr. Reed that it is appropriate to assign a hearing

examiner and asked for a motion to that effect. Dr. Byron so MOVED. Mr. Tweeten SECONDED the motion. The motion CARRIED with a unanimous vote.

- III.A.2 In the matter of Heart K Land & Cattle Co.'s appeal of its final 401 Certification with conditions, BER 2015-05 WQ, application No. MT4010948; MWO-2013-00590-MTB-Addendum, issued by DEQ for the Yellowstone River, Park County, MT.

Mr. Reed reported he has issued a scheduling order and requested that the Board assign a permanent Hearing Examiner.

Chairman Miles requested a motion to assign Mr. Reed as the permanent Hearing Examiner. Mr. Tweeten so MOVED, Dr. Byron SECONDED the motion. The MOTION CARRIED with a unanimous vote.

- III.A.3 In the matter of Westmoreland Resources, Inc.'s, BER 2015-06 WQ, appeal of final MPDES permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT.

Chairman Miles requested a motion to assign Mr. Reed as the permanent Hearing Examiner. Ms. Reinhart-Levine so MOVED the motion. Ms. Canty SECONDED the motion.

Mr. Tweeten interjected to inform the Board that 30 years ago he had worked for the company, and he doubts any information that developed in the course of the lawsuit has any currency with respect to issues that are going on now. He said he will inform the Board if any conflicts of interest arise.

Chairman Miles called for a vote, and the motion CARRIED with a unanimous vote.

- III.B.1. In the matter of the request to repeal ARM 17.8.334, 17.8.335, and 17.8.772 pertaining to Emission Standards for Existing Aluminum Plants and Mercury Allowance Allocations under Cap and Trade Budget, respectively.

Mr. Merchant provided information and responded to Board Member questions regarding the repeal.

Chairman Miles called for public comment. There was none.

Ms. Canty MOVED to initiate rulemaking to repeal ARM 17.8.334, 17.8.335, and 17.8.772. Mr. Sayles O'Connor SECONDED the motion. The motion CARRIED with a unanimous vote.

- III.B.2. In the matter of the request to generally revise the rules implementing the Opencut Mining Act ("the Act"), ARM Title 17, Chapter 24, Subchapter 2, in response to changes to the Act entered in the 2007, 2009, and 2013 legislative sessions; to generally clarify and simplify the rules by reorganizing the provisions to avoid treatment of single concepts in multiple rules, eliminate redundant provisions, and improve syntax; and to make substantive changes to remove unnecessary requirements and add requirements that improve reclamation and regulatory process.



Mr. Connor provided information and responded to Board Member questions on the rule revision.

Chairman Miles called for public comment. The Board heard public comment. Cary Hegreberg, Executive Director of the Montana Contractors Association, in favor of the revision.

Chairman Miles called for a motion to initiate rulemaking. Ms. Reinhart-Levine so MOVED. Mr. Tweeten SECONDED the motion. The motion CARRIED with a unanimous vote.

III.B.3 In the matter of the repeal of ARM 17.4.201, 17.30.645, 17.30.1386, 17.30.1401, 17.30.1402, 17.30.1405, 17.30.1406, 17.30.1407, 17.30.1410, 17.30.1411, 17.30.1412, 17.30.1413, 17.30.1414, 17.30.1419, 17.30.1420, 17.30.1421, 17.30.1425, 17.30.1426, 17.30.1602, 17.30.2001, 17.30.2003, 17.38.601, 17.38.602, 17.38.603, and 17.38.607.

Mr. Mathieus informed the board that the Department would like to postpone until the December 9, 2015, meeting.

Chairman Miles agreed to hear the issue on December 9, or whenever the Department is ready.

III.C. In the matter of final adoption of the proposed new rules, to meet the requirements of Section 128 of the federal Clean Air Act (CAA) regarding State boards and “conflict of interest.” The Department is requesting that the Board adopt the new rules with an amendment.

Mr. Mathieus and Mr. North provided information on the rulemaking to the Board and responded to questions.

Chairman Miles called for public comment. No public comment was offered.

Chairman Miles called for a motion to adopt the proposed new rules. Dr. Byron so MOVED the motion with proper AMENDMENTS. Mr. Tweeten SECONDED the motion. The motion CARRIED with a unanimous vote.

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

Ms. Canty recused herself in this proceeding. The board heard from both parties on the matter. Mr. Tweeten will prepare a statement on his own behalf.

Ms. Reinhart-Levine so MOVED to adopt MEIC’s Findings of Fact and Conclusions of Law. Dr. Byron SECONDED the motion. Chairman Miles noted a typo in MEIC’s Findings of Fact and Conclusions of Law and asked that it be corrected. The motion CARRIED with Mr. Tweeten OPPOSING the motion.

A separate transcript is associated with the case file and is available for public access

on the Boards website.

III.D.2 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.

Mr. Reed informed the board that because the case was assigned to him, no further action is needed by the Board.

III.D.3 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. An order dismissing the matter was considered by the Board.

Mr. Reed informed the board that as the case was assigned to him, no further action is needed by the Board.

IV. General Public Comment

Chairman Miles called for public comment on any matters within the Board's prevue.

No public comment was offered.

VI. Adjournment

At 1:16 p.m., upon conclusion of the hearing, Chairman Miles called for a motion to adjourn the regularly scheduled meeting. Mr. Tweeten so MOVED. Mr. O'Connor SECONDED the motion. The motion CARRIED unanimously.

Board of Environmental Review October 16, 2015, minutes approved:

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JOAN MILES  
CHAIRMAN  
BOARD OF ENVIRONMENTAL REVIEW

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DATE



P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: [www.mt.gov/ber](http://www.mt.gov/ber)

## 2016 DRAFT MEETING SCHEDULE

\*NOTE: The Board packet emailing date is the date we strive to meet. Often, situations or events happen that prevent us from meeting that date, in which case the packet and agendas are emailed and posted to the Web as quickly as we can make it happen.

January							February							March							April						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
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31																											

May							June							July							August						
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September							October							November							December						
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**LEGEND**

00	DOCUMENT SUBMITTAL DEADLINE DATES – ALL DOCUMENTS DUE TO BOARD SECRETARY BY NOON
00	*BOARD PACKET EMAILING DATES; AGENDA EMAILED TO INTERESTED PARTIES; PACKET POSTED TO WEB
00	BOARD MEETING DATES



Montana Department of  
**ENVIRONMENTAL QUALITY**

**MEMO**

TO: Ben Reed, Hearing Examiner  
Board of Environmental Review

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

DATE: October 15, 2015

SUBJECT: Board of Environmental Review Case No. BER 2015-07 WQ

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

IN THE MATTER OF:  
CHS, INC.'S APPEAL OF FINAL MPDES  
PERMIT NO. MT0000264 ISSUED BY DEQ  
FOR THE LAUREL REFINERY IN LAUREL,  
YELLOWSTONE COUNTY, MONTANA.

Case No. BER 2015-07 WQ

The BER has received the attached request for hearing. Also attached is DEQ's administrative documents relating to the request.

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

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

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

Attachments

c: W. John Tietz, Browning Kaleczyc Berry & Hoven P.C.

G. ANDREW ADAMEK  
CHAD E. ADAMS  
DANIEL J. AUERBACH  
KIMBERLY A. BEATTY  
TROY L. BENTSON  
SARA S. BERG  
LEO BERRY  
CARLO J. CANTY  
KIMBERLY P. DUDIK  
MARK D. ETCHART  
STEVE J. FITZPATRICK  
OLIVER H. GOE



**BROWNING KALECZYC  
BERRY & HOVEN P.C.**  
ATTORNEYS AT LAW  
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STEVEN T. WADE  
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LEO S. WARD  
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R. STEPHEN BROWNING : RETIRED  
STANLEY T. KALECZYC : OF COUNSEL

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www.bkbh.com

October 14, 2015

Board of Environmental Review  
1520 E. 6th Avenue  
P.O. Box 200901  
Helena, MT 59620-0901

**Hand-Delivered**

**RE: CHS, Inc.'s Notice of Appeal and Request for Hearing**

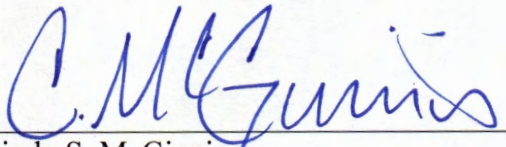
Dear Clerk:

Enclosed for filing in the above-referenced matter please find the original and one (1) copy of Applicant CHS's **Notice of Appeal and Request for Hearing**. Please advise me of the filing of this document by date-stamping the attached copy and returning it with our staff courier.

Should you have any questions regarding this filing, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,

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

By   
Cindy S. McGinnis  
Legal Assistant to W. John Tietz

Enclosures

W. John Tietz  
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Filed with the  
MONTANA BOARD OF  
ENVIRONMENTAL REVIEW  
This 14 day of October, 2015  
at 4:30 o'clock P. m.  
By: Hillary Houde

Attorneys for CHS, Inc.

STATE OF MONTANA, BOARD OF ENVIRONMENTAL REVIEW

IN THE MATTER OF:  CHS, INC.'s APPEAL OF MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT NO. MT0000264	<b>NOTICE OF APPEAL AND REQUEST FOR HEARING</b>
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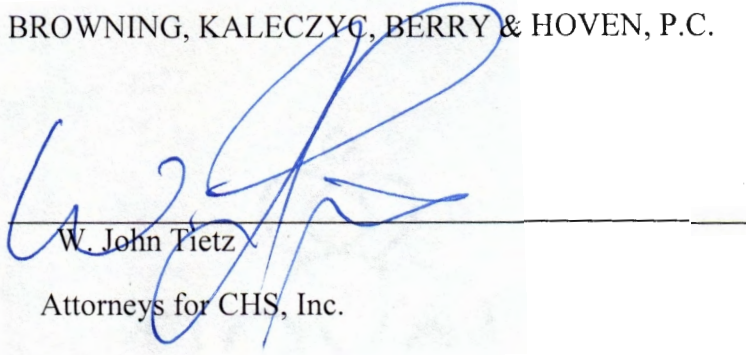
Applicant CHS, Inc. ("CHS"), by and through its counsel W. John Tietz of the law firm Browning, Kaleczyc, Berry & Hoven, P.C., pursuant to Mont. Code Ann. § 75-5-403 and ARM 17.30.1370(4), hereby appeals the proposed Montana Pollution Discharge Elimination System Permit No. MT0000264 (attached as Exhibit 1), modified by the Montana Department of Environmental Quality on September 16, 2015, and requests a hearing before the Board of Environmental Review. Specifically, CHS appeals the following elements of the Proposed Permit:

- 1) The hydrogen sulfide effluent limits for Outfalls 001 and 002;
- 2) The arsenic effluent limits for Outfalls 001 and 002;
- 3) The failure of the permit to account for variability of effluent pH due to natural biological processes in the final treatment pond;
- 4) The inclusion of effluent limits for total nitrogen for Outfalls 001 and 002;
- 5) The requirement to monitor and report total Kjeldahl nitrogen and total nitrogen discharged from Outfalls 001 and 002; and

6) The requirement to monitor and report nitrate + nitrite, fluoride, hydrogen sulfide, arsenic, and selenium discharged from Outfall 001 prior to the effluent limits for those parameters becoming effective on November 1, 2019.

Respectfully submitted this 14<sup>th</sup> day of October, 2015.

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

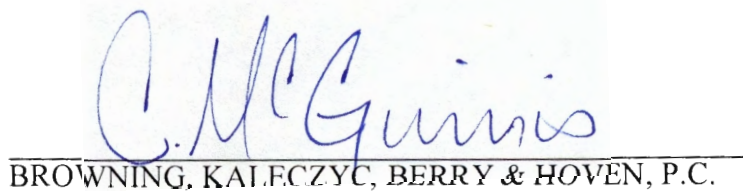


W. John Tietz  
Attorneys for CHS, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of October, 2015, a true copy of the foregoing was mailed by first-class mail, postage prepaid, addressed as follows:

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



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

## MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

### AUTHORIZATION TO DISCHARGE UNDER THE MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with Montana Water Quality Act, Title 75, Chapter 5, Montana Code Annotated (MCA) and the Federal Water Pollution Control Act (the "Clean Water Act"), 33 U.S.C. § 1251 *et seq.*,

**CHS, Inc.**

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

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

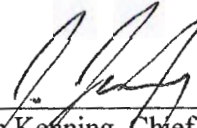
to receiving waters named, **Italian Drain and Yellowstone River**

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

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

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

FOR THE MONTANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

  
\_\_\_\_\_  
Jon Kenning, Chief  
Water Protection Bureau  
Permitting & Compliance Division

Issuance Date: September 16, 2015





## TABLE OF CONTENTS

Cover Sheet--Issuance and Expiration Dates

<b>I.</b>	<b>EFFLUENT LIMITATIONS, MONITORING REQUIREMENTS &amp; OTHER CONDITIONS</b>	<b>3</b>
A.	Description of Discharge Points and Mixing Zone .....	3
B.	Effluent Limitations .....	4
C.	Monitoring Requirements .....	7
D.	Special Conditions .....	10
E.	Compliance Schedule.....	11
<b>II.</b>	<b>MONITORING, RECORDING AND REPORTING REQUIREMENTS</b> .....	<b>12</b>
A.	Representative Sampling.....	12
B.	Monitoring Procedures.....	12
C.	Penalties for Tampering .....	12
D.	Reporting of Monitoring Results.....	12
E.	Compliance Schedules .....	12
F.	Additional Monitoring by the Permittee .....	13
G.	Records Contents .....	13
H.	Retention of Records.....	13
I.	Twenty-four Hour Notice of Noncompliance Reporting .....	13
J.	Other Noncompliance Reporting .....	14
K.	Inspection and Entry .....	14
<b>III.</b>	<b>COMPLIANCE RESPONSIBILITIES</b> .....	<b>15</b>
A.	Duty to Comply.....	15
B.	Penalties for Violations of Permit Conditions.....	15
C.	Need to Halt or Reduce Activity not a Defense .....	15
D.	Duty to Mitigate .....	15
E.	Proper Operation and Maintenance.....	15
F.	Removed Substances.....	16
G.	Bypass of Treatment Facilities.....	16
H.	Upset Conditions.....	16
I.	Toxic Pollutants .....	17
J.	Changes in Discharge of Toxic Substances .....	17
<b>IV.</b>	<b>GENERAL REQUIREMENTS</b> .....	<b>19</b>
A.	Planned Changes .....	19
B.	Anticipated Noncompliance .....	19
C.	Permit Actions.....	19
D.	Duty to Reapply .....	19
E.	Duty to Provide Information .....	19
F.	Other Information.....	19
G.	Signatory Requirements .....	19
H.	Penalties for Falsification of Reports.....	20
I.	Availability of Reports .....	20
J.	Oil and Hazardous Substance Liability .....	21
K.	Property or Water Rights.....	21
L.	Severability .....	21
M.	Transfers.....	21
N.	Fees .....	21
O.	Reopener Provisions.....	22
<b>V.</b>	<b>DEFINITIONS</b> .....	<b>23</b>

I. EFFLUENT LIMITATIONS, MONITORING REQUIREMENTS & OTHER CONDITIONS

A. Description of Discharge Points and Mixing Zone

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

Outfall

Description

001

**Location:** At the end of the pipe/ditch, discharging into the Italian Drain, located at 45°39'28" N latitude, 108°45'09" W longitude.

**Mixing Zone:** None

**Treatment Works:** Refinery wastewater treatment plant.

002

**Location (Future):** At the end of a single port diffuser, discharging into the Yellowstone River, located at 45°39'23.4" N latitude, 108°45'07.2" W longitude.

**Mixing Zone:**

The maximum extent of the **chronic/human health** mixing zone in the named receiving waters is as follows: 1,000 feet downstream for the following parameters: ammonia, nitrate+nitrite, nitrogen, phosphorus, fluoride, hydrogen sulfide, cyanide, lead, mercury, and selenium.

The maximum extent of the **acute** mixing zone in the named receiving waters is as follows: 100 feet downstream for the following parameters: ammonia and selenium.

**Treatment Works:** Refinery wastewater treatment plant.

B. Effluent Limitations

*Interim Effluent Limits – Outfall 001 Italian Ditch*

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

<b>Outfall 001 - Interim Numeric Discharge Limitations <sup>(1)</sup></b>			
<b>Parameter</b>	<b>Units</b>	<b>Maximum Daily</b>	<b>Average Monthly</b>
5-Day Biochemical Oxygen Demand (BOD <sub>5</sub> )	lb/day	620	331
Net Total Suspended Solids (TSS)	lb/day	532	339
Chemical Oxygen Demand (COD)	lb/day	4,425	2,288
Oil and Grease	mg/L	10	--
	lb/day	242	128
Phenol	lb/day	4.5	2.2
Ammonia, Total as N	lb/day	418	191
Sulfide	lb/day	3.9	1.8
Chromium, Total Recoverable (TR)	lb/day	9.1	5.2
Hexavalent Chromium	lb/day	1.0	0.36
Total Nitrogen (TN) <sup>(2)</sup>	lb/day	--	181
pH	s.u.	Between 6.0 and 9.0, all times	
Whole Effluent Toxicity, Acute, LC <sub>50</sub>	% effluent	No acute toxicity <sup>(3)</sup>	
Footnotes:			
(1) See Definitions section at end of permit for explanation of terms.			
(2) TN limits applicable August 1 <sup>st</sup> – October 31 <sup>st</sup> .			
(3) Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration.			

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

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

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

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

*Final Effluent Limits Outfall 001- Italian Ditch*

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

Outfall 001 - Final Numeric Discharge Limitations <sup>(1)</sup>			
Parameter	Units	Effluent Limits	
		Maximum Daily	Average Monthly
BOD <sub>5</sub>	lb/day	620	331
Net TSS	lb/day	532	339
COD	lb/day	4,425	2,288
Oil and Grease	mg/L	10	--
	lb/day	242	128
Phenol	lb/day	4.5	2.2
Ammonia, Total as N	mg/L	3.8	1.2
	lb/day	418	191
Nitrate + Nitrite	mg/L	10	10
Fluoride	mg/L	4.0	4.0
Sulfide	lb/day	3.9	1.8
Hydrogen Sulfide (H <sub>2</sub> S) <sup>(1)</sup>	µg/L	3.2	1.7
Arsenic, TR	µg/L	10	10
Chromium, TR	lb/day	9.1	5.2
Hexavalent Chromium	lb/day	1.0	0.36
Selenium, TR	µg/L	8.2	4.1
Total Nitrogen (TN) <sup>(2)</sup>	lb/day	--	181
pH	s.u.	Between 6.0 and 9.0, all times	
Whole Effluent Toxicity, Acute, LC <sub>50</sub>	% effluent	No acute toxicity <sup>(3)</sup>	
Footnote:			
(1) Any results that show "nondetect" at the RRV of 20 µg/L is considered compliance with the effluent limit.			
(2) Nutrient limits (TN) applicable August 1 <sup>st</sup> - October 31 <sup>st</sup> .			
(3) Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration.			

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

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

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

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

*Outfall 002 – Yellowstone River*

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

<b>Outfall 002 - Final Effluent Limits</b>			
<b>Parameter</b>	<b>Units</b>	<b>Effluent Limits</b>	
		<b>Maximum Daily</b>	<b>Average Monthly</b>
BOD <sub>5</sub>	lb/day	620	331
Net TSS	lb/day	532	339
COD	lb/day	4,425	2,288
Oil and Grease	mg/L	10	--
	lb/day	242	128
Phenol	lb/day	4.5	2.2
Ammonia, Total as N	lb/day	418	191
Sulfide	lb/day	3.9	1.8
Hydrogen Sulfide (H <sub>2</sub> S) <sup>(1,2)</sup>	µg/L	3.3	1.6
Arsenic, TR <sup>(2)</sup>	µg/L	11.3	11.3
Chromium, TR	lb/day	9.1	5.2
Hexavalent Chromium	lb/day	1.0	0.36
pH	s.u.	Between 6.0 and 9.0, all times	
Total Nitrogen (TN) <sup>(3)</sup>	lb/day	--	181
Whole Effluent Toxicity, Acute, LC <sub>50</sub>	% effluent	No acute toxicity <sup>(4)</sup>	
Footnote: (1) Any results that show "nondetect" at the RRV of 20 µg/L is considered compliance with the effluent limit. (2) Effective November 1, 2019. (3) Nutrient limits (TN) applicable August 1 <sup>st</sup> – October 31 <sup>st</sup> . (4) Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration.			

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

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

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

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

C. Monitoring Requirements

1. *Outfall 001 and Outfall 002*

As a minimum, upon the effective date of this permit, the following constituents shall be monitored at the frequency and with the type of measurement indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge. If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report (DMR) Form (EPA No. 3320-1) that no discharge or overflow occurred.

Self-monitoring of effluent discharged from Outfall 001 or Outfall 002 shall be conducted at the Flow Meter & Sampling Building following final treatment, unless another location is requested and approved by the Department in writing. Samples will reflect the nature of the discharge. Samples shall be collected, preserved and analyzed in accordance with approved procedures listed in 40 CFR 136. The data submitted to the Department must meet the Required Reporting Value (RRV), which is the detection level that must be achieved as listed in Circular DEQ-7.

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

Outfalls 001 and 002 - Effluent Monitoring Requirements <sup>(1)</sup>				
Parameter	Units	Monitoring Frequency	Type	Reporting Requirement
Fluoride	mg/L	1/Month	Composite	Daily Max & Mo Avg
Arsenic, TR	µg/L	1/Month	Composite	Daily Max & Mo Avg
Selenium, TR	µg/L	1/Month	Composite	Daily Max & Mo Avg
Cyanide	µg/L	2/Year <sup>(3)</sup>	Grab	Report
Lead, TR	µg/L	2/Year <sup>(3)</sup>	Composite	Report
Mercury, TR	µg/L	2/Year <sup>(3)</sup>	Composite	Report
Total Residual Chlorine	mg/L	1/Month	Grab	Report
Nitrate + Nitrite (Nov 1 – July 31)	mg/L	1/Month	Composite	Daily Max & Mo Avg
Nitrate + Nitrite (Aug 1 – Oct 31)	mg/L	1/Week <sup>(5)</sup>	Composite	Daily Max & Mo Avg
Total Kjeldahl Nitrogen (TKN)	mg/L	1/Week <sup>(5)</sup>	Composite	Mo Avg
TN <sup>(6)</sup>	lb/day	1/Month <sup>(5)</sup>	Calculated	Mo Avg
TP	mg/L	1/Month <sup>(5)</sup>	Composite	Mo Avg
	lb/day	1/Month <sup>(5)</sup>	Calculated	Mo Avg
Temperature	degrees C	1/Week	Instantaneous	Daily Max & Mo Avg
Whole Effluent Toxicity, Acute <sup>(7)</sup>	% Effluent	1/Quarter	Grab	Pass/Fail

Footnotes:

- (1) The effluent monitoring location must be after all treatment has been completed (*i.e.*, downstream from all treatment units, and prior to entry to the receiving waters).
- (2) Requires recording device or totalizer.
- (3) Samples required 2/week must be taken at least two days apart, and samples required 2/year must be taken at least four months apart.
- (4) Mass-based net TSS calculated by first determining mass-based net TSS discharge on a daily basis, then determining daily maximum and monthly average for the month.
- (5) Monitoring required only during the summer season of August 1 – October 31<sup>st</sup>.
- (6) TN is the sum of Nitrate+Nitrite and TKN.
- (7) Two species conducted quarterly. At minimum, failure of any acute WET test requires that the permittee comply with the Permit's Special Conditions.

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

2. *Whole Effluent Toxicity Monitoring – Acute Toxicity*

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

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

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

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

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

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

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



D. Special Conditions

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

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

2. *Notification Regarding Outfalls 001 and 002*

CHS Laurel Refinery currently discharges under Outfall 001. Once CHS constructs Outfall 002, they are required to notify the Department in writing at least 30 days in advance before discharge commences at Outfall 002.

CHS will be authorized to discharge from either outfall, but not both simultaneously. As a result, DMR submittals and annual fees will apply to each outfall. For any reporting period that CHS discharges through both outfalls, CHS shall include a daily log that documents the amount of effluent discharged through each outfall as well as indicates the effluent monitoring that is conducted. This is necessary since Outfalls 001 and 002 have different effluent limits and CHS must comply with the applicable effluent limit for each outfall.

3. *Storm Water Management*

CHS Laurel Refinery has two outfalls for storm water which are currently covered under Montana storm water industrial general permit (GP) authorization MTR000099. The GP excludes storm water discharges subject to 40 CFR 419. Although CHS Laurel Refinery submitted a certified Notice of Intent (NOI) that the two storm water outfalls are 'non-process' areas that meet the GP requirement, review of the NOI description provides reasonable doubt that all of the area covered under the GP can be excluded from the definition of "contaminated runoff." If any of these non-process areas includes contaminated runoff, the storm water discharge from this area cannot be authorized by the storm water industrial GP and must be covered under an individual permit.

CHS Laurel Refinery is required to evaluate whether discharge from the two storm water outfalls that are currently authorized under the GP should be classified as "contaminated" and permitted under this individual MPDES permit or "uncontaminated" and eligible to remain authorized under the GP. By no later than **July 1, 2018**, CHS Laurel Refinery shall either:

- submit a report evaluating the storm water runoff, including providing TOC and oil & grease concentrations and sources of potential contamination, and explain why continued coverage under the GP is appropriate; or

- submit the appropriate permit application forms and relevant information to request modification of this individual permit to include these two storm water outfalls and terminate coverage under the GP.

E. Compliance Schedule

1. By no later than **November 1, 2016**, CHS Laurel Refinery shall submit a plan for compliance with the Outfall 001 and Outfall 002 final effluent limits to the Department. The plan shall include, as appropriate:
  - An evaluation of each process contributing to parameters which have expected concentrations greater than the final effluent limits;
  - An evaluation of control methods and technology to reduce the pollutants from each contributing process; and
  - A projected schedule for ensuring compliance as of **November 1, 2019**.

Until the final compliance date of **November 1, 2019**, CHS Laurel Refinery must submit an annual report summarizing their progress towards meeting each of the effluent limits to the Department. The annual report must be post-marked no later than January 28<sup>th</sup> of each year, and include actions taken in the previous year and planned actions for the upcoming year.

2. By no later than **November 1, 2017**, CHS will submit the results of lab analyses to document the concentrations of TRC and, as necessary, magnesium oxide, in order to demonstrate whether TRC can be expected present and at what concentrations, as well as whether and to what extent magnesium oxide may cause interference with the lab tests.

Until the compliance date of **November 1, 2017**, CHS Laurel Refinery must submit an annual report summarizing their progress towards meeting these requirements to the Department. The annual report must be post-marked no later than January 28<sup>th</sup> of each year, and include actions taken in the previous year and planned actions for the upcoming year.

## II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

- A. Representative Sampling  
Samples taken in compliance with the monitoring requirements established under Part I of the permit shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.
- B. Monitoring Procedures  
Monitoring must be conducted according to test procedures approved under Part 136, Title 40 of the Code of Federal Regulations, unless other test procedures have been specified in this permit. All flow-measuring and flow-recording devices used in obtaining data submitted in self-monitoring reports must indicate values within 10 percent of the actual flow being measured.
- C. Penalties for Tampering  
The Montana Water Quality Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.
- D. Reporting of Monitoring Results  
Monitoring results must be reported on a Discharge Monitoring Report (DMR) EPA form 3320-1. Monitoring results must be submitted in either electronic or paper format and be postmarked no later than the 28th day of the month following the end of the monitoring period. Whole effluent toxicity (biomonitoring) results must be reported with copies of the laboratory analysis report on forms from the most recent version of EPA Region VIII's "Guidance for Whole Effluent Reporting."

If no discharge occurs during the reporting period, "no discharge" must be reported on the report form. Legible copies of these, and all other reports required herein, must be signed and certified in accordance with Part IV.G 'Signatory Requirements' of this permit and submitted to the Department at the following address:

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

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

F. Additional Monitoring by the Permittee

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

G. Records Contents

Records of monitoring information shall include:

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

H. Retention of Records

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

I. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee shall report any serious incidents of noncompliance as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the Water Protection Bureau at (406) 444-3080 or the Office of Disaster and Emergency Services at (406) 324-4777. The following examples are considered serious incidents:
  - a. Any noncompliance which may seriously endanger health or the environment;
  - b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part III.G of this permit, "Bypass of Treatment Facilities"); or

- c. Any upset which exceeds any effluent limitation in the permit (see Part III.H of this permit, "Upset Conditions").
2. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:
  - a. a description of the noncompliance and its cause;
  - b. the period of noncompliance, including exact dates and times;
  - c. the estimated time noncompliance is expected to continue if it has not been corrected; and
  - d. steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
3. The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Protection Bureau, by phone, (406) 444-3080.
4. Reports shall be submitted to the addresses in Part II.D of this permit, "Reporting of Monitoring Results".

J. Other Noncompliance Reporting

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

K. Inspection and Entry

The permittee shall allow the head of the Department or the Director, or an authorized representative thereof, upon the presentation of credentials and other documents as may be required by law, to:

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

### III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply

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

B. Penalties for Violations of Permit Conditions

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

C. Need to Halt or Reduce Activity not a Defense

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

D. Duty to Mitigate

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

E. Proper Operation and Maintenance

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

F. Removed Substances

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

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III.G.2 and III.G.3 of this permit.

2. Notice:

- a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.
- b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.I of this permit, "Twenty-four Hour Reporting".

3. Prohibition of bypass:

- a. Bypass is prohibited and the Department may take enforcement action against a permittee for a bypass, unless:
  - 1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - 2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - 3) The permittee submitted notices as required under Part III.G.2 of this permit.
- b. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in Part III.G.3.a of this permit.

H. Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part III.H.2 of this permit are met. No determination made

during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e. Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations).

2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
  - b. The permitted facility was at the time being properly operated;
  - c. The permittee submitted notice of the upset as required under Part II.I of this permit, "Twenty-four Hour Notice of Noncompliance Reporting"; and
  - d. The permittee complied with any remedial measures required under Part III.D of this permit, "Duty to Mitigate".
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

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

J. Changes in Discharge of Toxic Substances

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

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



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

IV. GENERAL REQUIREMENTS

- A. Planned Changes  
The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit.
- B. Anticipated Noncompliance  
The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- C. Permit Actions  
This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- D. Duty to Reapply  
If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application must be submitted at least 180 days before the expiration date of this permit.
- E. Duty to Provide Information  
The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for revoking, modifying and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit.
- F. Other Information  
When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Department, it shall promptly submit such facts or information with a narrative explanation of the circumstances of the omission or incorrect submittal and why they weren't supplied earlier.
- G. Signatory Requirements  
All applications, reports or information submitted to the Department or the EPA shall be signed and certified.
1. All permit applications shall be signed as follows:
    - a. For a corporation: by a responsible corporate officer;
    - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;

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

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

H. Penalties for Falsification of Reports

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

I. Availability of Reports

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

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

J. Oil and Hazardous Substance Liability

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

K. Property or Water Rights

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

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

M. Transfers

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

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

N. Fees

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

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

this sub-section. Suspensions are limited to one year, after which the permit will be terminated.

O. Reopener Provisions

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

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

V. DEFINITIONS

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

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

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



**COPY**

August 18, 2015

In August of 2012 the Libby Sky Ranch Homeowners Association received an Environmental Assessment from the Department of Environmental Quality in regards to a proposed Motor Vehicle Wrecking Facility. The Association had met and discussed the proposed wrecking facility with the State representative, Bruce Meyer, prior to this report and found Mr. Meyer cognitive and mindful of the residential area and park adjoining Mr. Payne's property and found the placement of the wrecking facility reassuring.

In the years since the approval of said wrecking facility, and especially since the beginning of 2015 Mr. Payne has expanded his facility to include property adjoining residential areas owned by members of the homeowners association in direct violation of the licensing that was approved by the State of Montana. In May of this year when inquiring the officials in Lincoln County about how the Homeowners Association could compel Mr. Payne to come into compliance with the approved licensing we were quite surprised to be informed about the County's complicit efforts to aid Mr. Payne in changing the size and scope of said wrecking yard without a application to modify the license or any attempt to comply with the existing license. In contacting the State on said matter we were equally surprised that the State was expediting the application to modify the license of said wrecking yard. The Homeowners Association received a letter on July 30<sup>th</sup> of 2015 from the DEQ notifying the Homeowners Association of the request to modify the license with the statement that upon "approval of the application to modify the license will not be renewed until Mr. Payne is in compliance with MVDRP statues. Mr. Payne has continually demonstrated, over the past [3] years, his inability or unwillingness to comply with any of the statues eluded to and the apparent inability or unwillingness of the County and State agencies to enforce any of the statues eluded to leave the Homeowners Association dubious of a good outcome. The Homeowners Association is also questioning the deviation from the process of approving the original wrecking yard and approving the modified wrecking yard in the fact that there is no new Environmental Assessment, no distinguishable boundaries of the modified wrecking yard and no Environmental impact Statement that was afforded the Homeowners Association in the original process.

In the course of events over the past few months the Homeowners Association has become well educated on the definitions of "public view", "necessary shielding", " what logging equipment is or isn't", etc. We have also become well informed on what statues and procedures are applicable to the setting up a wrecking yard and would like to site a few:

1] 17-10-516 [4]: which states that "in deciding whether to grant or deny a license application, the department shall consider the effect of the proposed facility on adjoining landowners and land uses."

The Homeowners Association feels, as stated above, that this "modification" is much more than that as it constitutes a different location of the facility, effectively increases the size of the facility and brings the boundaries of the facility directly up to adjoining landowner's property. It should be noted that Mr. Meyers was aware of the concerns of adjoining landowners and that Mr. Payne was "solely" responsible for the layout of the original facility. It should also be noted that in section [5] of this statue that "the department may not issue a license if the facility is not in compliance with the shielding requirements of ARM 17-50-202. It would seem that licenses have been issued in periods of non-compliance and the State and County agencies involved in this situation seem poised to perform back flips to bring Mr.

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Payne's non-compliant actions into some form of compliance regardless of existing statues, state assessments or public input.

2] 17-50-202 and 17-50-203: These statues clearly define what proper shielding is and is not and the time frame in which said shielding has to be completed. It should be noted again that Mr. Payne has already moved his facility onto the "proposed" property to be considered for modification years ago and continues to move vehicles onto the "new" area as we speak. It would seem, on the face of it, that Mr. Payne is under the impression that his new facility already has been approved and from the Homeowners Associations perspective it would seem that someone has indeed assured Mr. Payne that it will be. The Homeowners Association is questioning weather "any" inspections have ever been made by a county representative on an annual basis as required by statue 17-50-207. The Homeowners Association has been told stories of personnel changes in their departments at the County and State levels as reasons for the existence of this situation but we find these explanations inadequate.

3] 17-50-210 [5] [7]: this statue states in section [7] "junk vehicles must be placed in an orderly manner with in the vehicle graveyard site. This statue and a statement in the original Environmental Assessment explaining why an Environmental Impact Statement was not required and an Environmental Assessment was adequate read as follows: [1] Careful review of the information submitted with the license application, [2] On site assessment of the proposed facility and the surrounding area by the department, and [3] Comparing the proposed facility to currently licensed and operating motor vehicle wrecking facilities. The Homeowners Association would ask anyone to walk around Mr. Payne's facility and walk around Pioneer Wrecking Yard and find "anything" comparable between the two. We wonder why these two facilities are being held to such different standards.

The Homeowners Association continues to petition and gather signatures from landowners with property adjoining Mr. Payne's, explaining that this wrecking yard could very well butting up to their backyard despite the reassurances of the State and County agencies as no less then [8] homeowners have had the opportunity to learn. In addition, we of the Homeowners Association find it mind boggling that the County is assisting Mr. Payne in expanding his facility to the property line adjoining the J. Neil's Park southerly property line. The Homeowners Association will also continue to pursue any and all legal options, civil or criminal and/or departmental or personal, necessary to reset this process and would ask all the agencies involved to return to the original problem of weather Mr. Payne is, or ever has been in compliance with the original terms of licensing and take proper action from there.

Thank you for your time and careful consideration, Libby Sky Ranch Homeowners Association

Scott Roush Treasurer, Manager [406] 291-5541

CC:

Brady Christensen

Mark Peck

Jennifer Nelson

Kathy Hooper



**From:** Jody Breiland <jodybreiland@gmail.com>  
**Sent:** Tuesday, August 04, 2015 9:41 AM  
**To:** Christensen, Brady  
**Subject:** AGAINST REQUEST of Payne Logging, Inc.

Mr. Christensen,

The purpose of my email is to express my concern in response to the notification I received regarding Payne Logging, Inc. and their request to reconfigure their property boundary.

As I'm sure you're aware, the property currently runs along the beautiful J. Neil's Park. A park that is, most likely, the best, most used park in the area. Living in the Northwood neighborhood, I am privileged to be able to walk to the park and enjoy the peace and serenity of the area. I regularly walk my dog there, armed with the provided plastic bags. The park also provides the venue for several events all summer long. It is fantastic.

The only thing about the park that is not fantastic, is the eyesore and mess that is completely visible of the property of Payne Logging, Inc. It is disgusting and disheartening that those that come to the park, have to see a junkyard. There's no barrier between the park and the Payne property so all is there to see. It appears that railroad cars were going to be used to block some of the eyesore, but now there is even junk in front of those. As it stands now, requiring some sort of visual barrier would even be an improvement.

Another issue with this request is that if it is approved, having an auto wrecking facility will completely ruin the peacefulness of the park and the surrounding area. One of the key reasons that people moved into the area in the first place!

Not only do I feel that it's a terrible eyesore, it appears the proposed new boundary will encroach even closer to our homes. Homes that are lovely and well maintained. Homes that show the pride of ownership that I wish everyone would display. Having that come so close to these homes, can only have a negative impact on our property values. Which in turns, lowers the tax revenue that the county brings in.

I would hope that you will NOT grant a MVWF license, or modify any existing license in fact.

Thank you for your consideration. If you have any questions, you can reach me on my cell phone at 503-704-4021.

Jody Breiland  
Concerned Citizen



**MEMO**

TO: Ben Reed, Hearing Examiner  
Board of Environmental Review

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

DATE: October 26, 2015

SUBJECT: Board of Environmental Review Case No. BER 2015-08 JV

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

IN THE MATTER OF:  
TERMINATION BY DEQ OF THE  
APPLICATION BY PAYNE LOGGING, INC.  
REQUESTING TO MOVE BOUNDARIES OF  
THE PAYNE LOGGING FACILITY IN  
LIBBY, LINCOLN COUNTY, MONTANA.

Case No. BER 2015-08 JV

The BER has received the attached request for hearing. Also attached is DEQ's administrative documents relating to the request.

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

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

Ed Thamke, Bureau Chief  
Waste & Underground Tank Management  
Bureau  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Attachments

c: R. Allan Payne, Doney Crowley PC

R. Allan Payne  
Mark "Mac" Smith  
DONEY CROWLEY P.C.  
Diamond Block, Suite 200  
44 West 6th Avenue  
P.O. Box 1185  
Helena, MT 59624-1185  
Telephone: (406) 443-2211  
Facsimile: (406) 449-8443  
Email: rpayne@doneylaw.com  
msmith@doneylaw.com

Filed with the  
MONTANA BOARD OF  
ENVIRONMENTAL REVIEW  
This 23 day of October, 2015  
at 1:04 o'clock P.m.  
By: Hillary Hale

*Attorneys for Appellant Payne Logging, Inc.*

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

PAYNE LOGGING, INC.

TERMINATION OF APPLICATION BY  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY MOTOR VEHICLE RECYCLING  
AND DISPOSAL PROGRAM

BER 2015- 08 JV

**NOTICE OF APPEAL AND  
REQUEST FOR HEARING**

COMES NOW Appellant Payne Logging, Inc. ("Payne Logging"), by and through its undersigned counsel of record, pursuant to Mont. Code Ann. § 75-10-515, and appeals the Department of Environmental Quality ("DEQ"), Motor Vehicle Recycling and Disposal Program ("MVRDP's") termination of Appellant's application to modify the boundaries of a wrecking facility within the property boundaries ("Application").

**INTRODUCTION**

Robert Payne owns and operates Payne Logging, Inc. ("Payne Logging"). Payne Logging in turn owns and operates a wrecking facility in Libby, Montana ("Facility"). The Facility takes in wrecked vehicles, which are later re-sold as vehicle scrap, vehicle parts, and/or repaired vehicles. Sometime after a site visit on November 21, 2014, the Lincoln County Environmental

Health Department (“Lincoln County EHD”) informed Mr. Payne that he needed to remedy three issues at the Facility in order to renew his Wrecking Yard License # 376 (“License”). The three issues were a failure to post his License, to adequately report for vehicles taken in, and to adequately shield junk vehicles from public view. Between that site visit and the next site visit on January 14, 2015, Payne Logging made efforts to remedy those issues, as described by the Lincoln County EHD representative in the Documentation and Compliance Plan, attached hereto as Exhibit A.

Lincoln County EHD was satisfied with Payne Logging’s efforts to display a License and document vehicles taken in. However, Lincoln County EHD was still not satisfied with Payne Logging’s efforts to shield junk vehicles from public view, so Lincoln County EHD and Mr. Payne developed a compliance plan, as described in Exhibit A. This shielding problem mainly stems from the location of the current wrecking yard boundary as delineated in the License. A change in the delineated boundary location (not an increase in acreage) would help improve operations and help Payne Logging satisfy shielding requirements at the Facility.

Thus, Payne Logging filed its Application to modify the boundary as delineated in its License with MVRDP. Lincoln County held a public meeting about this Application but did not provide Notice to Payne Logging or Robert Payne. After the meeting, Lincoln County adopted Resolution No. 947 (“Resolution”) resolving that the County Commissioners oppose the Application submitted by Payne Logging. This Resolution is attached hereto as Exhibit B.

After the Resolution was passed, MVRDP notified Mr. Payne that his Application was denied solely due to the County’s opposition to the amended permit application. (“Denial”). This Denial is attached hereto as Exhibit C.

Payne Logging now appeals this Denial.

### POSITION OF APPELLANT

DEQ's denial of the Application was improper because it is based solely on the County's opposition but, on its face, the County's opposition does not meet the statutory requirement for such opposition because the County failed to make a finding or even collect a scintilla of evidence that the boundary adjustment would "significantly affect the quality of life of adjoining landowners and the surrounding community." The opposition by the County is also improper as Payne Logging was not given notice of the hearing the County held on its Application.

### BASIS FOR APPEAL AND ALLEGED ERRORS OF FACT OR LAW

1. This appeal is timely and proper pursuant to Mont. Code Ann. § 75-10-515.
2. Pursuant to Mont. Code Ann. § 70-10-516(2) and (3), Lincoln County may only oppose the location of a proposed facility if that location will "significantly affect the quality of life of adjoining landowners and the surrounding community."
3. Lincoln County did not make this finding and there is no evidence in the record that would support such a finding. Thus, the Lincoln County Resolution and the subsequent MVRDP Denial were improper.
4. Mr. Payne was not given direct notice of the public hearing, so no representative of Payne Logging was present at the "public" hearing. The Resolution only states that there was "unanimous opposition and no proponents." Payne Logging was not given a chance to explain or advocate for the boundary adjustment.
5. The boundary adjustment requested in the Application is not an increase in acreage, but a change in the location of the delineated boundaries. The adjustment would allow for a more practical space to store and process the junk vehicles. With this boundary adjustment, Payne Logging would be better able to satisfy its shielding requirements.

6. If these requested improvements to the Facility are allowed, which will also include shielding of junk vehicles, the neighboring landowners will benefit.
7. Lincoln County's 30-day statutory period to conduct another public hearing and object to the project has now passed.

DATED this 23<sup>rd</sup> day of October, 2015.

DONEY CROWLEY P.C.



---

Mark "Mac" Smith

R. Allan Payne

*Attorneys for Appellant Payne Logging, Inc.*



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *Notice of Appeal and Request for Hearing* was served via U.S. mail, first-class postage prepaid, on this 23<sup>rd</sup> day of October, 2015, upon the following:

Brady Christensen, CHMM  
Montana Department of Environmental Quality  
Motor Vehicle Recycling & Disposal Program  
P.O. Box 200901  
Helena, MT 59620-0901



Anna K. Milburn  
Legal Assistant

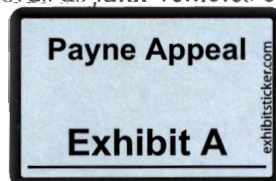
## Documentation and Compliance Plan for Payne Logging, Inc.-Wrecking Yard License #376

During the November 21, 2014 inspection of the Payne Logging wrecking yard in Libby, I found three areas of non-compliance. 1. Failure to post the State wrecking yard license. 2. Failure to keep records of vehicles brought into the wrecking yard and to file quarterly reports with the Montana Department of Justice. 3. Failure to shield junk vehicles from public view. The owner, Bob Payne was informed of the issues and that his license would not be renewed until he was in compliance, or had developed a compliance plan.

Mr. Payne and I visited on December 31, 2014 and again on January 14<sup>th</sup> and 16<sup>th</sup>, 2015. Our discussion on December 31 centered on what he wanted to accomplish with his wrecking facility. His objectives were 1) to take in wrecked vehicles, repair those vehicles and sell them, 2) sell parts from wrecked vehicles, 3) sell scrape, including scrap vehicles, 4) clean up his property so his kids wouldn't have to deal with it later. We also talked about the actual location of the wrecking yard in regard to the State's legal description, and review process including the EA analysis. During the discussion it became apparent that there was confusion about where he thought his wrecking yard was located, what he had been told by the County and the State in the past, and the actual location of the wrecking yard area as delineated by the State. Part of the confusion stems from the area described in the original proposal (12.7 acres) and what was actually approved by the State (3.15 acres). We reviewed the documents from the State including the EA and the cadastral map showing the actual delineated area.

When I visited Mr. Payne at his business on January 14<sup>th</sup>, he had posted his license and developed a form for record keeping, although he had not filled any of them out yet. During this visit, we discussed the location of the wrecking yard again. Mr. Payne expressed that it wasn't in the area that he had thought it was going to be and that he would like to be able to store vehicles that he had processed for crushing outside of the licensed 3.15 acre area, as it provided better access for the crusher and tractor-trailer. He asked me what a boundary change would entail, and I told him that I would check with the State, as I didn't know. I spoke with Bruce Meyer at the State about these issues and Mr. Payne's request for a boundary change. Bruce explained to me that it would require going through the application process, and may or may not require a full review. I shared this information with Mr. Payne at our meeting in my office on January 16<sup>th</sup> to make him aware that a boundary change may require him to go through the entire process again. He decided that it was important enough to his plan to apply for the boundary change and see where the chips fell. During this visit, I asked out director Kathi Hooper to join the discussion. We came up with the following compliance plan:


- 1.) Keeping records of the vehicles taken into the facility per MCA 75-10-512. During the January 14<sup>th</sup>, 2015 visit, Mr. Payne showed me a form he had developed for record keeping. That form appears to be sufficient, and we agreed that he would fill out a form for each vehicle currently in the wrecking facility and any new additions by April 30<sup>th</sup>, 2015. He would then continue to keep records as junk vehicles came in for the life of his facility. This



will satisfy the State's requirement for record keeping. He will also begin submitting the required quarterly reports to the Montana Department of Justice, Motor Vehicle Division starting in 2015.

- 2.) Shielding vehicles from public view per MCA 75-10-505. Mr. Payne removed the junk vehicles visible from Parkway after the inspection. But there is still an issue of junk vehicles being in public view from Rodeo Drive, a county road within J. Neils Park. Part of the issue is due to junk vehicles on the property not being within the wrecking yard area delineated and approved by the State. Mr. Payne has expressed that he does not have enough room in current delineated wrecking yard area for all of his junk vehicles and he plans to apply for a change to the wrecking yard boundary. We agreed that he would submit an application for this change by April 30<sup>th</sup>, 2015. If he decides not to apply for a boundary change, then all junk vehicles outside of the wrecking yard boundary will be moved into the currently designated wrecking yard by June 30<sup>th</sup>, 2015 and all junk vehicles visible from the public roadways will be sufficiently shielded by that date.

With this compliance plan signed and dated by Robert Payne and a representative of the Lincoln county Environmental Health Department, I recommend that license #376 for Payne Logging, Inc. be issued for 2015.



Jennifer Nelson, SIT  
Lincoln County Environmental Health

Signed by Robert Payne, Robert R Payne Date 2-3-15

Signed by Jennifer Nelson, Jennifer Nelson Date 2/3/15

PAYNE LOGGING, INC  
MOTOR VEHICLE RECYCLING & DISPOSAL ACT PERMIT  
RESOLUTION NO. 947

WHEREAS, Payne Logging, Inc. applied through Montana Department of Environmental Quality (DEQ) to modify their existing Motor Vehicle Wrecking Facility License #376 at 99 My Road, Libby, Montana; and

WHEREAS, Section 75-10-516(2), MCA, provides that, within 30 days of receipt of the notification, the governing body of the County may: (a) conduct a public hearing to determine whether the proposed facility will significantly affect the quality of life of adjoining landowners and the surrounding community, and (b) adopt a resolution in support of or in opposition to the location of the proposed facility; and

WHEREAS, the County Commissioners held a public hearing on August 28<sup>th</sup>, 2015 and there was unanimous opposition and no proponents; and


WHEREAS, PAYNE LOGGING, INC. has failed to meet the shielding requirements as set forth by ARM 17.50.202, with the existing License #376.

THEREFORE, BE IT RESOLVED that, the County Commissioners oppose the Motor Vehicle Wrecking Facility application submitted by Payne Logging, Inc. to modify existing License #376.

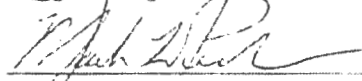
BE IT FURTHER RESOLVED that, the County Commissioners will be in opposition to any modifications until the current license is brought into full compliance with ARM 17.50.202 and all other Motor Vehicle Recycling & Disposal Program statutes.

DATED AND ADOPTED this 2nd day of September, 2015

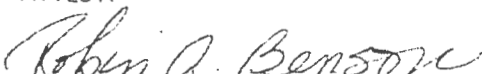
BOARD OF COUNTY COMMISSIONERS  
Lincoln County, Montana

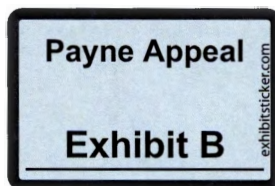
  
\_\_\_\_\_  
Mike Cole, Chairman

  
\_\_\_\_\_  
Greg Larson, Member

  
\_\_\_\_\_  
Mark Peck, Member

ATTEST:

  
\_\_\_\_\_  
Robin A. Benson, Clerk & Recorder





September 24, 2015

Robert Payne  
Payne Logging, Inc.  
PO Box 381  
Libby, MT 59923

Dear Mr. Payne,

On July 20, 2015, the Motor Vehicle Recycling and Disposal Program (MVRDP) received your application to move the boundaries of your wrecking facility within your property. Notifications were sent to adjoining land owners and the County Commissioners regarding this change. On September 2, 2015, the Lincoln County Commissioners opposed any change to your current license under Resolution 947, (enclosed), until full compliance with the motor vehicle recycling regulations are achieved regarding your original application. The MVRDP has terminated the application requesting to move the boundaries of your facility due to the denial on the county level.

In order to re-apply for a boundary change you must first be compliant at your original location to the satisfaction of the County Commissioners regarding the shielding of the facility.

I have enclosed an Ariel image of the original boundary of your wrecking facility. Please note that any vehicle(s) that meets the definition of a junk vehicle and all component parts must be moved to within this area and shielded from public view.

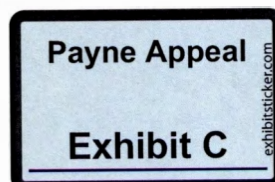
If you have any questions please feel free to contact me.

Sincerely,

Brady Christensen, CHMM  
Motor Vehicle Recycling and Disposal Program  
(406) 444-3048 or email at [bchristensen@mt.gov](mailto:bchristensen@mt.gov)

cc Jennifer Nelson, 418 Mineral Ave, Libby, MT 59923  
Kathi Hooper, 418 Mineral Ave, Libby, MT 59923

Enc. Resolution No. 947  
Ariel image of wrecking facility boundary



**COPY**

August 18, 2015

In August of 2012 the Libby Sky Ranch Homeowners Association received an Environmental Assessment from the Department of Environmental Quality in regards to a proposed Motor Vehicle Wrecking Facility. The Association had met and discussed the proposed wrecking facility with the State representative, Bruce Meyer, prior to this report and found Mr. Meyer cognitive and mindful of the residential area and park adjoining Mr. Payne's property and found the placement of the wrecking facility reassuring.

In the years since the approval of said wrecking facility, and especially since the beginning of 2015 Mr. Payne has expanded his facility to include property adjoining residential areas owned by members of the homeowners association in direct violation of the licensing that was approved by the State of Montana. In May of this year when inquiring the officials in Lincoln County about how the Homeowners Association could compel Mr. Payne to come into compliance with the approved licensing we were quite surprised to be informed about the County's complicit efforts to aid Mr. Payne in changing the size and scope of said wrecking yard without a application to modify the license or any attempt to comply with the existing license. In contacting the State on said matter we were equally surprised that the State was expediting the application to modify the license of said wrecking yard. The Homeowners Association received a letter on July 30<sup>th</sup> of 2015 from the DEQ notifying the Homeowners Association of the request to modify the license with the statement that upon "approval of the application to modify the license will not be renewed until Mr. Payne is in compliance with MVDRP statues. Mr. Payne has continually demonstrated, over the past [3] years, his inability or unwillingness to comply with any of the statues eluded to and the apparent inability or unwillingness of the County and State agencies to enforce any of the statues eluded to leave the Homeowners Association dubious of a good outcome. The Homeowners Association is also questioning the deviation from the process of approving the original wrecking yard and approving the modified wrecking yard in the fact that there is no new Environmental Assessment, no distinguishable boundaries of the modified wrecking yard and no Environmental impact Statement that was afforded the Homeowners Association in the original process.

In the course of events over the past few months the Homeowners Association has become well educated on the definitions of "public view", "necessary shielding", " what logging equipment is or isn't", etc. We have also become well informed on what statues and procedures are applicable to the setting up a wrecking yard and would like to site a few:

1] 17-10-516 [4]: which states that "in deciding whether to grant or deny a license application, the department shall consider the effect of the proposed facility on adjoining landowners and land uses."

The Homeowners Association feels, as stated above, that this "modification" is much more than that as it constitutes a different location of the facility, effectively increases the size of the facility and brings the boundaries of the facility directly up to adjoining landowner's property. It should be noted that Mr. Meyers was aware of the concerns of adjoining landowners and that Mr. Payne was "solely" responsible for the layout of the original facility. It should also be noted that in section [5] of this statue that "the department may not issue a license if the facility is not in compliance with the shielding requirements of ARM 17-50-202. It would seem that licenses have been issued in periods of non-compliance and the State and County agencies involved in this situation seem poised to perform back flips to bring Mr.

**COPY**

Payne's non-compliant actions into some form of compliance regardless of existing statues, state assessments or public input.

2] 17-50-202 and 17-50-203: These statues clearly define what proper shielding is and is not and the time frame in which said shielding has to be completed. It should be noted again that Mr. Payne has already moved his facility onto the "proposed" property to be considered for modification years ago and continues to move vehicles onto the "new" area as we speak. It would seem, on the face of it, that Mr. Payne is under the impression that his new facility already has been approved and from the Homeowners Associations perspective it would seem that someone has indeed assured Mr. Payne that it will be. The Homeowners Association is questioning weather "any" inspections have ever been made by a county representative on an annual basis as required by statue 17-50-207. The Homeowners Association has been told stories of personnel changes in their departments at the County and State levels as reasons for the existence of this situation but we find these explanations inadequate.

3] 17-50-210 [5] [7]: this statue states in section [7] "junk vehicles must be placed in an orderly manner with in the vehicle graveyard site. This statue and a statement in the original Environmental Assessment explaining why an Environmental Impact Statement was not required and an Environmental Assessment was adequate read as follows: [1] Careful review of the information submitted with the license application, [2] On site assessment of the proposed facility and the surrounding area by the department, and [3] Comparing the proposed facility to currently licensed and operating motor vehicle wrecking facilities. The Homeowners Association would ask anyone to walk around Mr. Payne's facility and walk around Pioneer Wrecking Yard and find "anything" comparable between the two. We wonder why these two facilities are being held to such different standards.

The Homeowners Association continues to petition and gather signatures from landowners with property adjoining Mr. Payne's, explaining that this wrecking yard could very well butting up to their backyard despite the reassurances of the State and County agencies as no less then [8] homeowners have had the opportunity to learn. In addition, we of the Homeowners Association find it mind boggling that the County is assisting Mr. Payne in expanding his facility to the property line adjoining the J. Neil's Park southerly property line. The Homeowners Association will also continue to pursue any and all legal options, civil or criminal and/or departmental or personal, necessary to reset this process and would ask all the agencies involved to return to the original problem of weather Mr. Payne is, or ever has been in compliance with the original terms of licensing and take proper action from there.

Thank you for your time and careful consideration, Libby Sky Ranch Homeowners Association

Scott Roush Treasurer, Manager [406] 291-5541

CC:

Brady Christensen

Mark Peck

Jennifer Nelson

Kathy Hooper

**From:** Jody Breiland <jodybreiland@gmail.com>  
**Sent:** Tuesday, August 04, 2015 9:41 AM  
**To:** Christensen, Brady  
**Subject:** AGAINST REQUEST of Payne Logging, Inc.

Mr. Christensen,

The purpose of my email is to express my concern in response to the notification I received regarding Payne Logging, Inc. and their request to reconfigure their property boundary.

As I'm sure you're aware, the property currently runs along the beautiful J. Neil's Park. A park that is, most likely, the best, most used park in the area. Living in the Northwood neighborhood, I am privileged to be able to walk to the park and enjoy the peace and serenity of the area. I regularly walk my dog there, armed with the provided plastic bags. The park also provides the venue for several events all summer long. It is fantastic.

The only thing about the park that is not fantastic, is the eyesore and mess that is completely visible of the property of Payne Logging, Inc. It is disgusting and disheartening that those that come to the park, have to see a junkyard. There's no barrier between the park and the Payne property so all is there to see. It appears that railroad cars were going to be used to block some of the eyesore, but now there is even junk in front of those. As it stands now, requiring some sort of visual barrier would even be an improvement.

Another issue with this request is that if it is approved, having an auto wrecking facility will completely ruin the peacefulness of the park and the surrounding area. One of the key reasons that people moved into the area in the first place!

Not only do I feel that it's a terrible eyesore, it appears the proposed new boundary will encroach even closer to our homes. Homes that are lovely and well maintained. Homes that show the pride of ownership that I wish everyone would display. Having that come so close to these homes, can only have a negative impact on our property values. Which in turns, lowers the tax revenue that the county brings in.

I would hope that you will NOT grant a MVWF license, or modify any existing license in fact.

Thank you for your consideration. If you have any questions, you can reach me on my cell phone at 503-704-4021.

Jody Breiland  
Concerned Citizen



**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM  
EXECUTIVE SUMMARY FOR ACTION ON PROPOSED RULEMAKING**

**Agenda # III.B.1.**

**Agenda Item Summary:** The department requests approval of updating DEQ-2 and then incorporating by reference the updated version.

**List of Affected Rules:** ARM 17.30.1001, 17.36.345, 17.36.914, 17.38.101, and 17.50.819

**Affected Parties Summary:** The parties primarily affected by this proposal are the public wastewater supply and subdivision plan review engineers, who use DEQ-2 for guidance. In addition, any engineers and/or wastewater personnel using DEQ-2 to prepare plans for submittal may be affected.

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

**Background:** The Department is updating wastewater operator certification classes, which are contained in ARM 17.40.202. Currently there are four classes and each class is referenced in DEQ-2. The Department published a notice of public hearing on proposed amendment, MAR Notice No. 17-374, at page 1593 of the 2015 Montana Administrative Register, on October 15, 2015, which proposes to combine the four classes into two classes. The Department anticipates that these proposed amendments will be adopted on November 30, 2015.

The Department, therefore, proposes amendments to Department Circular DEQ-2 that will direct interested parties to ARM 17.40.202.

**Hearing Information:** The Department recommends the Board appoint a hearing officer and conduct a public hearing to take comment on the proposed amendment of the above-stated rules.

**Board Options:** The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment
2. Modify the notice and initiate rulemaking; or
3. Determine that 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 officer to conduct a public hearing, as described in the attached draft Notice of Public Hearing on Proposed Amendment.

**Enclosures:**

1. Draft Notice of Public Hearing on Proposed Amendment
2. Proposed amendments to Department Circular DEQ-2

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.30.1001, 17.36.345, 17.36.914, )  
17.38.101, and 17.50.819 pertaining to )  
definitions, adoption by reference, )  
wastewater treatment systems: )  
technical requirements, plans for public )  
water supply or public sewage system, )  
plans for public water supply or )  
wastewater system, and incorporation by )  
reference and availability of referenced )  
documents )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT

(WATER QUALITY)  
(SUBDIVISIONS/ON-SITE  
SUBSURFACE WASTEWATER  
TREATMENT)  
(PUBLIC WATER AND SEWAGE  
SYSTEM REQUIREMENTS)  
(SOLID WASTE MANAGEMENT)

TO: All Concerned Persons

1. On \_\_\_\_\_, 2015, at \_\_:\_\_.m., the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing [in/at address], Montana, to consider the proposed amendment of the above-stated rules.

2. The board and department 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](mailto:ejohnson@mt.gov).

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

17.30.1001 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter:

(1) through (16) remain the same.

(17) "Unrestricted reclaimed wastewater" means wastewater that is treated to the standards for Class A-1 or Class B-1 reclaimed wastewater, as set forth in Appendix B of Department Circular DEQ-2, entitled "Montana Department of Environmental Quality Design Standards for Public Sewage Systems" (~~May 2012~~ 2016 edition).

(a) The board adopts and incorporates by reference Department Circular DEQ-2, entitled "Department of Environmental Quality Design Standards for Public Sewage Systems" (~~May 2012~~ 2016 edition). Copies are available from the Department of Environmental Quality, Technical and Financial Assistance Bureau, P.O. Box 200901, Helena, MT 59620-0901.

MAR Notice No. 17-\_\_\_\_

AUTH: 75-5-201, 75-5-401, MCA  
IMP: 75-5-301, 75-5-401, MCA

17.36.345 ADOPTION BY REFERENCE (1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

- (a) remains the same.
- (b) Department Circular DEQ-2, "Design Standards for Public Sewage Systems," 2012 2016 edition;
- (c) through (2) remain the same.

AUTH: 76-4-104, MCA  
IMP: 76-4-104, MCA

17.36.914 WASTEWATER TREATMENT SYSTEMS - TECHNICAL REQUIREMENTS (1) remains the same.

(2) Department Circular DEQ-4, 2013 edition, which sets forth standards for subsurface sewage treatment systems, and Department Circular DEQ-2, 2012 2016 edition, which sets forth design standards for public sewage systems, are adopted and incorporated by reference for purposes of this subchapter. All references to these documents in this subchapter refer to the editions set out above. Copies are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

- (3) through (7) remain the same.

AUTH: 75-5-201, MCA  
IMP: 75-5-305, MCA

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR PUBLIC SEWAGE SYSTEM (1) through (19)(b) remain the same.

(20) For purposes of this chapter, the board adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

- (a) remains the same.
- (b) Department of Environmental Quality Circular DEQ-2, 2012 2016 edition, which sets forth the requirements for the design and preparation of plans and specifications for sewage works;
- (c) through (21) remain the same.

AUTH: 75-6-103, MCA  
IMP: 75-6-103, 75-6-112, 75-6-121, MCA

17.50.819 INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED DOCUMENTS (1) The department adopts and incorporates by reference:

- (a) Department Circular DEQ-2, Design Standards for Public Sewage Systems (2012 2016 edition), which sets forth design standards for public sewage

systems;

(b) through (3) remain the same.

AUTH: 75-10-1202, MCA

IMP: 75-10-1202, MCA

REASON: The department has modified the wastewater operator certification classification. Before the amendments became effective, there were four classes in Department Circular DEQ-2 (DEQ-2). The department rule amendments combine the four classes into two classes.

The 2012 edition of DEQ-2 contains a reference to the previous four-tiered classification. Therefore, it is necessary to update the Circular. The proposed amendment to DEQ-2 is necessary to direct interested parties to ARM 17.40.202.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., \_\_\_\_\_, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

6. The board and department maintain 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](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the board.

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

8. With regard to the requirements of 2-4-111, MCA, the board and department have determined that the amendment of the above-referenced rules will

MAR Notice No. 17-\_\_\_\_

not significantly and directly impact small businesses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

\_\_\_\_\_  
JOHN F. NORTH  
Rule Reviewer

BY: \_\_\_\_\_  
JOAN MILES  
Chairman

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

BY: \_\_\_\_\_  
TOM LIVERS

Certified to the Secretary of State, \_\_\_\_\_, 2015.

**2012 Edition**

**CIRCULAR DEQ-2  
(formerly Circular WQB-2)**

**Adopted 03/24/95  
Initially Effective 04/28/95  
Revised 8/30/99  
2<sup>nd</sup> Revision 10/12/12**

**Montana Department of Environmental Quality  
(Established 07/01/95; formerly Montana Department of Health and  
Environmental Sciences)**

## 11.29 Detailed Alternative Evaluation

The following must be included for the alternatives to be evaluated in detail.

a – 1 remain the same

### m. Staffing Requirements

Consideration must be given to operator requirements and their related impacts to the operation and maintenance budget for the alternatives proposed. Current ~~W~~wastewater treatment system classifications and corresponding certifications are as follows: found in ARM 17.40.202.

~~Class 1: wastewater operator certification is required for the operation of conventional activated sludge plants, biological nutrient removal plants, ammonia conversion processes or other tertiary processes such as effluent filtration and membrane bioreactor systems;~~

~~Class 2: wastewater operator certification is required for the operation of extended aeration activated sludge plants such as oxidation ditches and package plants, fixed growth trickling filter and bio disc plants, or sequencing batch reactors;~~

~~Class 3: wastewater operator certification is required for the operation of mechanically aerated pond systems;~~

~~Class 4: wastewater operator certification is required for the operation of ponds that do not utilize mechanical aeration.~~

~~The highly automated nature of class 1 (and some class 2) systems will require increased operator attention and skill level (computer and circuitry knowledge), and increased process control testing for proper operation. For class 1 and class 2 more complex treatment systems (e.g., membrane bioreactors, biological nutrient removal, sequencing batch reactors, etc.), two or more full-time operators, with formal training specific to system operations (e.g., membrane bioreactors, biological nutrient removal, sequencing batch reactors, etc.) are strongly recommended. A back-up operator is recommended for all systems.~~

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM**

**EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION**

**Agenda # III.B.2.**

**Agenda Item Summary:** The Department requests that the Board initiate rulemaking to repeal rules in ARM Title 17, chapters 4, 30, and 38, pertaining to water pollution rules, radiological criteria, state and EPA coordination, pretreatment, definitions, enforcement actions for administrative penalties, purpose, definitions, enforcement procedures and suspended penalties. The Department is requesting the repeal of rules which repeat statutory language, no longer reflect current federal requirements, or were adopted to implement statutory enforcement provisions that were superseded by legislation enacted in 2005.

**List of Affected Rules:** This rulemaking would repeal ARM 17.4.201, 17.30.645, 17.30.1386, 17.30.1401, 17.30.1402, 17.30.1405, 17.30.1406, 17.30.1407, 17.30.1410, 17.30.1411, 17.30.1412, 17.30.1413, 17.30.1414, 17.30.1419, 17.30.1420, 17.30.1421, 17.30.1425, 17.30.1426, 17.30.1602, 17.30.2001, 17.30.2003, 17.38.601, 17.38.602, 17.38.603, and 17.38.607.

**Affected Parties Summary:** This rulemaking will not affect any regulated sources. The rules proposed for repeal either repeat statutory language, were never used, or are not currently used by the Department.

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

**Background:**

Proposed repeal of ARM 17.4.201 and 17.30.645. These rules pertaining to water pollution rules and radiological criteria unnecessarily repeat statutory language.

Proposed repeal of ARM 17.30.1386. This rule sets forth reporting requirements from the Department to the EPA regarding MPDES permitting. The rule implemented EPA regulations in 1989. These reporting requirements have been superseded by newer EPA reporting requirements that are set forth in annual agreements executed by EPA and the Department.

Proposed repeal of ARM 17.30.1401, 1402, 1405, 1406, 1407, 1410, 1411, 1412, 1413, 1414, 1419, 1420, 1421, 1425, and 1426. These rules were adopted in anticipation of the Department receiving delegation from the EPA for the federal



pretreatment program. The delegation did not take place, however, because of a lack of funding. As a result, the pretreatment program in Montana continues to be administered by the EPA. These rules, which were never implemented, do not reflect current EPA requirements.

Proposed repeal of 17.30.2001 and 2003 and 17.38.601, 602, 603, and 607.

Legislation passed in 2005 established a set of penalty factors that must be considered in penalty calculations. In May 2006, the Board promulgated new rules, ARM 17.4.301 through 17.4.308, to establish a penalty calculation process using those factors. Upon promulgation of the new penalty rules, some of the existing Water Quality Act and Public Water Supply Act penalty calculation rules (old rules) were repealed. The definition and procedural sections of the remaining old rules were not repealed to help guide the department's implementation of the new rules. After nine years of implementation of the new penalty rules, the remaining portions of the old rules are no longer needed.

**Hearing Information:** The Department recommends the Board appoint a hearing officer and conduct a public hearing to take comment on the proposed repeal of the above-stated rules.

**Board Options:** The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Repeal;
2. Modify the Notice and initiate rulemaking; or
3. Determine that the repeal 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 officer to conduct a public hearing, as described in the attached draft Notice of Public Hearing on Proposed Repeal.

**Enclosures:**

1. Draft Notice of Public Hearing on Proposed Repeal

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PUBLIC HEARING ON
17.4.201, 17.30.645, 17.30.1386,	)	PROPOSED REPEAL
17.30.1401, 17.30.1402, 17.30.1405,	)	
17.30.1406, 17.30.1407, 17.30.1410,	)	(PROCEDURAL RULES)
17.30.1411, 17.30.1412, 17.30.1413,	)	(WATER QUALITY)
17.30.1414, 17.30.1419, 17.30.1420,	)	(PUBLIC WATER SUPPLY AND
17.30.1421, 17.30.1425, 17.30.1426,	)	SEWAGE SYSTEM
17.30.1602, 17.30.2001, 17.30.2003,	)	REQUIREMENTS)
17.38.601, 17.38.602, 17.38.603, and	)	
17.38.607 pertaining to water pollution	)	
rules, radiological criteria, state and EPA	)	
coordination, pretreatment, definitions,	)	
enforcement actions for administrative	)	
penalties, purpose, definitions, enforcement)	)	
procedures, and suspended penalties	)	

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 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., February 23, 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 for repeal are as follows:

17.4.201 WATER POLLUTION RULES (AUTH: 2-4-201, 2-4-202, MCA; IMP: 75-5-307, MCA), located at page 17-91, Administrative Rules of Montana.

REASON: This rule merely repeats statutory requirements contained in 75-5-307(1), MCA. The statute is self-implementing and the rule is therefore unnecessary. Section 2-4-305(2), MCA, provides that rules may not unnecessarily repeat statutory language.

17.30.645 RADIOLOGICAL CRITERIA (AUTH: 75-5-201, 75-5-301, MCA; IMP: 75-5-301, MCA), located at page 17-2753, Administrative Rules of Montana.

REASON: This rule merely prohibits violation of radiological criteria in

MAR Notice No. 17-\_\_\_\_

Department Circular DEQ-7. Violation of any provision of DEQ-7 is "pollution," as defined in 75-5-301(30)(a), MCA. Causing pollution is prohibited by 75-5-605(1)(a), MCA, and the rule is therefore unnecessary. Section 2-4-305(2), MCA, provides that rules may not unnecessarily repeat statutory language.

17.30.1386 STATE AND EPA COORDINATION (AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA), located at pages 17-3002 and 17-3003, Administrative Rules of Montana.

REASON: This rule specifies reporting requirements from the Department of Environmental Quality (department) to the Environmental Protection Agency (EPA) regarding MPDES permitting. It was adopted in 1989 to comply with EPA requirements then in effect. Those requirements have since been modified. Current reporting requirements are contained in annual agreements entered into between EPA and the department. Therefore, this rule is unnecessary.

17.30.1401 APPLICABILITY (AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3025, Administrative Rules of Montana.

17.30.1402 DEFINITIONS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at pages 17-3025 through 17-3027, Administrative Rules of Montana.

17.30.1405 LOCAL LAW (AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3029, Administrative Rules of Montana.

17.30.1406 NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at pages 17-3029 through 17-3031, Administrative Rules of Montana.

17.30.1407 NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3031, Administrative Rules of Montana.

17.30.1410 REMOVAL CREDITS (AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3033, Administrative Rules of Montana.

17.30.1411 PRETREATMENT PROGRAMS: DEVELOPMENT BY POTW (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at pages 17-3033 through 17-3039, Administrative Rules of Montana.

17.30.1412 POTW PRETREATMENT PROGRAMS AND AUTHORIZATION TO REVISE PRETREATMENT STANDARDS: SUBMISSION FOR APPROVAL (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at pages 17-3041 through 17-3043, Administrative Rules of Montana.

17.30.1413 APPROVAL PROCEDURES FOR POTW PRETREATMENT

PROGRAMS AND POTW GRANTING OF REMOVAL CREDITS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at pages 17-3043 through 17-3045, Administrative Rules of Montana.

17.30.1414 REPORTING REQUIREMENTS FOR POTW'S AND INDUSTRIAL USERS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at pages 17-3047 through 17-3056, Administrative Rules of Montana.

17.30.1419 CONFIDENTIALITY OF INFORMATION (AUTH: 75-5-201, 75-5-105, MCA; IMP: 75-5-401, MCA), located at page 17-3059, Administrative Rules of Montana.

17.30.1420 NET/GROSS CALCULATION (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3059, Administrative Rules of Montana.

17.30.1421 UPSET PROVISION (AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA), located at pages 17-3059 and 17-3060, Administrative Rules of Montana.

17.30.1425 BYPASS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at pages 17-3063 and 17-3064, Administrative Rules of Montana.

17.30.1426 MODIFICATION OF POTW PRETREATMENT PROGRAMS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at pages 17-3064 and 17-3065, Administrative Rules of Montana.

REASON: Title 17, chapter 30, subchapter 14 was also adopted in December of 1989, in preparation for the Department of Health and Environmental Sciences (now the Department of Environmental Quality) receiving delegation of the federal pretreatment program. However, because of lack of funding, neither department accepted the delegation. Therefore, the pretreatment program for Montana is operated by EPA and these rules have never been implemented. The rules do not reflect current EPA requirements. Therefore, if the department were to seek delegation, it would be better to adopt new rules rather than to modify these rules. Retaining outdated rules for a program that the department does not administer causes confusion.

17.30.1602 EMERGENCY PROCEDURE (AUTH: 75-5-201, MCA; IMP: 75-5-621, MCA), located at page 17-3115, Administrative Rules of Montana.

REASON: This rule merely repeats statutory requirements contained in 75-5-621, MCA. The statute is self-implementing and the rule is therefore unnecessary. Section 2-4-305(2), MCA, provides that rules may not unnecessarily repeat statutory language.

17.30.2001 DEFINITIONS (AUTH: 75-5-201, MCA; IMP: 75-5-611, MCA), located at pages 17-3172 and 17-3173, Administrative Rules of Montana.

MAR Notice No. 17-\_\_\_\_

REASON: Class of violation definitions in ARM 17.30.2001(1) through (3) are outdated and are no longer necessary. Definitions in ARM 17.30.2001(4) through (7) are for commonly understood terms and are no longer necessary. Therefore, this rule is proposed to be repealed.

17.30.2003 ENFORCEMENT ACTIONS FOR ADMINISTRATIVE PENALTIES (AUTH: 75-5-201, MCA; IMP: 75-5-611, MCA), located at pages 17-3175 and 17-3176, Administrative Rules of Montana.

REASON: The board promulgated ARM 17.30.2001 through 17.30.2006 in April 1998 to establish administrative penalty calculation procedures for the Montana Water Quality Act. The board's predecessor, the Board of Health and Environmental Sciences, promulgated ARM 17.38.601 through 17.38.607 in February 1995 to establish administrative enforcement procedures and administrative penalties for the Public Water Supply Laws.

Legislation passed in 2005 established a standard set of penalty factors that must be considered in penalty calculations. See 75-5-1001, MCA. In May 2006, the board promulgated new rules to establish a penalty calculation process based on the statutory penalty factors in ARM 17.4.301 through 17.4.308. The new penalty calculations rules apply to penalties assessed under the Water Quality and Public Water Supply Acts. Upon promulgation of the new penalty rules, the majority of the old water quality and public water supply penalty calculation rules were repealed. However, the board did not repeal definitions and some procedural parts of the old rules in order to help guide the department's determination of the gravity factor under the new rules. After nine years of implementation of the new penalty rules, it is apparent that the remaining portions of the old water quality and public water supply penalty rules are no longer needed.

ARM 17.30.2001 is proposed for repeal because it contains definitions for terms used in rules that are proposed for repeal.

Most of ARM 17.30.2003(1) and (2) duplicate procedures described in 75-5-611 and 75-5-617, MCA. ARM 17.30.2003(3) describes a standard procedure regarding service of certified mail and is not needed. ARM 17.30.2003(4) states that a notice letter sent in accordance with 75-5-611(1), MCA, satisfies the requirement to send a notice letter as required in 75-5-617(2), MCA. Both sections of law require the department to send a notice letter. Because it is obviously most efficient to send only one notice letter, this declaration in rule is not needed.

ARM 17.30.2003(5) and (6) establish a procedure under which the department may not assess a penalty if the violator submits a letter that certifies that the activity was or is now in compliance or proposes a corrective action plan to return the activity to compliance. The department must respond to the letter within 30 days and determine if the violator's response was adequate. If inadequate or if adequate but not complied with, the department may issue an order that assesses a penalty. These provisions unduly limit the department's enforcement discretion.

ARM 17.30.2003(7) duplicates 75-5-611(2), MCA, and (8) merely references the standard penalty rules.

ARM 17.30.2003(9) is unnecessary if the previous sections are no longer in effect.

17.38.601 PURPOSE (AUTH: 75-6-103, MCA; IMP: 75-6-109, MCA), located at page 17-3667, Administrative Rules of Montana.

REASON: This rule describes the purpose of the PWS rules that establish administrative enforcement procedures and penalties. Because the board is repealing the remaining rules, the purpose statement is no longer applicable.

17.38.602 DEFINITIONS (AUTH: 75-6-103, MCA; IMP: 75-6-109, MCA), located at pages 17-3667 and 17-3668, Administrative Rules of Montana.

REASON: ARM 17.38.602 is proposed for repeal because it contains definitions for terms used in rules that are proposed for repeal.

17.38.603 ENFORCEMENT PROCEDURES (AUTH: 75-6-103, MCA; IMP: 75-6-109, MCA), located at pages 17-3668 and 17-3669, Administrative Rules of Montana.

REASON: Because the definitions for class of violation are proposed to be repealed, ARM 17.38.603(1) is no longer needed. ARM 17.38.603(2) unnecessarily lists requirements or conditions that may be included in orders. ARM 17.38.601(3) duplicates statutory language found in 75-6-110(3), MCA. Therefore, this rule is proposed to be repealed.

17.38.607 SUSPENDED PENALTIES (AUTH: 75-6-103, MCA; IMP, 75-6-109, MCA), located at page 17-3673, Administrative Rules of Montana.

REASON: This rule does not conform to existing statutes and is proposed to be repealed.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., \_\_\_\_\_, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

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

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

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

\_\_\_\_\_  
JOHN F. NORTH  
Rule Reviewer

BY: \_\_\_\_\_  
JOAN MILES, CHAIRMAN

Certified to the Secretary of State, \_\_\_\_\_, 2015.

ENVIRONMENTAL QUALITY

CHAPTER 38

PUBLIC WATER AND SEWAGE SYSTEM REQUIREMENTS

Subchapter 6

✓ *Repeal*

Administrative Enforcement Procedures

Rule ✓ 17.38.601

Purpose

✓ 17.38.602

Definitions

✓ 17.38.603

Enforcement Procedures

Rules 17.38.604 and 17.38.605 reserved

17.38.606

Administrative Penalties (REPEALED)

✓ 17.38.607

Suspended Penalties



Subchapter 6

Administrative Enforcement Procedures

17.38.601 PURPOSE (1) This subchapter implements 75-6-103, MCA, which requires rules establishing administrative enforcement procedures and administrative penalties authorized under the Public Water Supply Act, Title 75, chapter 6, part 1, MCA. These rules are to be applied in accordance with the enforcement policies and procedures adopted by the department for water quality related laws and programs administered by the department. (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1101, 1998 MAR p. 2754, Eff. 10/9/98.)

17.38.602 DEFINITIONS Unless the context clearly states otherwise, the following definitions, in addition to those in 75-6-102, MCA, and ARM 17.38.202 apply throughout this subchapter.

- (1) "Act" means Title 75, chapter 6, part 1, MCA.
- (2) "Class I violation" means a violation of the act or regulations requiring an immediate action or response by a person because of the health risk involved. These violations include, but are not limited to, the following:
  - (a) failure to act in the best interest of public health in an emergency situation, including, but not limited to, disease outbreaks, spills, tampering and treatment facility failures;
  - (b) failure to provide continuous disinfection when continuous disinfection has been required by the department; and
  - (c) failure to respond to nitrate, total coliform, turbidity, or other MCL violations that pose an acute risk to public health, including check sampling, and public notification.
- (3) "Class II violation" means any violation determined by the department not to be a Class I violation.
- (4) "Consent order" means a legally binding agreement signed by a person and the director or designee, whereby correction of recorded violations may be scheduled and penalties may be established for failure to comply within the time scheduled for compliance. Penalties for recorded past violations may also be included in the agreement.
- (5) "Designee" means an employee of the department who has been authorized by the director to issue orders under this subchapter.
- (6) "Director" means the director of the department.

(7) "Fees" means the annual assessment of fees for public water supply systems and fees assessed for the review of plans and specifications submitted to the department, as provided by 75-6-108, MCA.

(8) "Final order" means an order of the department issued or in force pursuant to 75-6-109, MCA, the recipient of which has failed to exercise within 30 days its right to a hearing before the board or has waived such right, or has exercised such right to a hearing, following which the board has issued a final order either affirming or modifying the department's order.

(9) "Order" means a written direction issued by the department to a person to take an action or series of actions to comply with a provision of the act or rules implementing the act, within a time established under the order and which may include a penalty assessment.

(10) "Person" is defined in 75-6-102, MCA, and includes a certified operator or any authorized agents of or contractors to any entity defined as a person.

(11) "Violation letter" means a letter sent by the department pursuant to 75-6-110(2), MCA, to notify persons that they are in violation of the act, rules implementing the act, a condition of approval, or an order of the department, and to describe the actions and a timetable necessary to return to compliance. A violation letter does not constitute a final action by the department and does not create a right to a contested case appeal. (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1102, 1998 MAR p. 2754, Eff. 10/9/98; AMD, 2003 MAR p. 2291, Eff. 10/17/03.)

17.38.603 ENFORCEMENT PROCEDURES (1) Administrative enforcement under this subchapter encourages progressive enforcement from an initial enforcement response, such as a written or oral communication, through optional follow-up or additional enforcement actions. The initial administrative enforcement action taken will be determined according to the following criteria:

(a) unless the violation represents an imminent threat to human health, safety, or welfare or to the environment, or is a Class I violation, the department shall first send a violation letter, pursuant to 75-6-110(2), MCA, prior to initiating an administrative enforcement action under this rule;

(b) the department may respond to a Class I violation or a violation that represents an imminent threat to human health, safety, or welfare or to the environment, by issuing an order in lieu of a violation letter;

(c) if a person fails to comply with the compliance requirements or schedule specified in a violation letter, the department may respond by issuing an order.

(2) Orders under this subchapter may include, but are not limited to, the following requirements or conditions:

(a) that the existing public water supply or sewage system be repaired or modified;

(b) that treatment be installed or improved;

(c) that the source of water supply be changed;

- (d) that no additional service connections be made to the public water supply or sewage system;
- (e) that the public water supply or sewage system conduct monitoring and reporting;
- (f) that a report concerning the condition and operation of the public water supply or sewage system be submitted to the department;
- (g) that maps, design reports, plans and specifications required by ARM 17.38.101 be submitted to the department;
- (h) that corrective measures be implemented to eliminate a violation or exceedence of an MCL;
- (i) that any commencement or continued construction, alteration, extension or operation of the public water supply or sewage system be halted until all written approvals or fees required by statute or rule are obtained;
- (j) that activities be conducted to prevent or remove a source of pollution from a place that will cause pollution of a public water supply system or of state water used for domestic purposes;
- (k) that public notification be given as specified by rule or order; and
- (l) that the public water supply or sewage system retain a certified operator in accordance with Title 37, chapter 42, MCA.

(3) The provisions of this subchapter do not limit the authority of the department to bring a judicial action, which may include the assessment of penalties and injunctive relief, prior to initiating an administrative action under this subchapter. The judicial action may be criminal or civil. (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1103, 1998 MAR p. 2754, Eff. 10/9/98; AMD, 2003 MAR p. 2291, Eff. 10/17/03.)

Rules 17.38.604 and 17.38.605 reserved

PUBLIC WATER AND SEWAGE  
SYSTEM REQUIREMENTS

17.38.606

17.38.606 ADMINISTRATIVE PENALTIES (1) The minimum daily administrative penalties for listed violations are set forth in Table I. To determine the total amount of the penalty to be assessed for a violation, the department shall adjust the minimum daily administrative penalty for the violation from Table I by the amounts calculated in (2). That amount must then be multiplied by the number of days of violation that has been charged by the department. To that amount the department shall add the amount of economic benefit calculated in (3). The amount that results is the total penalty amount. The total penalty amount, when divided by the number of days of violation charged, may not exceed \$1,000 for a public water system, other than a water hauler or a water bottling plant, that serves a population of more than 10,000, and \$500 for other violations.

See next page for Table I

Table I  
 Schedule of Minimum Daily Administrative Penalties  
 for Violations of the Public Water Supply Laws & Rules

Type of Violation	Penalty per day (\$)			
	S1	S2	S3	S4
Violations That Affect Human Health				
Acute MCL violation	\$85	\$170	\$340	\$680
Failure to monitor or report samples for acute contaminants (includes bacteria, turbidity and/or nitrate)	\$75	\$150	\$300	\$600
Failure to provide public notification of boil order or health advisory	\$65	\$130	\$260	\$520
Failure to provide treatment	\$50	\$100	\$200	\$400
Non-acute MCL violation	\$45	\$90	\$180	\$360
Failure to provide public education or notification (except for notification of boil order or health advisory)	\$40	\$80	\$160	\$320
Failure to monitor or report samples for water quality parameters or non-acute contaminants (other than bacteria, turbidity and nitrate)	\$35	\$70	\$140	\$280
Failure to self-monitor for chlorine, turbidity, or fluoride	\$10	\$20	\$40	\$80
Violations That Affect Program Administration and Integrity				
Failure to pay annual service connection fee	\$2	\$4	\$8	\$25
Failure to comply with an administrative order				
-water supply system	\$100	\$200	\$400	\$800
-sewage system	\$100	\$200	\$400	\$400
Failure to use certified operator	\$5	\$10	\$15	\$30
Construction, modification, or operation of a system without plan approval				
-water supply system	\$100	\$200	\$400	\$800
-sewage system	\$50	\$100	\$200	\$400

S1: Public system serving < 250 persons  
 S2: Public system serving 251 - 2,500 persons  
 S3: Public system serving 2,501 - 10,000 persons  
 S4: Public system serving > 10,000 persons

PUBLIC WATER AND SEWAGE  
SYSTEM REQUIREMENTS

17.38.606

(2) The department shall adjust the minimum daily administrative penalty from Table I by the following factors:

(a) The department shall consider the circumstances of the violation. If a violation has occurred through no negligence on the part of the violator, the minimum daily administrative penalty may not be increased for this penalty component. If a violation involves ordinary negligence, which is the failure to exercise the reasonable care of a person of common prudence, the minimum daily administrative penalty must be increased by up to 10%. If a violation involves gross negligence, which is the gross or reckless disregard for the violated legal requirement, the minimum daily administrative penalty must be increased by up to 15%. If the violation occurred due to intentional conduct, the minimum daily administrative penalty must be increased by up to 25%.

(b) The department shall consider the violator's history of violations. The minimum daily administrative penalty must be increased by 5% for each Class II violation, and 10% for each Class I violation, for which the department issued a warning letter, letter notifying the person of the violation under 75-6-110, MCA, or notice of violation, or successfully prosecuted a judicial action, within the two years prior to the date of the violation for which the penalty is being assessed. The maximum amount by which a minimum daily administrative penalty may be increased for history of violations is 20% of the penalty for the violation from Table I. A violation may not be counted if:

- (i) the notice of violation was vacated; or
- (ii) the notice of violation is subject to a pending administrative action; or
- (iii) the time to request review or appeal of an administrative or judicial decision has not expired.

(c) The department shall consider voluntary mitigation. If the violator takes measures beyond those required by the law to mitigate the violation or the impacts of the violation on human health or the environment, up to 20% of the minimum daily administrative penalty may be deducted.

(3) The department shall determine any economic benefit or savings that the violator gained as a result of the violation. The department shall use the best information reasonably available at the time of calculating the penalty to determine the economic benefit or savings. The dollar value of the economic benefit or savings, if any, must be added to the penalty amount calculated in (1) of this rule to determine the total penalty amount.

(4) If, after the notice of violation and administrative penalty order have been served, the violator wishes to have

the department consider its ability to pay, the violator shall provide information concerning its financial situation to the department. The department shall review the information provided and proceed as follows:

(a) If the department determines that the violator is unable to immediately pay the total penalty amount, but that the violator is able to pay on a schedule, the department may place the violator on a payment schedule. The department may charge interest on the unpaid balance at the rate assessed by the Montana department of revenue on income tax due.

(b) If the department determines that the assessed penalty is unfair in light of the violator's ability to pay, it may reduce the penalty. However, the total penalty amount may not be reduced to a value less than the violator's economic benefit resulting from the violation. (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1106, 1998 MAR p. 2754, Eff. 10/9/98; AMD, 2000 MAR p. 2698, Eff. 10/6/00.)

17.38.607 SUSPENDED PENALTIES (1) Prior to issuing an NOV and order that is to include administrative penalties, the department director or designee may consider suspending a portion of the administrative penalties when deemed appropriate. In evaluating the appropriateness of suspended penalties, the department director or designee shall consider the following criteria:

- (a) timeliness in response to violation;
- (b) history of past violations;
- (c) cooperative efforts toward compliance;
- (d) severity of violation and relative risk to human health; and
- (e) other extenuating circumstances.

(2) Whenever the director or designee determines that suspended penalties are appropriate, then written documentation will be provided stating the basis for the determination using the criteria listed in (1)(a) through (e) of this rule.

(3) Penalties suspended under this provision will be deemed waived if the violator complies with all provisions of the administrative order and remains in compliance for a period of one year from the date of compliance with the administrative order. (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1107, 1998 MAR p. 2754, Eff. 10/9/98.)

17.38.606 ADMINISTRATIVE PENALTIES (REPEALED) (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1106, 1998 MAR p. 2754, Eff. 10/9/98; AMD, 2000 MAR p. 2698, Eff. 10/6/00; REP, 2006 MAR p. 1139, Eff. 5/5/06.)

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- (d) severity of violation and relative risk to human health; and
- (e) other extenuating circumstances.

(2) Whenever the director or designee determines that suspended penalties are appropriate, then written documentation will be provided stating the basis for the determination using the criteria listed in (1)(a) through (e).

(3) Penalties suspended under this provision will be deemed waived if the violator complies with all provisions of the administrative order and remains in compliance for a period of one year from the date of compliance with the administrative order. (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1107, 1998 MAR p. 2754, Eff. 10/9/98.)



ENVIRONMENTAL QUALITY

CHAPTER 30

WATER QUALITY

Subchapter 20

*✓ Repeal*

Assessment of Administrative Penalties for  
Violations of Water Quality Act

Rule ✓17.30.2001 Definitions

Rule 17.30.2002 reserved

✓17.30.2003 Enforcement Actions for Administrative Penalties

Rule 17.30.2004 reserved

17.30.2005 Formula for Determining Administrative Penalties (REPEALED)

17.30.2006 Extent and Gravity of the Violation (REPEALED)

## Subchapter 20

Assessment of Administrative Penalties for  
Violations of Water Quality Act

17.30.2001 DEFINITIONS For purposes of ARM 17.30.2001 through 17.30.2004, the following terms have the meanings or interpretations indicated below and must be used in conjunction with and supplemental to those definitions contained in 75-5-103, MCA:

- (1) "Class I violation" means:
  - (a) a violation of a department order;
  - (b) a discharge of waste that enters state waters without a permit, or in a quantity or quality not authorized by a permit, unless the discharge falls under (3)(c) of this rule as a Class III violation;
  - (c) failure to comply with a requirement regarding notification of a spill, bypass or upset condition that results in an unpermitted discharge to state waters;
  - (d) violation of a permit compliance plan or schedule;
  - (e) failure to provide reasonable access to premises or records when required by 75-5-603, MCA, a permit, or an order; or
  - (f) a violation that causes a major harm or poses a major risk of harm to public health or the environment.
- (2) "Class II violation" means:
  - (a) construction, operation, or modification of a disposal system without first obtaining the appropriate permit;
  - (b) failure to submit a report or plan, as required by rule, permit, or license and not otherwise classified in this rule;
  - (c) placement of wastes in a location that will cause pollution of state waters;
  - (d) failure to monitor in accordance with a permit;
  - (e) failure to pay a permit fee as required by department rule or order; or
  - (f) any violation that is not otherwise classified in this rule.
- (3) "Class III violation" means:
  - (a) failure to submit a discharge monitoring report of sample analyses by the time specified in an applicable permit;
  - (b) failure to submit a complete discharge monitoring report;
  - (c) exceeding a permit condition limiting biochemical oxygen demand (BOD), carbonaceous biochemical oxygen demand (CBOD), or total suspended solids (TSS) by a concentration of 20% or less, or exceeding a mass loading limitation by 10% or less;
  - (d) violation of a removal efficiency requirement by a factor of less than 0.2 times the number value of the difference between 100 and the applicable removal efficiency requirement; or
  - (e) violation of a pH requirement by less than 0.5 pH.

(4) "Compliance" means meeting requirements of the Water Quality Act, Title 75, chapter 5, MCA, ARM Title 17, chapter 30, and any permit, authorization, or order issued under any of these authorities.

(5) "Permit" means a Montana ground water pollution control system or Montana pollutant discharge elimination system permit issued under ARM Title 17, chapter 30, subchapters 10 and 13 respectively; or an authorization under ARM 17.30.637(3).

(6) "Requirement" means any applicable provision of the Water Quality Act (Title 75, chapter 5, MCA), or its implementing rules (ARM Title 17, chapter 30), or any provision of a permit, authorization, or order issued under any of these authorities.

(7) "Violation", unless otherwise specified within a rule, means a transgression of any requirement of the Water Quality Act, Title 75, chapter 5, MCA, ARM Title 17, chapter 30, and any permit, authorization, or order issued under any of these authorities. (History: 75-5-201, MCA; IMP, 75-5-611, MCA; NEW, 1998 MAR p. 940, Eff. 4/17/98; AMD, 2006 MAR p. 1139, Eff. 5/5/06.)

Rule 17.30.2002 reserved

17.30.2003 ENFORCEMENT ACTIONS FOR ADMINISTRATIVE PENALTIES (1) Before initiating an administrative penalty action under this rule, the department shall issue a notice letter, in accordance with 75-5-617, MCA, notifying the person of the violation and requiring compliance. The department is not required to issue a notice letter under 75-5-617, MCA, if the violation represents an imminent threat to human health, safety, or welfare or to the environment.

(2) Upon determination that a violation has occurred, the department may initiate an administrative penalty action in accordance with 75-5-611, MCA, and this rule. Except for a violation specified under (7), the department shall first issue a written notice letter to a violator by certified mail or personal delivery that:

(a) contains the information required in 75-5-611(1), MCA, including the amount of penalty proposed for assessment under (6);

(b) explains how the penalty was calculated;

(c) describes the violator's opportunities for administrative appeal or for informal conference with the department; and

(d) discloses that, unless the alleged violation is vacated or dismissed, the department will include the alleged violation in violator's history for purposes of assessing penalties for any future violations even though this violation may ultimately be resolved without assessment of a penalty.

(3) Refusal to accept delivery of the notice letter does not render service incomplete.

(4) A notice letter issued in accordance with (2) satisfies the notice letter requirement in (1).

(5) Except as provided in (7), the department may not assess a penalty for a violation cited in the notice letter if the violator submits to the department in writing within the time specified in the notice letter:

(a) a response signed by the violator certifying that its activity was, or is now, in compliance with all requirements cited in the notice letter; or

(b) a proposal that describes a plan and schedule for corrective action that will bring the activity into timely compliance with the requirements cited in the notice letter and that is approved by the department.

(i) The department shall respond to a proposed corrective action plan within 30 days either approving or disapproving the proposed plan.

(6) If, after completing the requirements of (2), the department determines that the violator has not adequately responded as required in (5), the department may issue an administrative notice and order that assesses a penalty.

(a) The administrative notice and order must contain, as applicable, the information described in (2).

(b) If the department finds that a violator is not in compliance as certified under (5), or if a violator fails to adhere to the requirements of the plan and schedule for corrective action approved under (5)(b), the department may without further notice issue an administrative notice and order assessing a penalty.

(7) In lieu of the notice letter under (2), the department may issue an administrative notice together with an administrative order if the department's action:

(a) does not involve assessment of an administrative penalty; or

(b) seeks an administrative penalty only for an activity that the department believes and alleges was or is a violation of 75-5-605, MCA, and the violation was or is:

(i) a class I violation as described in ARM 17.30.2001(1); or

(ii) a violation of major extent and gravity as described in ARM 17.4.303.

(8) The department shall calculate a penalty in accordance with ARM 17.4.301 through 17.4.308.

(9) Nothing in this rule may be construed as limiting the department's authority under Title 75, chapter 5, MCA, to address violations through administrative compliance or cleanup orders or through judicial actions for penalties or injunctive relief. (History: 75-5-201, MCA; IMP, 75-5-611, MCA; NEW, 1998 MAR p. 940, Eff. 4/17/98; AMD, 2002 MAR p. 1749, Eff. 6/28/02; AMD, 2006 MAR p. 1874, Eff. 5/5/06.)

Rule 17.30.2004 reserved

17.30.2005 FORMULA FOR DETERMINING ADMINISTRATIVE PENALTIES (REPEALED) (History: 75-5-201, MCA; IMP, 75-5-611, MCA; NEW, 1998 MAR p. 940, Eff. 4/17/98; REP, 2006 MAR p. 1139, Eff. 5/5/06.)

17.30.2006 EXTENT AND GRAVITY OF THE VIOLATION (REPEALED) (History: 75-5-201, MCA; IMP, 75-5-611, MCA; NEW, 1998 MAR p. 940, Eff. 4/17/98; REP, 2006 MAR p. 1139, Eff. 5/5/06.)

17.30.2005 FORMULA FOR DETERMINING ADMINISTRATIVE PENALTIES (1) Subject to (7) of this rule and the limits provided in 75-5-611, MCA, the department shall determine the penalty in accordance with the point system set out in this rule.

(2) The department shall assign points for each violation based on the following criteria:

(a) The department shall consider the nature, extent, and gravity of the violation. The nature of the violation must be classified and its extent and gravity determined in accordance with ARM 17.30.2006. Points must then be assessed in accordance with the following matrix:

<u>Nature of violation</u>	<u>Extent and gravity of violation</u>		
	<u>minor</u>	<u>moderate</u>	<u>major</u>
class I:	31 - 36	37 - 43	44 - 50
class II:	16 - 20	21 - 25	26 - 30
class III:	1 - 5	6 - 10	11 - 15

(b) The department shall consider the circumstances of the violation. If a violation has occurred through no negligence on the part of the violator, it must not be assigned points under this category. A violation involving ordinary negligence, which is failure to exercise toward the violated legal requirement the care ordinarily exercised by a person of common prudence, must be assigned 1 to 15 points depending upon the degree of negligence. If the violation occurred due to gross negligence which is gross or reckless disregard for the violated legal requirement, or intentional conduct, it must be assigned 16 to 30 points depending upon the degree of fault.

(c)(i) In calculating a penalty, the department shall consider the violator's history of violations within 3 years prior to the date of the violation for which a penalty is being assessed. One point must be assigned for each class III violation; 3 points for each class II violation; and 5 points for each class I violation. Except as provided in (ii) below, any violation of which the violator has received written notice must be counted regardless of whether further enforcement action was taken.

(ii) A violation must not be counted if:

(A) the notice or order was vacated; or

(B) the notice or order is subject to a pending administrative or judicial action or if the time to request review or to appeal any administrative or judicial decision has not expired.

17.30.2005

ENVIRONMENTAL QUALITY

(d) The department shall consider voluntary mitigation. If the violator takes measures beyond those required by law to address or mitigate the violation or the impacts of the violation to waters of the state, 1 to 10 points may be deducted from the total points assigned depending on the amount voluntarily expended. No points may be deducted for corrective actions conducted by the violator pursuant to a department permit, notice or order.

(3) The points from (2)(a) through (d) of this rule are totaled and the amount of penalty must be determined from the following point schedule:

## WATER QUALITY

17.30.2005

<u>Points</u>	<u>Dollars</u>	<u>Points</u>	<u>Dollars</u>
10 and below	\$200	56	\$3,600
11	\$220	57	\$3,700
12	\$240	58	\$3,800
13	\$260	59	\$3,900
14	\$280	60	\$4,000
15	\$300	61	\$4,100
16	\$320	62	\$4,200
17	\$340	63	\$4,300
18	\$360	64	\$4,400
19	\$380	65	\$4,500
20	\$400	66	\$4,600
21	\$420	67	\$4,700
22	\$440	68	\$4,800
23	\$460	69	\$4,900
24	\$480	70	\$5,000
25	\$500	71	\$5,100
26	\$600	72	\$5,200
27	\$700	73	\$5,300
28	\$800	74	\$5,400
29	\$900	75	\$5,500
30	\$1,000	76	\$5,600
31	\$1,100	77	\$5,700
32	\$1,200	78	\$5,800
33	\$1,300	79	\$5,900
34	\$1,400	80	\$6,000
35	\$1,500	81	\$6,200
36	\$1,600	82	\$6,400
37	\$1,700	83	\$6,600
38	\$1,800	84	\$6,800
39	\$1,900	85	\$7,000
40	\$2,000	86	\$7,200
41	\$2,100	87	\$7,400
42	\$2,200	88	\$7,600
43	\$2,300	89	\$7,800
44	\$2,400	90	\$8,000
45	\$2,500	91	\$8,200
46	\$2,600	92	\$8,400
47	\$2,700	93	\$8,600
48	\$2,800	94	\$8,800
49	\$2,900	95	\$9,000
50	\$3,000	96	\$9,200
51	\$3,100	97	\$9,400
52	\$3,200	98	\$9,600
53	\$3,300	99	\$9,800
54	\$3,400	100 and above	\$10,000
55	\$3,500		



(4) The penalty amount determined under (3) of this rule is multiplied by the number of days on which the practice or condition constituting the violation has occurred, subject to the limits provided in 75-5-611, MCA.

(5) The department shall determine any economic benefit or savings that the violator gained as a result of the violation. The department shall use the best information reasonably available to it at the time of calculating the penalty to determine the economic benefit or savings. The dollar value of the economic benefit or savings, if any, shall be added to the penalty amount calculated in (1) through (4) of this rule to determine the total penalty amount.

(6)(a) If the violator is unable to immediately pay the full penalty amount, the department may place the violator on a payment schedule with interest on the unpaid balance at the rate assessed by the Montana department of revenue on income tax due.

(b) The department may reduce a penalty determined under this rule based on the violator's inability over the long term to pay the full penalty amount pursuant to (a) above. If the violator seeks to reduce the penalty based on its inability to pay the penalty, the violator shall provide to the department documentary evidence demonstrating the violator's financial limitations. However, the full penalty amount may not be lowered to a value less than the violator's economic benefit resulting from the violation.

(c) To be eligible for a penalty reduction based on inability to pay the penalty, the violator must show that the violation was not intentional or flagrant.

(7) The department may waive the point system if it finds that exceptional factors make use of the point system demonstrably unjust or demonstrably inadequate as a deterrent. The department shall set forth the basis for waiver in writing. The department may not waive use of the point system or reduce the penalty on the basis that a reduction in the penalty could be used to offset the costs of abating the violation. If the department waives the use of the point system, it shall use the criteria listed in this rule, but not the points attributable thereto, and other matters that justice may require to determine the amount of penalty. (History: 75-5-201, MCA; IMP, 75-5-611, MCA; NEW, 1998 MAR p. 940, Eff. 4/17/98.)

17.30.2006 EXTENT AND GRAVITY OF THE VIOLATION (1) For the purpose of ARM 17.30.2001 through 17.30.2006, the extent and gravity of the violation must be characterized as major, moderate, or minor according to the following criteria:

(a) A violation is "major" if:

(i) the violation presents a high likelihood of exposing humans to significant pollution; or

(ii) the violator deviates from the applicable requirements such that there is significant noncompliance in terms of both degree of deviation and length of time.

(b) A violation is "moderate" if:

(i) the violation has exposed or will likely expose state waters, but probably not humans, to significant pollution; or

(ii) the violator deviates from applicable requirements such that there is significant noncompliance in terms of either degree of deviation or length of time, but not both.

(c) A violation is "minor" if:

(i) the violation poses a relatively low likelihood of exposing humans and a low likelihood of exposing state waters to significant pollution; and

(ii) the violator deviates from applicable requirements but not to the extent that there is significant noncompliance in terms of either degree of deviation or length of time.

(History: 75-5-201, MCA; IMP, 75-5-611, MCA; NEW, 1998 MAR p. 940, Eff. 4/17/98.)