

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.30.1202, 17.30.1203, 17.30.1304,)
17.30.1322, 17.30.1331, 17.30.1340,)
17.30.1341, 17.30.1342, 17.30.1344,)
17.30.1345, 17.30.1346, 17.30.1350,)
17.30.1354, 17.30.1361, and 17.30.1372)
pertaining to MPDES program updates)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

(WATER QUALITY)

TO: All Concerned Persons

1. On June 16, 2020, at 1:00 p.m., the Board of Environmental Review (board) will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer no later than 5:00 p.m., June 9, 2020, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

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

17.30.1202 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter:

(1) through (29) remain the same.

(30) "New facility" means any building, structure, facility, or installation that meets the definition of a "new source" in ~~ARM 17.30.1304(37)(a) and (b)~~ or "new discharger" in ~~ARM 17.30.1304(36)~~ and that is a greenfield or stand-alone facility, commences construction after January 17, 2002, and uses either a newly constructed cooling water intake structure, or an existing cooling water intake structure whose design capacity is increased to accommodate the intake of additional cooling water. New facilities include only "greenfield" and "stand-alone" facilities. A greenfield facility is a facility that is constructed at a site at which no other source is located, or that totally replaces the process or production equipment at an existing facility. A stand-alone facility is a new, separate facility that is constructed on property where an existing facility is located and whose processes are substantially independent of the existing facility at the same site. New facility does not include new units that are added to a facility for purposes of the same general industrial operation (for example, a new peaking unit at an electrical generating station).

(a) through (38) remain the same.

AUTH: 75-5-304, MCA
IMP: 75-5-304, 75-5-401, MCA

REASON: The board is proposing to amend (30) to correct the references for the definitions of "new source" and "new discharger" by removing the erroneous subsections referred to in ARM 17.30.1304.

17.30.1203 CRITERIA AND STANDARDS FOR IMPOSING TECHNOLOGY-BASED TREATMENT REQUIREMENTS IN MPDES PERMITS - VARIANCE PROCEDURES (1) remains the same.

(2) For POTWs, effluent limitations must be based upon:

~~(a) secondary treatment as defined in 40 CFR Part 133, from date of permit issuance; and~~

~~(b) the best practicable waste treatment technology, not later than July 1, 1983.~~

(3) through (14) remain the same.

AUTH: 75-5-304, MCA
IMP: 75-5-304, 75-5-401, MCA

REASON: The board is proposing to amend (2) to maintain consistency with the federal regulations at 40 CFR 125.3, the federal rule implementing technology-based treatment requirements in permits. The board proposes to delete ARM 17.30.1203(2)(b) because it is outdated, and its corresponding federal requirement has been removed from 40 CFR 125.3.

The board is also proposing the editorial change of combining (2) and (2)(a) into one rule.

17.30.1304 DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and shall be used in conjunction with and are supplemental to those definitions contained in 75-5-103, MCA.

(1) and (2) remain the same.

~~(3)(a)~~ "Animal feeding operation" means:

(a) a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

(ii) crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) Two or more animal feeding operations under common ownership are considered, for the purposes of these rules, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(4) through (50) remain the same.

(51) "Pesticide discharges from pesticide application" means the discharges that result from the application of biological pesticides, and the application of chemical pesticides that leave a residue, from point sources into surface water. In the context of this definition, this does not include agricultural storm water discharges and return flows from irrigated agriculture.

(52) "Pesticide residue" means that portion of a pesticide application that is discharged from a point source into surface water and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

(51) through (79) remain the same but are renumbered (53) through (81).

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

IMP: 75-5-401, MCA

REASON: The board is proposing to amend the definitions found in ARM 17.30.1304 to maintain consistency with requirements at 40 CFR 122.2, the federal rule defining terms used in the National Pollutant Discharge Elimination System regulations. The definitions will ensure consistency with federal regulatory updates found in 40 CFR 122.2.

The board is proposing editorial changes to (3) to maintain consistency with current Secretary of State formatting procedures.

The board is proposing to add (51) pesticide discharges from pesticide application to increase clarity regarding discharges that require MPDES permit coverage, and to be consistent with the federal regulations at 40 CFR 122.2.

The board is proposing to add a definition of pesticide residue to clarify which discharges from application of pesticides will require MPDES permits. Proposed (52) is consistent with the federal definition of pesticide residue at 40 CFR 122.2.

The board is also proposing to renumber current definitions (51) through (79) as (53) through (81).

17.30.1322 APPLICATION FOR A PERMIT (1) Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by general permits under ARM 17.30.1341, excluded under ARM 17.30.1310, or a user of a privately owned treatment works unless the department requires otherwise under ARM 17.30.1344, shall submit a complete application to the department in accordance with this rule and ARM 17.30.1364 and 17.30.1365, 17.30.1370 through 17.30.1379, and 17.30.1383.

(a) All applicants for MPDES permits shall submit applications on department permit application forms. More than one application form may be required from a facility depending on the number and types of discharges or outfalls found there. Application forms may be obtained by contacting the Water Protection Bureau at (406) 444-3080 5546; Department of Environmental Quality, Water Protection Bureau, 1520 East Sixth Avenue, P.O. Box 200901, Helena, MT 59620-0901; or on the department's web site at <http://deq.mt.gov/default.mcp.x>.

(b) through (5) remain the same.

(6) All applicants for MPDES permits, other than POTWs, shall provide the following information to the department, using the department's application Form 1. Additional information required of applicants is set forth in (7) through (17):

(a) and (b) remain the same.

(c) up to four standard industrial category (SIC) codes and up to four North American Industry Classification System (NAICS) codes which best reflect the principal products or services provided by the facility;

(d) the operator's name, address, telephone number, electronic mail address, ownership status, and status as federal, state, private, public, or other entity;

(e) through (g)(iii) remain the same.

(iv) those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area; ~~and~~

(h) a brief description of the nature of the business;

(i) an indication of whether the facility uses cooling water and the source of the cooling water; and

(j) an indication of whether the facility is requesting any of the variances at (13), if known at the time of the application.

(7) Existing manufacturing, commercial, mining, and silvicultural dischargers applying for MPDES permits, except for those facilities subject to the requirements of (8), shall provide the following information to the department, using application forms provided by the department:

(a) through (g)(ix)(B) remain the same.

(x) where quantitative data are required in (7)(g)(i) through (ix), existing data may be used, if available, in lieu of sampling done solely for the purpose of application, provided that:

(A) all data requirements are met; sampling was performed, collected, and analyzed no more than four and one-half years prior to submission;

(B) all data are representative of the discharge; and

(C) all available representative data are considered in the values reported;

(h) through (9) remain the same.

(10) New manufacturing, commercial, mining, and silvicultural dischargers applying for MPDES permits (except for new discharges of facilities subject to the requirements of (8) or new discharges of storm water associated with industrial activity that are subject to the requirements of (11)) shall provide the following information to the department, using application forms provided by the department:

(a) through (e)(vi) remain the same.

(vii) No later than ~~two years~~ 24 months after the commencement of discharge from the proposed facility, the applicant is required to complete and submit forms prescribed by the department. However, the applicant need not complete those portions of the forms requiring tests which he has already performed and reported under the discharge monitoring requirements of his MPDES permit;

(f) through (11) remain the same.

(12) Unless otherwise indicated, all new and existing publicly owned treatment works (POTWs) and other dischargers designated by the department, shall provide, at a minimum, the information in (a) through (h) to the department, using Form 2A. Permit applicants shall submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The department may waive any requirement of (a) through (h), if the department has access to substantially identical information. The department may also waive any requirement of (a) through (h) that

is not of material concern for a specific permit, if approved by EPA. The waiver request to the EPA must include the department's justification for the waiver. The EPA's disapproval of the proposed waiver does not constitute final agency action, but does provide notice to the department and permit applicant that EPA may object to any MPDES permit issued in the absence of the required information.

(a) All applicants shall provide the following basic information:

(i) remains the same.

(ii) name, mailing address, ~~and~~ telephone number, and electronic mail address of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;

(iii) through (viii)(C) remain the same.

(D) for effluent sent to another facility for treatment prior to discharge:

(I) remains the same.

(II) the name, mailing address, contact person, ~~and~~ phone number, and electronic mail address of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(III) the name, mailing address, contact person, phone number, electronic mail address, and MPDES permit number (if any) of the receiving facility; and

(IV) through (E) remain the same.

(ix) An indication of whether the applicant is operating under or requesting to operate under a variance as specified at (14), if known at the time of application.

(b) and (c) remain the same.

(d) As specified in (i) through (ix), all applicants shall submit to the department effluent monitoring information for samples taken from each outfall through which effluent is discharged to state surface waters. The department may allow applicants to submit sampling data for only one outfall, on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The department may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone. For POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge.

(i) through (ix) remain the same.

(e) All applicants shall provide an identification of any whole effluent toxicity tests conducted during the four and one-half years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge. For POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge.

(i) through (ix) remain the same.

(f) Applicants shall submit the following information about industrial discharges to the POTW:

(i) number of significant industrial users (SIUs) and non-significant categorical industrial users (NSCIUs), including SIUs and NSCIUs that truck or haul waste, discharging to the POTW; and

(ii) through (h) remain the same.

(i) All applicants shall provide the name, mailing address, telephone number, electronic mail address, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility.

(j) through (18) remain the same.

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

IMP: 75-5-401, MCA

REASON: The board is proposing to amend MPDES permit application requirements in this rule to maintain consistency with the federal rules in 40 CFR 122.21, which were amended in June 2019 to improve application consistency, accuracy, and usability. As an authorized state program, the MPDES program must collect all application information required in federal regulations at 40 CFR 122.21.

The board is proposing to amend (1)(a) to maintain consistency with the federal update at 40 CFR 122.21(a)(2) by updating department contact information for obtaining application forms. Providing up-to-date contact information will save the permitting authorities and the public time when they seek to inquire about application requirements.

The board is proposing to amend (6)(c) to maintain consistency with the federal rule at 40 CFR 122.21(f)(3). This federal rule requires all facilities except publicly owned treatment works to include North American Industry Classification System (NAICS) codes in addition to the Standard Industrial Classification (SIC) codes that reflect the products or services provided by the facility. While some Clean Water Act regulations use SIC codes, they have not been updated since 1987. The NAICS codes are the federal data standard typically used to identify and classify industrial operations. Applicants will be required to provide both codes.

The board is proposing to amend (6)(d) to maintain consistency with the federal rule at 40 CFR 122.21(f)(4). This federal rule requires applicants that are not POTWs to provide an electronic mailing address (email).

The board is proposing to amend (6) by adding (6)(i) and (6)(j) to maintain consistency with the federal rules found at 40 CFR 122.21(f)(9) and (f)(10), respectively. The new provision of (6)(i) will require applicants to indicate whether the facility uses cooling water, and the source of cooling water. The new provision of (6)(j) will require applicants to indicate whether the facility is requesting any of the variances at (13). By requiring indication of the use and source of cooling water, or the intent to request a variance, DEQ will receive key information necessary to effectively develop an MPDES permit for the facility.

The board is proposing to add new (7)(g)(x) to maintain consistency with the federal rule at 40 CFR 122.21(g)(7)(ix), which allows existing non-publicly-owned treatment works (Non-POTW) applicants to use data up to four and one-half years prior to the date of application, but does not require four and one-half years of data. This new regulation also clarifies that existing data may only be used where they remain representative of the current discharge characteristics.

The board is proposing to amend (10)(e)(vii) to maintain consistency with the federal rule 40 CFR 122.21(k)(5)(vi). This is an editorial change that provides clarity to the allowed timeframe for new dischargers to submit data.

The board is proposing to amend (12)(a)(ii) to maintain consistency with the federal rule at 40 CFR 122.21(j)(1)(ii) in requiring applicants to provide an electronic mailing address (email) of the facility's owner, operator, or both.

The board is proposing to amend (12)(a)(viii)(D)(II) to maintain consistency

with the rule at 40 CFR 122.21(j)(1)(viii)(D)(2) in requiring POTW applicants that send effluent to another facility for treatment prior to discharge to provide the email address of the organization transporting the effluent.

The board is proposing to amend (12)(a)(viii)(D)(III) to maintain consistency with the federal rule at 40 CFR 122.21(j)(1)(viii)(D)(3) in requiring POTW applicants that send effluent to another facility for treatment prior to discharge to provide the email address of the facility that receives the transported effluent.

The board is proposing new (12)(a)(ix) to maintain consistency with the federal rule at 40 CFR 122.21(j)(1)(ix). This federal rule requires new and existing POTWs to indicate on their application whether they are operating or requesting to operate under a variance as specified at (14).

The board is proposing to amend (12)(d) and (12)(e) to maintain consistency with the federal rules at 40 CFR 122.21(j)(4)(i) and (j)(5)(i), respectively. These federal rules specify deadlines for new POTW dischargers to submit data after commencement of discharge.

The board is proposing to amend (12)(f)(i) to maintain consistency with the federal rule at 40 CFR 122.21(j)(6)(i). This federal rule requires POTW applicants to indicate the number of non-significant categorical industrial users (NSCIUs) instead of categorical industrial users (CIUs). This will clarify whether wastewater accepted from these facilities might be uncharacteristic of domestic sewage, because CIUs are categorized as either SIUs or NSCIUs. The proposed amendment also requires applicants to include SIUs and NSCIUs that truck or haul waste to ensure that the reported number include all SIUs and NSCIUs that contribute waste to the POTW, not only those directly connected to the POTW.

The board is proposing to amend (12)(i) to maintain consistency with the federal rule at 40 CFR 122.21(j)(9) in requiring applicants to provide an electronic mailing address of contractors responsible for operational and maintenance of the facility.

17.30.1331 CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES AND AQUACULTURE PROJECTS (1) through (5) remain the same.

(6) The board hereby adopts and incorporates herein by reference Appendix C of 40 CFR Part 122 which is an appendix to a federal agency rule setting forth criteria for determining whether a facility or operation merits classification as a concentrated aquatic animal production facility. ~~See ARM 17.30.1303 for complete information about all materials incorporated by reference.~~

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

REASON: The board is proposing to amend (6) by removing the reference to ARM 17.30.1303, which was repealed in 2012.

17.30.1340 NEW SOURCES AND NEW DISCHARGERS (1) Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in ARM 17.30.1304(37), and:
(a) through (c) remain the same.

(2) A source meeting the requirements of (1)(a), (b), or (c) is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger. (See ARM 17.30.1304(36).)

(3) remains the same.

(4) Construction of a new source as defined under ARM 17.30.1304(37) has commenced if the owner or operator has:

(a) through (9) remain the same.

~~(10) The board hereby adopts and incorporates herein by reference 40 CFR 125.3, which is a federal agency rule setting forth technology-based treatment requirements for point source dischargers. See ARM 17.30.1303 for complete information about all materials incorporated by reference.~~

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

IMP: 75-5-401, MCA

REASON: The board is proposing to amend (1) and (4) to eliminate the incorrect referenced section of ARM 17.30.1304(37), which refers to indirect discharger instead of new source. The board is proposing to amend (2) by removing the incorrect referenced section of ARM 17.30.1304(36), which refers to impingement instead of new discharger. ARM 17.30.1304 is the board's rule that is equivalent to 40 CFR 122.2, the federal rule definitions terms for the NPDES program.

The board is proposing to remove as redundant (10). The board has internal rules at ARM 17.30.1203 which are equivalent to 40 CFR 125.3, the federal rules setting forth technology-based treatment requirements for point source dischargers. The changes will also maintain consistency with federal rules at 40 CFR 122.29, the federal rules which sets forth conditions for new sources and new dischargers. The board is proposing to remove the reference to ARM 17.30.1303, which was repealed in 2012.

17.30.1341 GENERAL PERMITS (1) through (3) remain the same.

(4) A person owning or proposing to operate a point source who wishes to operate under a MPDES general permit shall complete a standard MPDES application or notice of intent form available from the department for the particular general permit. Except for notices of intent, the department shall, within 30 days of receiving a completed application, either issue to the applicant an authorization to operate under the MPDES general permit, or shall notify the applicant that the source does not qualify for authorization under a MPDES general permit, citing one or more of the following reasons as the basis for denial:

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

(i) through (v) remain the same.

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

(vii) through (13) remain the same.

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

REASON: The board is proposing to amend (4)(a)(vii) to clarify this reference is to the federal Clean Water Act, not the Montana Water Quality Act.

17.30.1342 CONDITIONS APPLICABLE TO ALL PERMITS The following conditions apply to all MPDES permits. Additional conditions applicable to MPDES permits are set forth in ARM 17.30.1344. All conditions applicable to MPDES permits must be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these rules must be given in the permit.

(1) through (9) remain the same.

(10) Monitoring and records:

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

(b) through (11) remain the same.

(12) Reporting requirements:

(a) The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(i) through (e) remain the same.

(f) Twenty-four hour reporting:

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission must also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) through (h) remain the same.

(13) Other noncompliance:

(a) The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of (b) and (c).

(b) through (d) remain the same.

(14) Upset Conditions:

(a) Effect of an upset: An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of (b) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(b) Conditions necessary for demonstration of an 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:

(i) through (iv) remain the same.

(c) Burden of proof: In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) The board hereby adopts and incorporates herein by reference ~~(see ARM 17.30.1303 for complete information about all materials incorporated by reference)~~:

(a) and (b) remain the same.

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

IMP: 75-5-401, MCA

REASON: The board is proposing editorial changes to (10), (12) and (13) to maintain consistency with current Secretary of State formatting procedures.

The board is proposing editorial changes at (14) to clarify upset conditions and to maintain consistency with the current Secretary of State formatting procedures.

The board is proposing to amend (15) by removing the reference to ARM 17.30.1303, which was repealed in 2012.

17.30.1344 ESTABLISHING LIMITATIONS, STANDARDS, AND OTHER PERMIT CONDITIONS (1) remains the same.

(2) The board hereby adopts and incorporates herein by reference ~~(see ARM 17.30.1303 for complete information about all materials incorporated by reference)~~:

(a) through (i) remain the same.

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

IMP: 75-5-401, MCA

REASON: The board is proposing to amend (2) by removing the reference to ARM 17.30.1303, which was repealed in 2012.

17.30.1345 CALCULATING MPDES PERMIT CONDITIONS (1) remains the same.

(2) Production-based limitations.

(a) remains the same.

(b)(i) Except in the case of POTW's, or as provided in (3), calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) must be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production must be estimated using projected production. The time period of the measure of production must correspond to the time period of the calculated permit limitations; for example, monthly production must be used to calculate average monthly discharge limitations.

(3) and (4) remain the same.

(5) All permit effluent limitations, standards, or prohibitions for a metal must be expressed in terms of "total recoverable metal" as defined in 40 CFR Part 136

unless:

- (a) remains the same.
- (b) in establishing permit limitations on a case-by-case basis under ~~40 CFR 125.3~~ ARM 17.30.1203, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the Act; or
- (c) through (7) remain the same.
- (8) Mass limitations:
 - (a) All pollutants limited in permits must have limitations, standards, or prohibitions expressed in terms of mass except:
 - (i) through (b) remain the same.
- (9) Pollutants in intake water:
 - (a) Upon request of the discharger, technology-based effluent limitations or standards must be adjusted to reflect credit for pollutants in the discharger's intake water if:
 - (i) through (e) remain the same.
- (10) Internal waste streams:
 - (a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by ARM 17.30.1344, in accordance with 40 CFR 122.44(i), must also be applied to the internal waste streams.
 - (b) and (11) remain the same.
- (12) The board hereby adopts and incorporates herein by reference ~~(see ARM 17.30.1303 for complete information about all materials incorporated by reference):~~

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

IMP: 75-5-401, MCA

REASON: The board is proposing editorial changes to (2) to maintain consistency with the Secretary of State formatting procedures.

The board is proposing to amend (5)(b) to correct the reference for establishing effluent limitations on a case-by-case basis from 40 CFR 125.3 to the internal reference ARM 17.30.1203. ARM 17.30.1203 is the board's rule that is equivalent to 40 CFR 125.3.

The board is proposing editorial changes to (8), (9), and (10) to maintain consistency with current Secretary of State formatting procedures.

The board is proposing to amend (12) by removing the reference to ARM 17.30.1303, which was repealed in 2012.

17.30.1346 DURATION OF PERMITS (1) through (5) remain the same.

(6) The board hereby adopts and incorporates herein by reference sections 301(b)(2)(A), (C), (E), and (F) of the federal Clean Water Act, 33 USC 1251, et seq., which set forth deadlines for achieving effluent limitations and treatment of toxic pollutants. ~~See ARM 17.30.1303 for complete information about all materials~~

incorporated by reference.

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

REASON: The board is proposing to amend (6) by removing the reference to ARM 17.30.1303, which was repealed in 2012.

17.30.1350 SCHEDULES OF COMPLIANCE (1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Act and rules adopted thereunder, ~~specifically including any applicable requirements under ARM Title 17, chapter 30, subchapter 12.~~

(a) Any schedules of compliance under this rule must require compliance as soon as possible, but not later than any the applicable statutory deadline under the Act or under the federal Clean Water Act ~~as codified at 33 USC 1311(b)(2)(A), (C), (D), (E), and (F).~~

(b) through (2) remain the same.

~~(3) The board hereby adopts and incorporates herein by reference the federal Clean Water Act 33 USC 1311(b)(2)(A), (C), (E), and (F) which set forth deadlines for achieving effluent limitations and treatment of toxic pollutants. See ARM 17.30.1303 for complete information about all materials incorporated by reference. Copies of these materials are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.~~

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

REASON: The board is proposing to amend this rule to maintain consistency with the federal rules at 40 CFR 122.47. This federal rule sets forth conditions of compliance schedules for permits. The board is proposing to amend (1) by removing the reference to ARM Title 17, chapter 30, subchapter 12, which contains the board's rules for technology-based treatment requirements, to which compliance schedules do not apply.

The board is proposing to amend (1)(a) by removing the references to 33 USC 1311(b)(2)(A), (C), (E), and (F), which are outdated and no longer applicable.

The board is proposing to remove (3), which is outdated and no longer applicable.

17.30.1354 DISPOSAL OF POLLUTANTS INTO WELLS, INTO PUBLICLY OWNED TREATMENT WORKS, OR BY LAND APPLICATION (1) through (3) remain the same.

(4) The board ~~hereby~~ adopts and incorporates ~~herein~~ by reference 40 CFR Part 125, subpart D, which is a series of federal agency rules setting forth criteria and standards for determining eligibility for a variance from effluent limitations based on fundamentally different factors (FDF). ~~See ARM 17.30.1303 for complete information about all materials incorporated by reference.~~

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

REASON: The board is proposing to amend (4) by removing the reference to ARM 17.30.1303, which was repealed in 2012.

17.30.1361 MODIFICATION OR REVOCATION AND REISSUANCE OF PERMITS (1) and (2) remain the same.

(3) The following are causes to modify or, alternatively, revoke and reissue a permit:

(a) remains the same.

(b) the department has received notification ~~(as required in the permit, see ARM 17.30.1362(12)(e))~~ of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (ARM 17.30.1360(2)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(4) remains the same.

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

REASON: The board is proposing to amend (3)(b) to maintain consistency with the equivalent federal rule at 40 CFR 122.62. This federal rule sets forth requirements for modification or revocation and reissuance of permits. The board proposes to remove the incorrect reference to ARM 17.30.1362(12)(c). The correct reference for the permittee to give notice to the department is ARM 17.30.1342, but its removal will eliminate redundancy.

17.30.1372 PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD (1) through (4) remain the same.

(5) Public notice of activities described in (1)(a) must be given by the following methods:

(a) by mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this rule may waive his or her rights to receive notice for any classes and categories of permits):

(i) through (v) remain the same.

(vi)~~(A)~~ to any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

~~(B)~~(vii) to each state agency having any authority under state law with respect to the construction or operation of such facility.

(b) and (c) remain the same.

(d) any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation-; and

(e) for major permits and MPDES general permits, in lieu of the requirement for publication of a notice in a daily or weekly newspaper, as described in (5)(b), the department may publish all notices of activities described in (1) to the permitting

authority's public website. If the department selects this option for a draft permit, as defined in ARM 17.30.1304, in addition to meeting the requirements in (6), the department must post the draft permit and fact sheet on the website for the duration of the public comment period.

(6) through (8) remain the same.

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

IMP: 75-5-401, MCA

REASON: The board is proposing editorial changes to (5)(a) to maintain consistency with current Secretary of State formatting procedures.

The board is proposing to add (5)(e) to maintain consistency with the equivalent federal rule set forth in 40 CFR 124.10(c)(2)(iv). This federal rule sets forth requirements for public notice of permit actions. The proposed addition provides an alternative method of providing notice of permit applications and hearings, and affirms flexibility in reaching the public through a variety of methods that would expand public access to applications and draft permits.

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 Sandy Scherer, 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 sscherer@mt.gov, no later than 5:00 p.m., June 19, 2020. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. 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; solar and wind energy bonding, 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 Sandy Scherer, 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 Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

6. Sarah Clerget, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the

hearing.

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

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

BY: /s/ Christine Deveny
CHRISTINE DEVENY
Chair

Certified to the Secretary of State April 21, 2020.