

Minor Industrial
Permit No.: MT0000451

**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.*,

Ash Grove Cement Company

is authorized to discharge from its **Montana City Plant**

located at **100 Highway 518, Clancy, MT 59634**

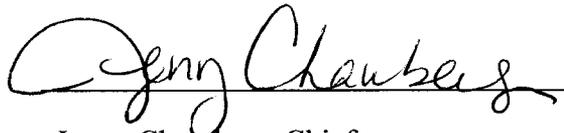
to receiving waters named **Prickly Pear Creek**

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, 2010.**

This permit and the authorization to discharge shall expire at midnight, **October 31, 2015.**

FOR THE MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY



Jenny Chambers, Chief
Water Protection Bureau
Permitting & Compliance Division

Issuance Date: September 27, 2010

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I. EFFLUENT LIMITATIONS, MONITORING REQUIREMENTS & OTHER CONDITIONS

A. Description of Discharge Points and Mixing Zone

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

<u>Outfall</u>	<u>Description</u>
001	Location: at the end of the pipe, discharging into Prickly Pear Creek, located at: latitude 46°32'39" N, longitude 111°55'26" W Mixing Zone: none. Treatment Works: settling ponds.
002	Location: at the end of the pipe, discharging into Prickly Pear Creek, located at: latitude 46°32'43" N, longitude 111°55'24" W. Mixing Zone: none. Treatment Works: settling ponds.
002A	Internal Monitoring Location: <i>Interim:</i> From the effective date of the permit ending at midnight on October 31, 2012, the interim Outfall 002A is located at Outfall 002. <i>Final:</i> Beginning November 1, 2012 and lasting the duration of the permit, the final internal monitoring point will be at the end of the pipe discharging into Holding Pond #3, located at: latitude 46°32'43"N, longitude 111°55'16" W. Mixing Zone: none. Treatment Works: settling ponds.
003	Location: at the end of the pipe, discharging into Prickly Pear Creek, located at: latitude 46° 32' 34"N, longitude 111° 55' 28"W. Mixing Zone: none. Treatment Works: none.

B. Effluent Limitations

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

Effluent Limitations for Outfalls 001 & 002A ^(1,2)			
Parameter	Units	Average Monthly Limit	Maximum Daily Limit
Total Suspended Solids (TSS) ⁽³⁾	mg/L	50	50
pH ⁽⁴⁾	s.u.	6.0 – 9.0	
Footnotes: (1) See Definition section at end of permit for explanation of terms. (2) Until midnight, October 31, 2012, the interim Outfall 002A will be at Outfall 002. As of November 1, 2012, the final Outfall 002A will be the discharge into Holding Pond #3. (3) Ash Grove must not exceed 50 mg/L as an instantaneous maximum, except in case of overflow during a 10-year 24-hour rain event for Outfalls 001 & 002A. (4) pH must be within range of 6.0 – 9.0, except in case of overflow during a 10-year 24-hour rain event for Outfalls 001 & 002A.			

Effluent Limitations for Outfall 002 ⁽¹⁾			
Parameter	Units	Average Monthly Limit	Maximum Daily Limit
pH ⁽²⁾	s.u.	6.0 – 9.0	
Footnotes: (1) See Definition section at end of permit for explanation of terms. (2) pH must be within range of 6.0 – 9.0.			

Effluent Limitations for Outfall 003 ⁽¹⁾			
Parameter	Units	Average Monthly Limit	Maximum Daily Limit
Total Suspended Solids (TSS)	mg/L	50	50
pH ⁽²⁾	s.u.	6.0 – 9.0	
Footnotes: (1) See Definition section at end of permit for explanation of terms. (2) pH must be within range of 6.0 – 9.0.			

pH: Effluent pH shall remain between 6.0 and 9.0 standard units (instantaneous minimum and instantaneous maximum) as listed in the above tables. For compliance purposes, any single analysis or measurement beyond this limitation shall be considered a violation of the pH effluent limitation.

There shall be no discharge of floating solids or visible foam in other than trace amounts [ARM 17.30.637(1)(b)].

There shall be no discharge which causes visible oil sheen in the receiving water [ARM 17.30.637(1)(b)].

C. Monitoring Requirements

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

Ash Grove shall monitor discharges as follows:

- Outfall 001 – at the last point of control prior to Prickly Pear Creek
- Outfall 002A- *Interim*: at Outfall 002. *Final*: beginning on November 1, 2012, at the last point of control prior to Holding Pond #3 (see Special Conditions).
- Outfall 002 - at the last point of control prior to Prickly Pear Creek
- Outfall 003 - at the last point of control prior to Prickly Pear Creek

The Required Reporting Value (RRV) is the detection level that must be achieved in reporting surface water monitoring or compliance data to the Department (Circular DEQ-7). The RRV is the Department's best determination of a level of analysis that can be achieved by the majority of the commercial, university, or governmental laboratories using EPA-approved methods or methods approved by the Department.

The permittee shall collect a grab sample within the first thirty minutes of discharge from any permitted outfall for any discharges which result from precipitation-related events, at minimum. As an alternative to a single grab sample, the permittee may take a flow-weighted composite of either the entire discharge or the first three hours of the discharge. For flow-weighted composite, only one analysis of the composited aliquots is required. Flow weighted composite samples are not allowed for pH and oil and grease.

Effluent Monitoring Requirements Outfall 001 ⁽¹⁾				
Parameter	Unit	RRV	Sample Frequency⁽²⁾	Sample Type
Flow	gpm	--	1/Week	Instantaneous
Total Suspended Solids (TSS)	mg/L	--	1/Month	Grab
pH	s.u.	--	1/Week	Instantaneous
Oil & Grease (visual)	presence/ absence	--	1/Week	Instantaneous
Oil & Grease ⁽³⁾	mg/L	--	Semi-annual	Grab
Sulfates	mg/L	--	Semi-annual	Grab
Aluminum (Dissolved)	mg/L	0.030	Semi-annual	Grab
Arsenic, Total Recoverable ⁽⁴⁾	mg/L	0.003	Semi-annual	Grab
Cadmium, Total Recoverable ⁽⁴⁾	mg/L	0.00008	Semi-annual	Grab
Copper, Total Recoverable ⁽⁴⁾	mg/L	0.001	Semi-annual	Grab
Iron, Total Recoverable ⁽⁴⁾	mg/L	0.05	Semi-annual	Grab
Lead, Total Recoverable ⁽⁴⁾	mg/L	0.0005	Semi-annual	Grab
Zinc, Total Recoverable ⁽⁴⁾	mg/L	0.010	Semi-annual	Grab
Footnotes: (1) See Definitions section at end of permit for explanation of terms. (2) Sample frequency only during periods of discharge. (3) Use EPA Method 1664, Revision A: N-Hexane Extractable Material (HEM), or equivalent. (4) Except for aluminum, metals must be analyzed as total recoverable, use EPA Method (Section) 4.1.4 [EPA 600/4-79-020, March 1983] or equivalent.				

Effluent Monitoring Requirements Outfall 002A ⁽¹⁾				
Parameter	Unit	RRV	Sample Frequency⁽²⁾	Sample Type
Flow	gpm	--	1/Week	Instantaneous
Total Suspended Solids (TSS)	mg/L	--	1/Month	Grab
pH	s.u.	--	1/Week	Instantaneous
Oil & Grease (visual)	presence/ absence	--	1/Week	Instantaneous
Footnotes: (1) See Definitions section at end of permit for explanation of terms. (2) Sample frequency only during periods of discharge.				

Effluent Monitoring Requirements Outfall 002 ⁽¹⁾				
Parameter	Unit	RRV	Sample Frequency⁽²⁾	Sample Type
Flow	gpm	--	1/Week	Instantaneous
pH	s.u.	--	1/Week	Instantaneous
Oil & Grease (visual)	presence/ absence	--	1/Week	Instantaneous
Oil & Grease ⁽³⁾	mg/L	--	Semi-annual	Grab
Sulfates	mg/L	--	Semi-annual	Grab
Aluminum (Dissolved)	mg/L	0.030	Semi-annual	Grab
Arsenic, Total Recoverable ⁽⁴⁾	mg/L	0.003	Semi-annual	Grab
Cadmium, Total Recoverable ⁽⁴⁾	mg/L	0.00008	Semi-annual	Grab
Copper, Total Recoverable ⁽⁴⁾	mg/L	0.001	Semi-annual	Grab
Iron, Total Recoverable ⁽⁴⁾	mg/L	0.05	Semi-annual	Grab
Lead, Total Recoverable ⁽⁴⁾	mg/L	0.0005	Semi-annual	Grab
Zinc, Total Recoverable ⁽⁴⁾	mg/L	0.010	Semi-annual	Grab
Footnotes:				
(1) See Definitions section at end of permit for explanation of terms.				
(2) Sample frequency only during periods of discharge.				
(3) Use EPA Method 1664, Revision A: N-Hexane Extractable Material (HEM), or equivalent.				
(4) Except for aluminum, metals must be analyzed as total recoverable, use EPA Method (Section) 4.1.4 [EPA 600/4-79-020, March 1983] or equivalent.				

Effluent Monitoring Requirements Outfall 003 ⁽¹⁾				
Parameter	Unit	RRV	Sample Frequency ⁽²⁾	Sample Type
Flow	gpm	--	1/Month	Instantaneous
Total Suspended Solids (TSS)	mg/L	--	1/Quarter	Grab
pH	s.u.	--	1/Month	Instantaneous
Oil & Grease (visual)	presence/ absence	--	1/Month	Instantaneous
Oil & Grease ⁽³⁾	mg/L	--	Semi-annual	Grab
Sulfates	mg/L	--	Semi-annual	Grab
Aluminum (Dissolved)	mg/L	0.030	Semi-annual	Grab
Arsenic, Total Recoverable ⁽⁴⁾	mg/L	0.003	Semi-annual	Grab
Cadmium, Total Recoverable ⁽⁴⁾	mg/L	0.00008	Semi-annual	Grab
Copper, Total Recoverable ⁽⁴⁾	mg/L	0.001	Semi-annual	Grab
Iron, Total Recoverable ⁽⁴⁾	mg/L	0.05	Semi-annual	Grab
Lead, Total Recoverable ⁽⁴⁾	mg/L	0.0005	Semi-annual	Grab
Zinc, Total Recoverable ⁽⁴⁾	mg/L	0.010	Semi-annual	Grab

Footnotes:
(1) See Definitions section at end of permit for explanation of terms.
(2) Sample frequency only during periods of discharge.
(3) Use EPA Method 1664, Revision A: N-Hexane Extractable Material (HEM), or equivalent.
(4) Except for aluminum, metals must be analyzed as total recoverable, use EPA Method (Section) 4.1.4 [EPA 600/4-79-020, March 1983] or equivalent.

Reporting Requirements

Average Monthly Limit (AML)

The AML or 30-day average is the Arithmetic Average or mean of all of the Daily Discharge samples collected during a calendar month, as defined in Part V of the permit. If only one sample is collected then it is considered the 30-day average and reported on the Discharge Monitoring Report.

D. Special Conditions/Compliance Schedules

1. 10-year 24-hour Rainfall Event – Outfalls 001 & 002A

If a rainfall event at or above the 10-year 24-hour rainfall event occurs, Ash Grove is not required to meet the TSS and pH effluent limits for Outfalls 001 & 002A. However, Ash Grove is responsible for submitting, with any DMR that indicates such an occurrence, documentation that the precipitation event did exceed the 10-year 24-hour rainfall event as described in 40 CFR 411.31(b). Acceptable methods of precipitation documentation include on-site rain gauge records or any official rainfall records from the National Weather Service.

2. No Process Water Discharge

Ash Grove is not allowed to discharge any wastewater that is defined as "Process Water" as regulated under 40 CFR 411 Subpart A without applying for a permit modification.

3. Flow Measurement

In order to come into compliance with the flow monitoring requirements contained under Part I.B. of this permit, Ash Grove must:

- (A) **By November 1, 2011**, Ash Grove shall provide the Department with a written report prepared by a qualified engineer that evaluates current flow monitoring capabilities, procedures, and devices for each outfall. This action shall consist of a complete review of flow measurement at Ash Grove over the range of expected flows.

If necessary for accurate flow monitoring at any of the outfalls, Ash Grove will include in the report any proposed improvements necessary to meet flow monitoring requirement: flow monitoring within 10 percent of the actual flow being measured. For such an outfall, Ash Grove shall provide the Department with any plans, specifications, and a construction schedule for installation of those improvements. Included in the report shall be recommended procedures for calibration and flow verification. The Department will review the plan, recommend any necessary changes, and approve the final plan for implementation.

- (B) **By November 1, 2012**, any actions needed to meet the requirements of this Special Condition must be completed.

4. Final Monitoring Location - Outfall 002A

In order to come into compliance with the monitoring requirement contained under Part I.B. of this permit for demonstrating compliance with the Effluent Limitations Guideline (ELG) under 40 CFR 411 Subpart C, Ash Grove must:

- (A) **By November 1, 2011**, Ash Grove must design and submit a monitoring plan to the Department. The plan must include the facility's proposed method for quantifying (flow) and qualifying (TSS and pH) the non-regulated wastewater discharges to Holding Pond #1 in order to discount this contribution to the regulated wastestream. Ash Grove shall also design a monitoring plan for the discharge into Holding Pond #3 (Outfall 002A), including flow measurement as outlined in Special Condition #3.

The Department will review the plan, recommend any necessary changes, and approve the final plan for implementation.

- (B) **By November 1, 2012**, Ash Grove must complete and implement any actions needed to meet the requirements of this Special Condition.

5. Storm Water Pollution Prevention Plan (SWPPP) – Outfall 003

Ash Grove will be responsible to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) for the discharges to Outfall 003. This SWPPP may be part of the SWPPP prepared for other storm water outfalls at Ash Grove under MTR300113 or a stand-alone plan.

A copy of the SWPPP shall be submitted to the Department by no later than April 1, 2011. The SWPPP shall be implemented as soon as possible but no later than twelve months from the effective date of the permit.

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

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 \$25,000, or by imprisonment for not more than six months, or by both.

D. Reporting of Monitoring Results

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

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

E. Compliance Schedules

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

F. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using approved analytical methods as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data

submitted in the Discharge Monitoring Report. Such increased frequency shall also be indicated.

G. Records Contents

Records of monitoring information shall include:

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

H. Retention of Records

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

I. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee shall report any serious incident of noncompliance affecting the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the Water Protection Bureau at (406) 444-3080 or the Office of Disaster and Emergency Services at (406) 841-3911. The following examples are considered serious incidents:
 - a. Any noncompliance which may seriously endanger health or the environment;

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

J. Other Noncompliance Reporting

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

K. Inspection and Entry

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

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

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

III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply

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

B. Penalties for Violations of Permit Conditions

The Montana Water Quality Act provides that any person who violates a permit condition of the Act is subject to civil or criminal penalties not to exceed \$25,000 per day or one year in prison, or both, for the first conviction, and \$50,000 per day of violation or by imprisonment for not more than two years, or both, for subsequent convictions. MCA 75-5-611(a) also provides for administrative penalties not to exceed \$10,000 for each day of violation and up to a maximum not to exceed \$100,000 for any related series of violations. Except as provided in permit conditions on Part III.G of this permit, "Bypass of Treatment Facilities" and Part III.H of this permit, "Upset Conditions", nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity not a Defense

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

D. Duty to Mitigate

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

E. Proper Operation and Maintenance

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

F. Removed Substances

1. 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 ten (10) days before the date of the bypass.
 - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.I of this permit, "Twenty-four Hour Reporting".
3. Prohibition of bypass:
 - a. Bypass is prohibited and the Department may take enforcement action against a permittee for a bypass, unless:
 - 1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - 2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - 3) The permittee submitted notices as required under Part III.G.2 of this permit.
 - b. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in Part III.G.3.a of this permit.

H. Upset Conditions

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

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:

1. The alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit; or
2. There are any planned substantial changes to the existing sewage sludge management practices of storage and disposal. The permittee shall give the Department notice of any planned changes at least 180 days prior to their implementation.

B. Anticipated Noncompliance

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

C. Permit Actions

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

D. Duty to Reapply

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

E. Duty to Provide Information

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

F. Other Information

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

G. Signatory Requirements

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

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

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

- H. Penalties for Falsification of Reports
The Montana Water Quality Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more that \$25,000 per violation, or by imprisonment for not more than six months per violation, or by both.
- I. Availability of Reports
Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. As required by the Clean Water Act, permit applications, permits and effluent data shall not be considered confidential.
- J. Oil and Hazardous Substance Liability
Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.
- K. Property or Water Rights
The issuance of this permit does not convey any property or water rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.
- L. Severability
The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
- M. Transfers
This permit may be automatically transferred to a new permittee if:
1. The current permittee notifies the Department at least 30 days in advance of the proposed transfer date;
 2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them;
 3. The Department does not notify the existing permittee and the proposed new permittee of an intent to revoke or modify and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part IV.M.2 of this permit; and
 4. Required annual and application fees have been paid.

N. Fees

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

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

O. Reopener Provisions

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

1. **Water Quality Standards:** The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.
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.

V. DEFINITIONS

1. **“Act”** means the Montana Water Quality Act, Title 75, chapter 5, MCA.
2. **“Administrator”** means the administrator of the United States Environmental Protection Agency.
3. **“Acute Toxicity”** occurs when 50 percent or more mortality is observed for either species (See Part I.C of this permit) at any effluent concentration. Mortality in the control must simultaneously be 10 percent or less for the effluent results to be considered valid.
4. **“Annual Average Load”** means the arithmetic mean of all 30-day or monthly average loads reported during the calendar year for a monitored parameter.
5. **“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.
6. **“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.
7. **“Bypass”** means the intentional diversion of waste streams from any portion of a treatment facility.
8. **“Composite samples”** shall be flow proportioned. The composite sample shall, as a minimum, contain at least four (4) samples collected over the compositing period. Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six (6) hours nor more than 24 hours. Acceptable methods for preparation of composite samples are as follows:
 - a. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;
 - b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;
 - c. Constant sample volume, time interval between samples proportional to flow (i.e. sample taken every “X” gallons of flow); and,
 - d. Continuous collection of sample, with sample collection rate proportional to flow rate.

9. **“Daily Discharge”** means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
10. **“Daily Maximum Limit”** means the maximum allowable discharge of a pollutant during a calendar day. Expressed as units of mass, the daily discharge is cumulative mass discharged over the course of the day. Expressed as a concentration, it is the arithmetic average of all measurements taken that day.
11. **“Department”** means the Montana Department of Environmental Quality (MDEQ) established by 2-15-3501, MCA.
12. **“Director”** means the Director of the Montana Department of Environmental Quality.
13. **“Discharge”** means the injection, deposit, dumping, spilling, leaking, placing, or failing to remove any pollutant so that it or any constituent thereof may enter into state waters, including ground water.
14. **“EPA”** means the United States Environmental Protection Agency.
15. **“Federal Clean Water Act”** means the federal legislation at 33 USC 1251, *et seq.*
16. **“Grab Sample”** means a sample which is taken from a waste stream on a one-time basis without consideration of flow rate of the effluent or without consideration for time.
17. **“Indirect discharge”** means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Federal Clean Water Act.
18. **“Industrial User”** means a source of Indirect Discharge.
19. **“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.
20. **“Instantaneous Measurement”**, for monitoring requirements, means a single reading, observation, or measurement.
21. **“Maximum daily discharge limitation”** means the highest allowable daily discharge.

22. **"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))
23. **"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.
24. **"Noncontact cooling water"** means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product or finished product. (40 CFR 401.11 (n))
25. **"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.
26. **"Process waste water"** means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. (40 CFR 401.11(q)).
27. **"Regional Administrator"** means the administrator of Region VIII of EPA, which has jurisdiction over federal water pollution control activities in the state of Montana.
28. **"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.
29. **"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.
30. **"TSS"** means the pollutant parameter total suspended solids.
31. **"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.