July 30, 2021

To: BER Chairman Ruffatto and BER Members

From: Dave Simpson

Re: Contested Case Backlog and Contested Case Procedure

Fellow Board Members:

Background

At the April BER meeting we considered and acted on the Copper Ridge case(s). I found this case to be extremely frustrating because it was initiated in 2015 over an NOV that originated in 2012. There were a lot of problems and issues with this case that led to multiple procedural twists and turns, but in the end it took six years to reach resolution. Other than the Duane Murry case, which was remanded at the same meeting, this is the only case that has come to the Board for decision in three meetings.

Meanwhile, there are at last count 16 other contested cases on our docket in various stages of process. The oldest of these cases is the Western Energy Co. MPDES case, dating back to 2012, which is now in District Court and for the moment, out of our hands. Aside from this case, the Westmoreland Resources Inc. MPDES case originated in 2015, and the Signal Peak mine permit case to 2017. Of the remainder, six originated in 2019, five in 2020, and two so far this year.

Of the total of 18 cases, two are before the district court, four are stayed for various reasons, four are in various forms of dispute resolution, and one is stipulated for dismissal, leaving seven currently active cases. So I suppose it can be argued that progress is being made and the backlog is not quite as dire as it may first appear.

At the June meeting we were informed that the BER budget is in trouble, alluding to the unusually large number of contested cases filed in the last couple of years.

And I am sure that COVID restrictions on in-person meetings and hearings have inhibited progress to some extent.

All of this triggered a thought that there might be a less formal alternative potentially applicable in at least some cases. I suggest that the BER request a briefing from and discussion with counsel on the subject of informal procedure under MAPA so that a course going forward can be established.

Statutory Provisions

An examination of the Statute and rules applicable to contested case procedure revealed the following:

2-4-603 MCA authorizes a waiver of administrative proceedings in some circumstances. Specifically, 2-4-603(2) reads in part as follows:

> (2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then use informal proceedings under 2-4-604.

204-604 MCA enumerates standards for informal proceedings under the Administrative Procedure Act, quoted in part below:

2-4-604. Informal proceedings. (1) In proceedings under this section, the agency shall, in accordance with procedures adopted under 2-4-201:

(a) give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing examiner:

(i) written or oral evidence in opposition to the agency's action or refusal to act;

(ii) a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction; or

(iii) other written or oral evidence relating to the contested case;

(b) if the objections of the persons or parties are overruled, provide a written explanation within 7 days.

(2) The record must consist of:

(a) the notice and summary of grounds of the opposition;

(b) evidence offered or considered;

(c) any objections and rulings on the objections;

(d) all matters placed on the record after ex parte communication pursuant to 2-4-613;

(e) a recording of any hearing held, together with a statement of the substance of the evidence received or considered, the written or oral statements of the parties or other persons, and the proceedings. A party may object in writing to the statement or may order at that party's cost a transcription of the recording, or both. Objections become a part of the record.

In addition, 2-4-604(5) MCA reads as follows:

(5) A party may petition for review of an informal agency decision pursuant to part 7 of this chapter.

Part 7 spells out requirements for appeal of an agency decision to District Court.

Complete copies of the sections referenced above are attached for reference.

Regulatory Provisions

At ARM 17.4.101, the Department of Environmental Quality adopts and incorporates by reference the Attorney General's Organizational and Procedural Rules ("MODEL RULES") under the Administrative Procedure Act. (Copies Attached for Reference). Pertinent sections include:

ARM 1.3.201(3): INTRODUCTION AND DEFINITIONS

(3) Each agency subject to MAPA must adopt rules describing its organization and procedures, per 2-4-201, MCA.

ARM 1.3.212 CONTESTED CASES, NOTICE OF OPPORTUNITY TO BE HEARD:

(1) All parties to contested cases must be provided notice of hearing. As illustrated by sample form 212a, the notice must include:

(a) the time, place, and nature of the hearing;
(b) the legal authority and jurisdiction under which the hearing is being conducted;

(c) a citation to the statutes and rules involved;
(d) a short and plain statement of the issues involved;
(e) notice that formal proceedings may be waived pursuant to 2-4-603, MCA;
(f) a statement advising parties of their right to be represented by counsel at the hearing; and
(g) if applicable, a statement staying the agency action or detailing at what point the party's legal rights, duties, or privileges will be revoked or imposed.

**ARM 1.3.215** CONTESTED CASES, INFORMAL DISPOSITION

(1) Informal disposition of contested cases is permissible pursuant to 2-4-603, MCA.
(2) Informal proceedings in contested cases must give the parties an opportunity to present to the agency or the hearing examiner written or oral evidence challenging the agency's actions, its refusal to act, its justifications for determination, or other evidence relating to the contested case.
(3) An informal conference may be conducted prior to the proceedings in order to define issues, determine witnesses, and agree upon stipulations.
(4) A record of proceedings conducted under this part must be made in accordance with 2-4-604, MCA

Discussion

The foregoing excerpts confirm that there is a statutory and regulatory framework for informal disposition of contested cases in some circumstances. In my past experience as a coal company manager dealing with NOV appeals, I do not recall ever having been offered an informal conference or having been informed of the option for informal proceedings. Any NOV appeal automatically triggered the formal contested case process, and the decision whether or not to appeal necessarily involved a choice between standing on principal given the potential legal costs of a contested case, or simply paying the penalty and getting on with business. And more to the point, the Duane Murray case seems tailor

made for an informal process. The record provided to BER does not include any indication that this was considered.

So there are several questions that need to be asked and addressed:

1. Is the informal conference routinely used as a first step in contested case procedure?

2. To what extent have hearing examiners advised of, promoted and employed informal proceedings?

3. Should BER initiate rulemaking to promote and facilitate informal proceedings under MAPA where appropriate? Or are existing statutory and regulatory provisions adequate? How can the Board encourage use of informal procedure where feasible?

4. What other measures, if any, are available to expedite the time frames in contested cases to reduce and minimize backlog?

5. Are there other avenues of dispute resolution that can be offered and employed as alternatives to formal contested case procedure?

As it stands, the contested case procedure is long on process and short on product. Unless more efficient ways can be found, increased backlog and longer resolution timelines are inevitable.

The current backlog of contested cases is problematic, both from the standpoint of the BER budget and our responsibility to the people of Montana. Challenging a state decision under MAPA is a daunting process that involves a major commitment of time and money. As public servants we are obligated to make the process as efficient and responsive as possible while maintaining fairness to all parties.

# STATUTORY AND REGULATORY SECTIONS CITED

**Montana Code Annotated 2019**

**TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION**
**CHAPTER 4. ADMINISTRATIVE PROCEDURE ACT**
**Part 6. Contested Cases**

Informal Disposition And Hearings -- Waiver Of Administrative Proceedings -- Recording And Use Of Settlement Proceeds

**2-4-603. Informal disposition and hearings -- waiver of administrative proceedings -- recording and use of settlement proceeds.** (1) (a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. A stipulation, agreed settlement, consent order, or default that disposes of a contested case must be in writing.

(b) Unless otherwise provided by law, if a stipulation, agreed settlement, consent order, or default results in a monetary settlement involving an agency or the state, settlement proceeds must be deposited in the account or fund in which the penalty, fine, or other payment would be deposited if the contested case had proceeded to final decision. If there is no account or fund designated for the fine, penalty, or payment in the type of action, then the settlement must be deposited in the general fund.

(c) If a stipulation, agreed settlement, consent order, or default results in a nonmonetary settlement involving an agency or the state, settlement proceeds, whether received by the state or a third party, must be recorded in a nonstate, nonfederal state special revenue account established pursuant to **17-2-102**(1)(b)(i) for the purpose of recording nonmonetary settlements.

(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then use informal proceedings under **2-4-604**. Parties to contested case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.

(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to **2-4-702**. The petition must contain an agreed statement of facts and a statement of the legal

issues or contentions of the parties upon which the court, together with the additions it may consider necessary to fully present the issues, may make its decision.

History: En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(4); amd. Sec. 2, Ch. 277, L. 1979; amd. Sec. 1, Ch. 451, L. 1999; amd. Sec. 1, Ch. 305, L. 2001; amd. Sec. 1, Ch. 347, L. 2005.

**2-4-604. Informal proceedings.** (1) In proceedings under this section, the agency shall, in accordance with procedures adopted under **2-4-201**:

(a) give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing examiner:

(i) written or oral evidence in opposition to the agency's action or refusal to act;

(ii) a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction; or

(iii) other written or oral evidence relating to the contested case;

(b) if the objections of the persons or parties are overruled, provide a written explanation within 7 days.

(2) The record must consist of:

(a) the notice and summary of grounds of the opposition;

(b) evidence offered or considered;

(c) any objections and rulings on the objections;

(d) all matters placed on the record after ex parte communication pursuant to **2-4-613**;

(e) a recording of any hearing held, together with a statement of the substance of the evidence received or considered, the written or oral statements of the parties or other persons, and the proceedings. A party may object in writing to the statement or may order at that party's cost a transcription of the recording, or both. Objections become a part of the record.

(3) Agencies shall give effect to the rules of privilege recognized by law.

(4) In agency proceedings under this section, irrelevant, immaterial, or unduly repetitious evidence must be excluded but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not the evidence is admissible in a trial in the courts of Montana. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.

(5) A party may petition for review of an informal agency decision pursuant to part 7 of this chapter.

History: En. Sec. 3, Ch. 277, L. 1979; amd. Sec. 43, Ch. 61, L. 2007.

**Part 7. Judicial Review of Contested Cases**

**2-4-701. Immediate review of agency action.** A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(part).

**2-4-702.** *(Temporary)* **Initiating judicial review of contested cases.** (1) (a) Except as provided in **75-2-213** and **75-20-223**, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in **75-2-211**, **75-2-213**, and subsections (2)(c) and (2)(e) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the

agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in **2-4-704**(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to **33-16-1012**(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(e) (i) A party who is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, may petition the district court or the water court for judicial review of the decision. If a petition for judicial review is filed in the water court, the water court rather than the district court has jurisdiction and the provisions of this part apply to the water court in the same manner as they apply to the district court. The time for filing a petition is the same as provided in subsection (2)(a).

(ii) If more than one party is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, the district court where the appropriation right is located has jurisdiction. If more than one aggrieved party files a petition but no aggrieved party files a petition in the district court where the appropriation right is located, the first judicial district, Lewis and Clark County, has jurisdiction.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court

may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of **27-19-315** through **27-19-317** are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record. *(Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.)*

**2-4-702.** *(Effective October 1, 2025)* **Initiating judicial review of contested cases.** (1) (a) Except as provided in **75-2-213** and **75-20-223**, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in **75-2-211**, **75-2-213**, and subsection (2)(c) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in **2-4-704**(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to

which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to **33-16-1012**(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of **27-19-315** through **27-19-317** are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(part); amd. Sec. 1, Ch. 520, L. 1985; amd. Sec. 1, Ch. 290, L. 1995; amd. Sec. 1, Ch. 361, L. 2003; amd. Sec. 4, Ch. 347, L. 2005; amd. Sec. 3, Ch. 445, L. 2009; amd. Sec. 1, Ch. 126, L. 2017.

**2-4-703. Receipt of additional evidence.** If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(5).

**2-4-704. Standards of review.** (1) The review must be conducted by the court without a jury and must be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof of the irregularities may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

(a) the administrative findings, inferences, conclusions, or decisions are:

(i) in violation of constitutional or statutory provisions;

(ii) in excess of the statutory authority of the agency;

(iii) made upon unlawful procedure;

(iv) affected by other error of law;

(v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(b) findings of fact, upon issues essential to the decision, were not made although requested.

(3) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82 on the grounds of unconstitutionality, as provided in subsection (2)(a)(i), the petitioner shall first establish the unconstitutionality of the underlying statute.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(6), (7); amd. Sec. 2, Ch. 83, L. 1989; amd. Sec. 3, Ch. 361, L. 2003.

**2-4-705 through 2-4-710 reserved.**

**2-4-711. Appeals -- staying agency decision.** An aggrieved party may obtain review of a final judgment of a district court under this part by appeal to the supreme court within 60 days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process:

(1) if appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for 20 days from the date of filing of the notice;

(2) if appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise.

History: En. Sec. 17, Ch. 2, Ex. L. 1971; amd. Sec. 18, Ch. 285, L. 1977; R.C.M. 1947, 82-4217.

**ADMINISTRATIVE RULES OF MONTANA**

17 : ENVIRONMENTAL QUALITY

**17.4.101 MODEL RULES**

(1) The Department of Environmental Quality and the Board of Environmental Review adopt and incorporate the Attorney General's Organizational and Procedural Rules, ARM 1.3.201, 1.3.202, 1.3.211 through 1.3.224, and 1.3.226 through 1.3.233, effective August 15, 2008, and the Secretary of State's Organizational and Procedural Rules, ARM 1.3.101, 1.3.102, 1.3.301, 1.3.302, 1.3.304, 1.3.305, 1.3.307 through 1.3.309, 1.3.311 through 1.3.313, and 44.17.101, effective August 1, 2008, including the sample forms which follow the Attorney General's model rules, except as modified by (2) and (3), as authorized by 2-4-302, MCA.

(2) The incorporation of ARM 1.3.309 is modified by the addition of the rules in subchapter 2 of this chapter which incorporate requirements of statutes administered by the department and board.

(3) The incorporation of ARM 1.3.312 is modified by adding the words "or summary" and deleting the words "in full" in (2)(a)(i) so that it will read as follows: "(i) the text of the rule adopted or amended, or reference to the notice of proposed agency action in which the text or summary of the proposed rule or rule as proposed to be amended was printed."

(4) ARM 1.3.101 and 1.3.102 are procedural rules required by Article II, Section 8 of the 1972 Constitution, right of participation.
ARM 1.3.201, 1.3.202, 1.3.211 through 1.3.224, and 1.3.226 through 1.3.233 are organizational and procedural rules required by the Montana Administrative Procedure Act. Copies of the model rules may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

History: 2-4-201, 2-4-202, MCA; IMP, 2-4-201, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, 1982 MAR p. 383, Eff. 2/26/82; AMD, 1983 MAR p. 1350, Eff. 9/30/83; TRANS, from DHES, 1996 MAR p. 1497; AMD, 2000 MAR p. 472, Eff. 2/11/00; AMD, 2009 MAR p. 1011, Eff. 6/26/09.

Printer Friendly Version

## 1.3 : **ATTORNEY GENERAL MODEL RULES**

### 1.3.201 INTRODUCTION AND DEFINITIONS

(1) Montana statutes are referred to collectively as the Montana Code Annotated (MCA).

(2) The Montana Administrative Procedure Act is referred to as "MAPA" and includes 2-4-101 through 2-4-711, MCA. MAPA outlines procedures that agencies must follow when:

(a) adopting, amending, or repealing agency rules;

(b) hearing contested cases; or

(c) issuing declaratory rulings.

(3) Each agency subject to MAPA must adopt rules describing its organization and procedures, per 2-4-201, MCA. Section 2-4-202, MCA, directs the Secretary of State to prepare a model form for a rule describing the organization of agencies and model rules of practice for agency guidance in fulfilling these requirements. It directs the Attorney General to prepare model rules of practice for agencies to use as a guide for contested case hearings and declaratory rulings. The model rules have been adopted for that purpose. Agencies may

adopt the model rules by incorporating them by reference. Subsequent amendments may be adopted only by following the rulemaking procedure of MAPA. See 2-4-307, MCA.

(4) The term "register" refers to the Montana Administrative Register.

History: 2-4-202, MCA; IMP, 2-4-202, MCA; Eff. 12/31/72; AMD, 1977 MAR p. 1192, Eff. 12/24/77; AMD, 1979 MAR p. 1200, Eff. 10/12/79; AMD, 1981 MAR p. 1196, Eff. 10/16/81; AMD, 1999 MAR p. 1225, Eff. 6/4/99; AMD, 2009 MAR p. 7, Eff. 1/16/09.

1.3.212 CONTESTED CASES, NOTICE OF OPPORTUNITY TO BE HEARD

(1) All parties to contested cases must be provided notice of hearing. As illustrated by sample form 212a, the notice must include:

(a) the time, place, and nature of the hearing;

(b) the legal authority and jurisdiction under which the hearing is being conducted;

(c) a citation to the statutes and rules involved;

(d) a short and plain statement of the issues involved;

(e) notice that formal proceedings may be waived pursuant to 2-4-603, MCA;

(f) a statement advising parties of their right to be represented by counsel at the hearing; and

(g) if applicable, a statement staying the agency action or detailing at what point the party's legal rights, duties, or privileges will be revoked or imposed.

**1.3.215** CONTESTED CASES, INFORMAL DISPOSITION

(1) Informal disposition of contested cases is permissible pursuant to 2-4-603, MCA.

(2) Informal proceedings in contested cases must give the parties an opportunity to present to the agency or the hearing examiner written or oral evidence challenging the agency's actions, its refusal to act, its justifications for determination, or other evidence relating to the contested case.

(3) An informal conference may be conducted prior to the proceedings in order to define issues, determine witnesses, and agree upon stipulations.

(4) A record of proceedings conducted under this part must be made in accordance with 2-4-604, MCA.

History: 2-4-202, MCA; IMP, 2-4-202, MCA; Eff. 12/31/72; AMD, 1977 MAR p. 1192, Eff. 12/24/77; AMD, 1979 MAR p. 1229, Eff. 10/12/79; AMD, 2014 MAR p. 683, Eff. 8/15/08.

Exhibit A

Major POTW
Permit No.: MT0021920

# 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.*,

**City of Great Falls**

is authorized to discharge from its **Domestic Wastewater Treatment Plant**

located at **1600 6th Street NE, Great Falls, Montana**

to receiving waters named the **Missouri River**

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

This permit shall become effective **September 1, 2019**

This permit and the authorization to discharge shall expire at midnight **August 31, 2024**

FOR THE MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

_____
Jon Kenning, Chief
Water Protection Bureau

Modified Pursuant to Board Order on: _____

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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.

| Outfall | Description |
|---|---|
| 003 | **Location:** At the end of the pipe discharging into the Missouri River, located at 47.520333 N, 111.297119 W.<br><br>**Source Specific Chronic Mixing Zone:** A segment of the Missouri River extending 4,800 feet downstream from Outfall 003. Up to 12 percent of the 7Q10 for total ammonia, nitrate plus nitrite, total recoverable metals, and cyanide.<br><br>**Source Specific Acute Mixing Zone:** A segment of the Missouri River extending 80 feet long x 20 feet wide. Up to 1.2 percent of the 7Q10 for total ammonia, nitrate plus nitrite, total recoverable metals, and cyanide.<br><br>**Treatment Works**: Major publicly-owned treatment works with Industrial Pretreatment Program |

B. Effluent Limitations for Outfall 003

Upon the effective date of the permit and lasting through the permit term, the quality of effluent discharged through Outfall 003 shall, as a minimum, meet the limitations as set forth below:

**Final Effluent Limits – Outfall 003**

| Parameter | Units | Average Monthly Limit [(1)] | Average Weekly Limit [(1)] | Maximum Daily Limit [(1)] |
|---|---|---|---|---|
| Carbonaceous Biochemical Oxygen Demand ($CBOD_5$) | mg/L | 25 | 40 | - |
| | lb/day | 2773 | 4437 | - |
| | Percent Removal | 85 | - | - |
| Total Suspended Solids (TSS) | mg/L | 30 | 45 | - |
| | lb/day | 3328 | 4991 | - |
| | Percent Removal | 85 | - | - |
| *E. coli*, April - October | org/100 mL | 126 | 252 | - |
| *E. coli*, November - March | org/100 mL | 630 | 1,260 | - |
| Oil and Grease | mg/L | - | - | 10.0 |
| pH | s.u. | 6.0-9.0 instantaneous minimum and maximum | | |
| Total Recoverable Arsenic | µg/L | 19.8 | - | 19.8 |

[(1)] See Definitions section at the end of the permit for explanation of terms.
[(2)] Final effluent limits effective August 1, 2024.

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

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

C. Monitoring Requirements

As a minimum, upon the effective date of this permit, the following constituents must 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. Reporting frequency shall be monthly, and each facility must submit the results on their NetDMR for each month by the 28th of the following month. If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report that no discharge or overflow occurred.

Samples must be collected, preserved, and analyzed in accordance with approved procedures listed in 40 CFR Part 136.

Laboratory analytical results reported as less than detection must achieve the required reporting values (RRVs) in Circular DEQ-7 (May 2017).

Influent / Outfall 003

1. Influent samples will be based on the proportion of flow collected at the influent composite sampler of each pump station.
2. Effluent composite samples will be collected at the automatic composite sampler after the flow meter, and grab samples will be collected through the trough of the composite sampler. Samples will reflect the nature and effect of the discharge. DEQ can approve a request to change sample location as a minor modification of the permit.

**Self-Monitoring Requirements for Influent and Outfall 003**

| Parameter (1) | Unit (2) | Sample Frequency | Sample Type (3) | Reporting Requirement | Required Reporting Value |
|---|---|---|---|---|---|
| Effluent Flow | mgd | Continuous | Calculated | Daily Average<br>Daily Maximum | 0.01 |
| Influent Flow | mgd | Continuous | Calculated | Daily Average<br>Daily Maximum | 0.01 |
| Carbonaceous Biochemical Oxygen Demand, ($CBOD_5$) | mg/L | 5/Week | Composite | Monthly Average<br>Weekly Average | 5 |
| | % Removal | 1/Month | Calculated | Monthly Average | 0.1 |
| | lbs/day | 1/Month | Calculated | Monthly Average | 0.1 |
| Influent $CBOD_5$ | mg/L | 5/Week | Composite | Monthly Average | 5 |
| Total Suspended Solids (TSS) | mg/L | 5/Week | Composite | Monthly Average<br>Weekly Average | 10 |
| | % | 1/Month | Calculated | Monthly Average | 0.1 |
| | lbs/day | 1/Month | Calculated | Monthly Average | 0.1 |
| Influent TSS | mg/L | 5/Week | Composite | Monthly Average | 10 |
| pH | s.u. | Daily | Instantaneous | Daily Minimum<br>Daily Maximum | 0.1 |
| Temperature | °C | 1/Day | Instantaneous | Monthly Average<br>Daily Maximum | 0.1 |
| *E. coli* | org/100 mL | 5/Week | Grab | Monthly Average<br>Weekly Average | 1/100 mL |
| Oil and Grease | Presence | Daily | Observation | Present/Absent | NA |
| | mg/L | 1/Quarter (4) | Grab | Monthly | 1 |

| Self-Monitoring Requirements for Influent and Outfall 003 | | | | | |
|---|---|---|---|---|---|
| **Parameter** [1] | **Unit** [2] | **Sample Frequency** | **Sample Type** [3] | **Reporting Requirement** | **Required Reporting Value** |
| Total Ammonia, as N | mg/L | 1/Month | Composite | Monthly Average | 0.07 |
| Nitrate + Nitrite, as N | mg/L | 1/Month | Composite | Monthly Average | 0.02 |
| Kjeldahl Nitrogen, as N | mg/L | 1/Month [5] | Composite | Monthly Average | 0.225 |
| Total Nitrogen, as N [6] | mg/L | 1/Month [5] | Calculated | Monthly Average | 0.245 |
| | lbs/day | 1/Month [5] | Calculated | | NA |
| Total Phosphorus, as P | mg/L | 1/Month [5] | Composite | Monthly Average | 0.003 |
| | lbs/day | 1/Month [5] | Calculated | | NA |
| Dissolved Oxygen | mg/L | 1/Week | Grab | Single Sample | 0.3 |
| Arsenic, Total Recoverable | µg/L | 1/Month | Composite | Monthly Average<br>Daily Maximum | 1 |
| Copper, Total Recoverable | µg/L | 1/Quarter | Composite | Monthly Average | 2 |
| Cyanide, Total Recoverable | µg/L | See Part 1.D.4 | Composite | Monthly Average<br>Daily Maximum | 3 |
| Lead, Total Recoverable | µg/L | 1/Quarter | Composite | Monthly Average | 0.3 |
| Di(2-ethylhexyl) phthalate | µg/L | [9] | Composite | Monthly Average<br>Daily Maximum | 2 |
| Whole Effluent Toxicity | % Effluent | 1/Quarter | Composite | Pass/Fail | NA |
| ***Expanded Effluent Testing Data – Required for EPA Application 2A Form D*** | | | | | |
| Metals, Total Recoverable | µg/L | 2/Year [7] | Composite | Single Sample | [8] |
| Hardness, Total (as $CaCO_3$) | mg/L | 2/Year [7] | Grab | Single Sample | 10 |
| Volatile Organic Compounds | µg/L | 2/Year [7] | Composite | Single Sample | [8] |
| Acid-Extractable Compounds | µg/L | 2/Year [7] | Composite | Single Sample | [8] |
| Base Neutral Compounds | µg/L | 2/Year [7] | Composite | Single Sample | [8] |

[1] All parameters are effluent unless otherwise noted.
[2] See narrative discussion in this section of permit for additional details on calculating load and percent removal.
[3] See Definition section at end of permit for explanation of terms.
[4] Oil and grease analysis must be conducted once per quarter or when a visual sheen is observed in the effluent.
[5] Must be sampled once per month during the applicable season (July 1 – September 30).
[6] Calculated as the sum of Nitrate + Nitrite (as N) and Total Kjeldahl Nitrogen concentrations.
[7] Samples must be analyzed two times per year during the years of 2022 and 2023, at least four months apart. A copy of the analytic laboratory report must be submitted (results will not be entered into NetDMR).
[8] See Circular DEQ-7 for minimum RRVs.
[9] Monthly monitoring required for 11 consecutive months beginning September 2019, followed by quarterly monitoring thereafter.

Upstream/Ambient Monitoring

Great Falls is required to monitor the ambient condition of the receiving water as described in the table below. Monitoring must take place at a location upstream and outside the influence of Outfall 003. Monitoring and sampling will be conducted from the Central West Bridge structure at a location nearest the mixed interface of the Missouri and Sun River as possible.

If river conditions cause a need for an alternate monitoring location, Great Falls must choose a location that is near the usual monitoring location and outside the influence of Outfall 003 that is representative of the mixed receiving water. When used, the alternate monitoring location must be noted on the facility's discharge monitoring reports. Monitoring must include the sample type, frequency, and required reporting values (RRVS) as identified below.

In the event conditions prohibit sampling, the permittee will enter the appropriate "no data indicator code' on the discharge monitoring report.

**Upstream/Ambient Monitoring and Reporting Requirements**

| Parameter | Unit | Sample Type [1] | Reporting Requirement | Required Reporting Value [2] |
|---|---|---|---|---|
| ***Parameters with Monitoring Required Monthly from September 2019 – August 2024*** | | | | |
| Cyanide, Total Recoverable | µg/L | Grab | Single Sample | 3 |
| Di(2-ethylhexyl) phthalate | µg/L | Grab | Single Sample | 2 |
| ***Parameters with Monitoring Required Quarterly from 2020 – 2022*** | | | | |
| pH | s.u. | Instantaneous | Minimum, Maximum | 0.1 |
| Temperature | °C | Instantaneous | Minimum, Maximum | 0.1 |
| Total Ammonia, as N | mg/L | Grab | Single Sample | 0.07 |
| Hardness, as $CaCO_3$ | µg/L | Grab | Single Sample | 0.1 |
| Nitrate + Nitrite, as N [3] | mg/L | Grab | Single Sample | 0.02 |
| Antimony, Total Recoverable | µg/L | Grab | Single Sample | 0.5 |
| Arsenic, Total Recoverable | µg/L | Grab | Single Sample | 1 |
| Beryllium, Total Recoverable | µg/L | Grab | Single Sample | 0.8 |
| Cadmium, Total Recoverable | µg/L | Grab | Single Sample | 0.03 |
| Chromium, Total Recoverable | µg/L | Grab | Single Sample | 3 |
| Copper, Total Recoverable | µg/L | Grab | Single Sample | 2 |
| Lead, Total Recoverable | µg/L | Grab | Single Sample | 0.3 |
| Mercury, Total Recoverable | µg/L | Grab | Single Sample | 0.005 |
| Nickel, Total Recoverable | µg/L | Grab | Single Sample | 2 |
| Selenium, Total Recoverable | µg/L | Grab | Single Sample | 1 |
| Silver, Total Recoverable | µg/L | Grab | Single Sample | 0.2 |
| Thallium, Total Recoverable | µg/L | Grab | Single Sample | 0.2 |
| Zinc, Total Recoverable | µg/L | Grab | Single Sample | 8 |
| ***Parameters (Nutrients) with Monitoring Required July, August, September from 2020 – 2022*** | | | | |
| Nitrate + Nitrite, as N | mg/L | Grab | Single Sample | 0.02 |
| Kjeldahl Nitrogen, as N | mg/L | Grab | Single Sample | 0.225 |
| Total Nitrogen, as N [3] | mg/L | Calculated | Single Sample | 0.245 |
| Total Phosphorus, as P | mg/L | Grab | Single Sample | 0.003 |

[1] See Definition section at end of permit for explanation of terms.
[2] See Circular DEQ-7 for minimum RRVs.
[3] May be determined by persulfate digestion (grab sampling) or calculated as the sum of nitrate + nitrite (as N) and total Kjeldahl nitrogen concentrations. If persulfate digestion is used, then it is not required to sample total Kjeldahl nitrogen.

Reporting Requirements

**Load Calculations**

Effluent limitations or monitoring requirements that are expressed in terms of load (lb/day) must be based on total mass of the discharge in accordance with the definition of daily discharge in Part V of this permit. The total mass shall be calculated using the following equation:

$$Load = effluent\ flow\ rate\ x\ \ parameter\ concentration\ x\ \ conversion\ factor$$

$$\frac{lb}{day} \quad = \quad mgd \ \ x \quad \frac{mg}{L} \quad x \quad 8.34 \frac{lb \bullet L}{Mgal \bullet mg}$$

**Average Monthly Limit (AML)**

The AML or monthly average is the arithmetic average or mean (except *E. coli*) of all 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 monthly average and reported on the Discharge Monitoring Report.

**Average Weekly Limit (AWL)**

The AWL or weekly average is the arithmetic average or mean (except *E. coli*) of all the daily discharge samples collected during a calendar week, as defined in Part V of the permit. If only one sample is collected during the calendar week, it is considered the weekly average. The highest weekly average of the monitoring period shall be reported on the weekly average blank on the Discharge Monitoring Report. In cases where only one sample is collected during the entire monitoring period, that sample shall be reported as both the monthly and weekly average.

**Composite Samples**

Composite samples shall, as a minimum, be composed of four 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 samples may be composed of constant volume aliquots collected at regular intervals (simple composite) or flow proportioned.

Whole Effluent Toxicity Testing – Acute Toxicity

Starting in the first calendar quarter following the effective date of the permit, the permittee shall, at least once each quarter conduct an acute static replacement toxicity test on a composite/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. Samples shall be collected on a two-day progression; i.e., if the first quarterly sample is on a Monday, the second quarter sample shall be on a Wednesday, etc. Saturdays, Sundays and Holidays will be skipped in the progression.

The static toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of Methods for Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms, EPA-600/4-90/027 and the "Region VIII EPA NPDES Acute Test Conditions-Static Renewal Whole Effluent Toxicity". The permittee shall conduct an acute 48-hour static renewal toxicity test using *Ceriodaphnia dubia* and an acute 96-hour static renewal toxicity test using fathead minnows (*Pimephales promelas*). The control of pH in the toxicity test utilizing $CO_2$ 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 (a resample test) shall be conducted within 14 days of the date the permittee is informed of the test failure. If acute toxicity occurs in the resample test, then the permittee is required to:

a. Increase the WET testing frequency from quarterly to monthly until further notified by DEQ; and
b. Undertake a Toxicity Identification Evaluation (TIE)/Toxicity Reduction Evaluation (TRE).

The quarterly results from the laboratory shall be reported along with the Discharge Monitoring Report (DMR) 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 DMRs respectively). The format for the laboratory report shall be consistent with the latest revision of *the Region VIII Guidance for Acute Whole Effluent Reporting* and shall include all chemical and physical data as specified.

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

D. Special Conditions

1. Compliance Schedule

   a. Final effluent limits for di(2-ethylhexyl) phthalate will be effective starting August 1, 2024.
   b. Upstream monitoring of di(2-ethylhexyl) phthalate will be required monthly.
   c. Great Falls must submit **annual reports** during each year of the compliance schedule. The annual reports must summarize ongoing evaluation of potential sources of di(2-ethylhexyl) phthalate, potential control, instream concentrations, and mixing availability.
   d. Great Falls must submit annual reports by January 28$^{th}$ of the years 2020 - 2024.

2. Sewage Sludge:

   The use or disposal of sewage sludge must be in conformance with 40 CFR Part 503.

3. Toxicity Identification Evaluation (TIE) / Toxicity Reduction Evaluation (TRE):

   If toxicity is detected in two consecutive discharges, and it is determined by DEQ that a TIE/TRE is necessary, the permittee shall be so notified and shall initiate a TIE/TRE immediately thereafter. The purpose of the TIE/TRE will be to establish the cause(s) of the toxicity, locate the source(s) of the toxicity, and control or provide treatment for the toxicity.

   If the TIE/TRE establishes that the toxicity cannot be eliminated, the permittee shall submit a proposed compliance plan to DEQ. The plan shall include the proposed approach to control toxicity and a proposed compliance schedule for achieving control. If the approach and schedule are acceptable to DEQ, this permit may be reopened and modified.

   If the TIE/TRE shows that toxicity is caused by a toxicant(s) that may be controlled with specific numerical limitations, the permittee may:

   a. Submit an alternative control program for compliance with the numerical requirements;

b. If necessary, provide a modified whole effluent testing protocol which compensates for the pollutant(s) being controlled numerically.

If acceptable to DEQ, this permit may be reopened and modified to incorporate any additional numerical limitations, a modified compliance schedule if judged necessary by DEQ, and/or a whole effluent protocol.

4. Cyanide:

a. Monthly effluent monitoring for Cyanide is required through end of December 2021, then monitoring is required every two weeks beginning January 1, 2021 through April 30, 2021, then quarterly monitoring is required thereafter.

b. If an effluent sample result indicates Cyanide is present at a concentration equal to or greater than the applicable water quality standard, the City must, within 60 days after receipt of the sample results, submit to DEQ any and all information that demonstrates the reported value(s) was caused by sampling or testing contamination or any other factor not related to the character of effluent. If, after consideration of the information submitted by the City, DEQ chooses to reopen the permit for the sole purpose of proposing a permit limit and/or revising the monitoring requirements for Cyanide, DEQ will notify the City. The City may then submit any supplemental permit information addressing Cyanide, which may include a request for a mixing zone. DEQ will consider all submitted information and evaluate any requested mixing zone in accordance with Title 17, chapter 30, subchapter 5, ARM.

E. Pretreatment Requirements

1. The Permittee shall operate an industrial pretreatment program in accordance with the following permit requirements developed pursuant to Section 402(b)(8) of the Clean Water Act, the General Pretreatment Regulations (40 CFR Part 403), and the approved pretreatment program submitted by the Permittee. The pretreatment program was approved in October 1985 and has subsequently incorporated substantial modifications as approved by the Approval Authority. The approved pretreatment program, and any approved modifications thereto, is hereby incorporated by reference and shall be implemented in a manner consistent with the following requirements:

   a. Industrial user information shall be updated at a minimum of once per year or at that frequency necessary to ensure that all Industrial Users are properly permitted and/or controlled. The records shall be maintained and updated as necessary.

   b. The Permittee shall sample and inspect each Significant Industrial User (SIU) at least once per calendar year (40 CFR Section 403.8(f)(2)(v)). This is in addition to any industrial self-monitoring activities;

   c. The Permittee shall evaluate, at least every two years, whether each Significant Industrial User needs a plan to control slugs or spills or needs to update such a plan. Where needed, the Permittee shall require the SIU to prepare or update, and then implement the plan. Where a slug prevention plan is required, the Permittee shall ensure that the plan contains at least the minimum elements required in 40 CFR Section 403.8(f)(2)(vi);

   d. The Permittee shall investigate instances of non-compliance with Pretreatment Standards and requirements indicated in reports and notices required under 40 CFR Section 403.12, or indicated by analysis, inspection, and surveillance activities.

   e. The Permittee shall enforce all applicable Pretreatment Standards and requirements and obtain remedies for noncompliance by any industrial user;

f. The Permittee shall control, through the legal authority in the approved pretreatment program, the contribution to the POTW by each industrial user to ensure compliance with applicable Pretreatment Standards and requirements. In the case of industrial users identified as significant under 40 CFR Section 403.3(v), this control shall be achieved through permit, order, or similar means and shall contain, at a minimum, the following conditions:

1) Statement of duration (in no case more than five (5) years);

2) Statement of non-transferability without, at a minimum, prior notification to the Permittee and provision of a copy of the existing control mechanism to the new owner or operator;

3) Effluent limits based on applicable Pretreatment Standards, Categorical Pretreatment Standards, local limits, and State and local law;

4) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable Pretreatment Standards in 40 CFR Part 403, Categorical Pretreatment Standards, local limits, and State and local law; and,

5) Statement of applicable civil and criminal penalties for violation of Pretreatment Standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond deadlines mandated by federal statute or regulation.

g. The Permittee shall provide adequate staff, equipment, and support capabilities to carry out all elements of the pretreatment program as required by 40 CFR Section 403.8(f)(3);

h. The approved program shall not be substantially modified by the Permittee without the approval of the EPA. Substantial and non-substantial modifications shall follow the procedures outlined in 40 CFR Section 403.18;

i. The Permittee shall develop, implement, and maintain an enforcement response plan as required by 40 CFR Section 403.8(f)(5); and

j. The Permittee shall notify all Industrial Users of the users' obligations to comply with applicable requirements under Subtitles C and D of the Resource Conservation and Recovery Act (RCRA) as required by 40 CFR Section 403.8(f)(2)(iii).

2. The Permittee shall establish and enforce specific local limits to implement the provisions of 40 CFR Section 403.5(a) and (b), as required by 40 CFR Section 403.5(c). The Permittee shall continue to develop these limits as necessary and effectively enforce such limits.

In accordance with EPA policy and with the requirements of 40 CFR sections 403.8(f)(4) and 403.5(c), the Permittee shall determine if existing technically based local limits are adequate to implement the general and specific prohibitions of 40 CFR sections 403.5(a) and (b).

If a local limits re-evaluation is necessary, this evaluation should be conducted in accordance with the latest revision of the "EPA Region VIII Strategy for Developing Technically Based Local Limits", and after review of the "Guidance Manual on the Development and implementation of Local Discharge Limitations Under the Pretreatment Program" December 1987. Where the Permittee determines that revised or new local limits are necessary, the Permittee shall submit the proposed local limits to the EPA in approvable form based upon the findings of the technical evaluation within two-hundred and seventy (270) days from the effective date of this permit.

3. Additional Requirements:

   a. The Permittee shall analyze the treatment facility influent and effluent for the presence of the toxic pollutants listed in 40 CFR Part 122 Appendix D (NPDES Application Testing Requirements) Table II at least once per year and the toxic pollutants in Table III at least four times per year. If, based upon information available to the Permittee, there is reason to suspect the presence of any toxic or hazardous pollutant listed in Table V, or any other pollutant in a quantity or concentration known or suspected to adversely affect POTW operation, receiving water quality, or solids disposal procedures, analysis for those pollutants shall be performed at least four times per year on both the influent and the effluent.

      Along with the Permittee's pretreatment annual report, the Permittee will submit a list of compounds included in Table V that are suspected or known to be present in its influent wastewater. This determination shall be based on a review of the Permittee's pretreatment program records. The EPA and/or the Department may review and comment on the list and the list may be revised if in the opinion of the EPA and/or the Department the list is incomplete. The Permittee will perform analysis four times a year on the influent for the revised list of compounds for which there are acceptable testing procedures.

   b. Where the pollutants monitored in accordance with this section are reported as being above the method detection limit, the results for these pollutants shall be reported in the Permittee's pretreatment annual report.

   c. The Permittee shall analyze the treatment facility sludge (biosolids) prior to disposal, for the presence of the toxic pollutants listed in 40 CFR Part 122 Appendix D (NPDES Application Testing Requirements) Table III at least once per year. If the Permittee does not dispose of biosolids during the calendar year, the Permittee shall certify to that in the Pretreatment Annual Report and the monitoring requirements in this paragraph shall be suspended for that calendar year.

      The Permittee shall review the pollutants in 40 CFR Part 122, Appendix D, Tables II and V. If any of the pollutants in these tables were above detection in the influent samples during the previous 2 years or last 2 analyses, whichever is greater, the Permittee shall sample and analyze sewage sludge for these pollutants. The Permittee shall perform this evaluation and analysis at least once per year. Pollutants that are analyzed by method 601, Purgeable Halocarbons, are excluded from this requirement.

      The Permittee shall use sample collection and analysis procedures as approved for use under 40 CFR Part 503.

      The Permittee shall report the results for these pollutants in the Permittee's pretreatment annual report.

   d. All analyses shall be in accordance with test procedures established in 40 CFR Part 136. Where analytical techniques are not specified or approved under 40 CFR Part 136, the Permittee shall use its best professional judgment and guidance from the State and EPA regarding analytical procedures. All analytical procedures and method detection limits must be specified when reporting the results of such analyses. Sampling methods shall be those defined in 40 CFR Part 136, 40 CFR Part 403, as defined in this permit, or as specified by the Approval Authority. Where sampling methods are not specified, the influent and effluent samples collected shall be composite samples consisting of at least twelve (12) aliquots collected at approximately equal intervals over a representative 24-hour period and composited according to flow. Where automated composite sampling is inappropriate, at least four (4) grab samples shall be manually taken at equal intervals over a representative 24-hour period, and composited prior to analysis using approved methods.

4. The Permittee shall prepare annually a list of industrial users which, during the preceding twelve (12) months, have significantly violated Pretreatment Standards or Requirements. This list is to be published annually in the largest newspaper in the Permittee's service area as required by 40 CFR Section 403.8(f)(2)(viii).

   In addition, on or before March 28, the Permittee shall submit a pretreatment program annual report to the EPA and the Department which contains the following information:

   a. An updated list of all Significant Industrial users as defined at 40 CFR 403.3(v). For each Significant Industrial User listed, the following information shall be included:

      1) All applicable Standard Industrial Classification (SIC) codes and categorical determinations, as appropriate. In addition, a brief description of the industry and general activities;

      2) Whether each significant Industrial User has an unexpired control mechanism and an explanation as to why any SIUs are operating without a current, unexpired control mechanism (e.g. permit);

      3) A summary of all monitoring activities performed within the previous twelve (12) months. The following information shall be reported:

         Total number of Significant Industrial Users inspected; and
         Total number of Significant Industrial Users sampled

   b. Additional Requirements:

      1) For all industrial users that were in Significant Non-Compliance during the previous twelve (12) months, provide the name of the violating industrial user, indicate the nature of the violations, the type and number of actions taken (warning letter, notice of violation, administrative order, criminal or civil suit, fines or penalties collected, etc.) and current compliance status. If the industrial user was put on a schedule to attain compliance with effluent limits, indicate the date the schedule was issued, and the date compliance is to be attained. Determination of Significant Non-Compliance shall be performed as defined at 40 CFR Section 403.8(f)(2)(viii).

      2) A summary of all enforcement actions not covered by the paragraph above conducted in accordance with the approved Enforcement Response Plan.

   c. A list of all Significant Industrial Users whose authorization to discharge was terminated or revoked during the preceding twelve (12) month period and the reason for termination;

   d. A report on any Interference, Pass Through, upset or MPDES permit violations known or suspected to be caused by non-domestic discharges of pollutant and actions taken by the Permittee in response;

   e. Verification of publication of industrial users in Significant Non-compliance;

   f. Identification of the specific locations, if any, designated by the Permittee for receipt (discharge) of trucked or hauled waste;

   g. Information as required by the EPA or the Department on the discharge to the POTW from the following activities:

      1) Ground water clean-up from underground storage tanks;
      2) Trucked or hauled waste; and,
      3) Groundwater cleanup from RCRA or Superfund sites.

   h. A description of all changes made during the previous calendar year to the Permittee's pretreatment program that were not submitted as substantial or non-substantial modifications to the EPA.

i. The Permittee shall evaluate actual pollutants loadings against the approved Maximum Allowable Head works Loadings (MAHLs). Where the actual loading exceeds the MAHL, the Permittee shall immediately begin a program to either revise the existing local limit and/or undertake such other studies as necessary to evaluate the cause(s) of the exceedance. The Permittee shall provide a summary of its intended action.

j. Other information that may be deemed necessary by EPA.

5. The Permittee shall prohibit the introduction of the following pollutants into the POTW:

a. Pollutants which create a fire or explosion hazard in the publicly owned treatment works (POTW), including, but not limited to, waste streams with a closed cup flashpoint of less than sixty (60) degrees Centigrade (140 degrees Fahrenheit) using the test methods specified in 40 CFR Section 261.21;

b. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works are specifically designed to accommodate such discharges;

c. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW, or other interference with the operation of the POTW;

d. Any pollutant, including oxygen demanding pollutants (e.g., BOD), released in a discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW:

e. Heat in amounts which will inhibit biological activity in the POTW resulting in Interference but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds forty (40) degrees Centigrade (104 degrees Fahrenheit) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits;

f. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause Interference or Pass Through;

g. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

h. Any trucked or hauled pollutants, except at discharge points designated by the POTW; and

i. Any specific pollutant which exceeds a local limitation established by the POTW in accordance with the requirements of 40 CFR Section 403.5(c) and (d);

j. Any other pollutant which may cause Pass Through or Interference.

6. The Permittee shall provide EPA and the Department with adequate notice of any substantial change in the volume or character of pollutants being introduced into the treatment works by any Significant Industrial User introducing pollutants into the treatment works at the time of application for the discharge permit. For the purposes of this section, “substantial change” shall mean a level of change which has a reasonable probability of affecting the Permittee’s ability to comply with its permit conditions or to cause a violation of stream standards applied to the receiving water.

Adequate notice shall include information on:

a. The quality and quantity of effluent to be introduced into the treatment works, and,

b. Any anticipated impact of the change on the quality or quantity of effluent to be discharged from the publicly owned treatment works.

7. Section 309(f) of the Clean Water Act provides that the EPA may issue a notice to the POTW stating that a determination has been made that appropriate enforcement action must be taken against an industrial user for noncompliance with any Pretreatment Standards and requirements. The notice provides the POTW with thirty (30) days to commence such action. The issuance of such permit notice shall not be construed to limit the authority of the permit issuing authority or Approval Authority.

8. The EPA and the Department retain, at all times, the right to take legal action against any source of non-domestic discharge, whether directly or indirectly controlled by the Permittee, for violations of a permit, order, or similar enforceable mechanism issued by the Permittee, violations of any Pretreatment Standard or Requirement, or for failure to discharge at an acceptable level under national standards issued by the EPA under 40 CFR, Chapter I, Subchapter N. In those cases where a MPDES permit violation has occurred because of the failure of the Permittee to properly develop and enforce Pretreatment Standards and Requirements as necessary to protect the POTW, EPA and/or the Department shall hold the Permittee responsible and may take legal action against the Permittee as well as the sources(s) of non-domestic discharge contributing to the permit violation.

## 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. Sludge samples shall be collected at a location representative of the quality of sludge immediately prior to use-disposal practice.

### 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. See Part I.C of this permit for any applicable sludge monitoring procedures. 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

Monitoring results must be reported within a Discharge Monitoring Report (DMR). Monitoring results must be submitted electronically (NetDMR) web-based application) no later than the 28th day of the month following the end of the monitoring period. If no discharge occurs during the entire reporting period, "No Discharge" must be reported within the respective DMR. All other reports must be signed and certified in accordance with Part IV.G 'Signatory Requirements' of this permit and submitted to DEQ at the following address:

Montana Department of Environmental Quality
Water Protection Bureau
PO Box 200901
Helena, Montana 59620-0901

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 must be submitted 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 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) 444-5546 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) 444-5546.

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 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 and the Director 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. Sludge shall not be directly blended with or enter either the final plant discharge and/or waters of the United States.

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.

## 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 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 modifying, revoking 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 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 and the Director. 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 Rights
The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege.

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 rates established under 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. Sewage Sludge: There have been substantial changes (or such changes are planned) in sludge use or disposal practices; applicable management practices or numerical limitations for pollutants in sludge have been promulgated which are more stringent than the requirements in this permit; and/or it has been determined that the permittee's sludge use or disposal practices do not comply with existing applicable state or federal regulations.
6. 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.
7. 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. **"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. **"Average weekly limitation"** means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.
8. **"$BOD_5$"** means the five-day measure of pollutant parameter biochemical oxygen demand.
9. **"Bypass"** means the intentional diversion of waste streams from any portion of a treatment facility.
10. **"$CBOD_5$"** means the five-day measure of pollutant parameter carbonaceous biochemical oxygen demand.
11. **"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.
12. **"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.
13. **"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.
14. **"Department"** means the Montana Department of Environmental Quality (MDEQ). Established by 2-15-3501, MCA.
15. **"Director"** means the Director of the Montana Department of Environmental Quality.
16. **"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.

17. **"EPA"** means the United States Environmental Protection Agency.
18. **"Federal Clean Water Act"** means the federal legislation at 33 USC 1251, *et seq.*
19. **"Geometric Mean"** means the value obtained by taking the Nth root of the product of the measured values.
20. **"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.
21. **"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.
22. **"Industrial User"** means a source of Indirect Discharge.
23. **"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.
24. **"Instantaneous Measurement"**, for monitoring requirements, means a single reading, observation, or measurement.
25. **"Interference"** means a discharge which, alone or in conjunction with other contributing discharges
    a. Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
    b. Therefore causes a violation of any requirement of the POTW's MPDES permit (including an increase in the magnitude or duration of a violation) or causes the prevention of sewage sludge use or disposal in compliance with the following statutes and regulations: Section 405 of the Clean Water Act; 40 CFR Part 503 - Standards for the Use and Disposal of Sewage Sludge; Resource Conservation and Recovery Act (RCRA); 40 CFR Part 258 - Criteria for Municipal Solid Waste Landfills; and/or any State regulations regarding the disposal of sewage sludge.
26. **"Maximum daily discharge limitation"** means the highest allowable daily discharge.
27. **"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))
28. **"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.
29. **"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.
30. **"Pass through"** means a discharge which exits the POTW into waters of the State of Montana in quantities or concentrations which, alone or in conjunction with other discharges, is a cause of a violation of any requirement of the POTW's MPDES permit (including an increase in the magnitude or duration of a violation).
31. **"POTW"** means a publicly owned treatment works.
32. **"Regional Administrator"** means the administrator of Region VIII of EPA, which has jurisdiction over federal water pollution control activities in the state of Montana.
33. **"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.
34. **"Sewage Sludge"** means any solid, semi-solid or liquid residue generated during the treatment of domestic sewage and/or a combination of domestic sewage and industrial waste of a liquid nature in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived

from sewage sludge. Sewage sludge does not include ash generated during the incineration of sewage sludge or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

35. **"TIE"** means a toxicity identification evaluation.
36. **"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.
37. **"TRE"** means a toxicity reduction evaluation.
38. **"TSS"** means the pollutant parameter total suspended solids.
39. **"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.

Exhibit B

Major POTW
Permit No.: MT0021920

# 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.*,

**City of Great Falls**

is authorized to discharge from its **Domestic Wastewater Treatment Plant**

located at **1600 6th Street NE, Great Falls, Montana**

to receiving waters named the **Missouri River**

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

This permit shall become effective **September 1, 2019**

This permit and the authorization to discharge shall expire at midnight **August 31, 2024**

FOR THE MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

_____
Jon Kenning, Chief
Water Protection Bureau

Modified Pursuant to Board Order on~~Issuance Date~~: _____

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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.

| Outfall | Description |
|---|---|
| 003 | **Location:** At the end of the pipe discharging into the Missouri River, located at 47.520333 N, 111.297119 W.<br><br>**Source Specific Chronic Mixing Zone:** A segment of the Missouri River extending 4,800 feet downstream from Outfall 003. Up to 12 percent of the 7Q10 for total ammonia, nitrate plus nitrite, total recoverable metals, and cyanide.<br><br>**Source Specific Acute Mixing Zone:** A segment of the Missouri River extending 80 feet long x 20 feet wide. Up to 1.2 percent of the 7Q10 for total ammonia, nitrate plus nitrite, total recoverable metals, and cyanide.<br><br>**Treatment Works**: Major publicly-owned treatment works with Industrial Pretreatment Program |

B. Effluent Limitations for Outfall 003

Upon the effective date of the permit and lasting through the permit term, the quality of effluent discharged through Outfall 003 shall, as a minimum, meet the limitations as set forth below:

**Final Effluent Limits – Outfall 003**

| Parameter | Units | Average Monthly Limit [1] | Average Weekly Limit [1] | Maximum Daily Limit [1] |
|---|---|---|---|---|
| Carbonaceous Biochemical Oxygen Demand ($CBOD_5$) | mg/L | 25 | 40 | - |
| | lb/day | 2773 | 4437 | - |
| | Percent Removal | 85 | - | - |
| Total Suspended Solids (TSS) | mg/L | 30 | 45 | - |
| | lb/day | 3328 | 4991 | - |
| | Percent Removal | 85 | - | - |
| *E. coli*, April - October | org/100 mL | 126 | 252 | - |
| *E. coli*, November - March | org/100 mL | 630 | 1,260 | - |
| Oil and Grease | mg/L | - | - | 10.0 |
| pH | s.u. | 6.0-9.0 instantaneous minimum and maximum | | |
| Total Recoverable Arsenic | µg/L | 19.8 | - | 19.8 |
| ~~Di(2-ethylhexyl) phthalate~~ [2] | ~~µg/L~~ | ~~3.2~~ | ~~-~~ | ~~3.2~~ |

[1] See Definitions section at the end of the permit for explanation of terms.
[2] Final effluent limits effective August 1, 2024.

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

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

C. Monitoring Requirements

As a minimum, upon the effective date of this permit, the following constituents must 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. Reporting frequency shall be monthly, and each facility must submit the results on their NetDMR for each month by the 28th of the following month. If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report that no discharge or overflow occurred.

Samples must be collected, preserved, and analyzed in accordance with approved procedures listed in 40 CFR Part 136.

Laboratory analytical results reported as less than detection must achieve the required reporting values (RRVs) in Circular DEQ-7 (May 2017).

Influent / Outfall 003

1. Influent samples will be based on the proportion of flow collected at the influent composite sampler of each pump station.
2. Effluent composite samples will be collected at the automatic composite sampler after the flow meter, and grab samples will be collected through the trough of the composite sampler. Samples will reflect the nature and effect of the discharge. DEQ can approve a request to change sample location as a minor modification of the permit.

**Self-Monitoring Requirements for Influent and Outfall 003**

| Parameter (1) | Unit (2) | Sample Frequency | Sample Type (3) | Reporting Requirement | Required Reporting Value |
|---|---|---|---|---|---|
| Effluent Flow | mgd | Continuous | Calculated | Daily Average<br>Daily Maximum | 0.01 |
| Influent Flow | mgd | Continuous | Calculated | Daily Average<br>Daily Maximum | 0.01 |
| Carbonaceous Biochemical Oxygen Demand, ($CBOD_5$) | mg/L | 5/Week | Composite | Monthly Average<br>Weekly Average | 5 |
| | % Removal | 1/Month | Calculated | Monthly Average | 0.1 |
| | lbs/day | 1/Month | Calculated | Monthly Average | 0.1 |
| Influent $CBOD_5$ | mg/L | 5/Week | Composite | Monthly Average | 5 |
| Total Suspended Solids (TSS) | mg/L | 5/Week | Composite | Monthly Average<br>Weekly Average | 10 |
| | % | 1/Month | Calculated | Monthly Average | 0.1 |
| | lbs/day | 1/Month | Calculated | Monthly Average | 0.1 |
| Influent TSS | mg/L | 5/Week | Composite | Monthly Average | 10 |
| pH | s.u. | Daily | Instantaneous | Daily Minimum<br>Daily Maximum | 0.1 |
| Temperature | °C | 1/Day | Instantaneous | Monthly Average<br>Daily Maximum | 0.1 |
| *E. coli* | org/100 mL | 5/Week | Grab | Monthly Average<br>Weekly Average | 1/100 mL |
| Oil and Grease | Presence | Daily | Observation | Present/Absent | NA |

| Self-Monitoring Requirements for Influent and Outfall 003 | | | | | |
|---|---|---|---|---|---|
| **Parameter** [1] | **Unit** [2] | **Sample Frequency** | **Sample Type** [3] | **Reporting Requirement** | **Required Reporting Value** |
| | mg/L | 1/Quarter [4] | Grab | Monthly | 1 |
| Total Ammonia, as N | mg/L | 1/Month | Composite | Monthly Average | 0.07 |
| Nitrate + Nitrite, as N | mg/L | 1/Month | Composite | Monthly Average | 0.02 |
| Kjeldahl Nitrogen, as N | mg/L | 1/Month [5] | Composite | Monthly Average | 0.225 |
| Total Nitrogen, as N [6] | mg/L | 1/Month [5] | Calculated | Monthly Average | 0.245 |
| | lbs/day | 1/Month [5] | Calculated | | NA |
| Total Phosphorus, as P | mg/L | 1/Month [5] | Composite | Monthly Average | 0.003 |
| | lbs/day | 1/Month [5] | Calculated | | NA |
| Dissolved Oxygen | mg/L | 1/Week | Grab | Single Sample | 0.3 |
| Arsenic, Total Recoverable | µg/L | 1/Month | Composite | Monthly Average<br>Daily Maximum | 1 |
| Copper, Total Recoverable | µg/L | 1/Quarter | Composite | Monthly Average | 2 |
| Cyanide, Total Recoverable | µg/L | See Part 1.D.4 | Composite | Monthly Average<br>Daily Maximum | 3 |
| Lead, Total Recoverable | µg/L | 1/Quarter | Composite | Monthly Average | 0.3 |
| Di(2-ethylhexyl) phthalate | µg/L | ~~1/Month~~ [9] | Composite | Monthly Average<br>Daily Maximum | 2 |
| Whole Effluent Toxicity | % Effluent | 1/Quarter | Composite | Pass/Fail | NA |
| ***Expanded Effluent Testing Data – Required for EPA Application 2A Form D*** | | | | | |
| Metals, Total Recoverable | µg/L | 2/Year [7] | Composite | Single Sample | [8] |
| Hardness, Total (as $CaCO_3$) | mg/L | 2/Year [7] | Grab | Single Sample | 10 |
| Volatile Organic Compounds | µg/L | 2/Year [7] | Composite | Single Sample | [8] |
| Acid-Extractable Compounds | µg/L | 2/Year [7] | Composite | Single Sample | [8] |
| Base Neutral Compounds | µg/L | 2/Year [7] | Composite | Single Sample | [8] |

[1] All parameters are effluent unless otherwise noted.
[2] See narrative discussion in this section of permit for additional details on calculating load and percent removal.
[3] See Definition section at end of permit for explanation of terms.
[4] Oil and grease analysis must be conducted once per quarter or when a visual sheen is observed in the effluent.
[5] Must be sampled once per month during the applicable season (July 1 – September 30).
[6] Calculated as the sum of Nitrate + Nitrite (as N) and Total Kjeldahl Nitrogen concentrations.
[7] Samples must be analyzed two times per year during the years of 2022 and 2023, at least four months apart. A copy of the analytic laboratory report must be submitted (results will not be entered into NetDMR).
[8] See Circular DEQ-7 for minimum RRVs.
~~[8]~~[9] Monthly monitoring required for 11 consecutive months beginning September 2019, followed by quarterly monitoring thereafter.

Upstream/Ambient Monitoring

Great Falls is required to monitor the ambient condition of the receiving water as described in the table below. Monitoring must take place at a location upstream and outside the influence of Outfall 003. Monitoring and sampling will be conducted from the Central West Bridge structure at a location nearest the mixed interface of the Missouri and Sun River as possible.

If river conditions cause a need for an alternate monitoring location, Great Falls must choose a location that is near the usual monitoring location and outside the influence of Outfall 003 that is representative of the mixed receiving water. When used, the alternate monitoring location must be noted on the facility's discharge monitoring reports. Monitoring must include the sample type, frequency, and required reporting values (RRVS) as identified below.

In the event conditions prohibit sampling, the permittee will enter the appropriate "no data indicator code' on the discharge monitoring report.

**Upstream/Ambient Monitoring and Reporting Requirements**

| Parameter | Unit | Sample Type (1) | Reporting Requirement | Required Reporting Value (2) |
|---|---|---|---|---|
| ***Parameters with Monitoring Required Monthly from September 2019 – August 2024*** | | | | |
| Cyanide, Total Recoverable | µg/L | Grab | Single Sample | 3 |
| Di(2-ethylhexyl) phthalate | µg/L | Grab | Single Sample | 2 |
| ***Parameters with Monitoring Required Quarterly from 2020 – 2022*** | | | | |
| pH | s.u. | Instantaneous | Minimum, Maximum | 0.1 |
| Temperature | °C | Instantaneous | Minimum, Maximum | 0.1 |
| Total Ammonia, as N | mg/L | Grab | Single Sample | 0.07 |
| Hardness, as $CaCO_3$ | µg/L | Grab | Single Sample | 0.1 |
| Nitrate + Nitrite, as N (3) | mg/L | Grab | Single Sample | 0.02 |
| Antimony, Total Recoverable | µg/L | Grab | Single Sample | 0.5 |
| Arsenic, Total Recoverable | µg/L | Grab | Single Sample | 1 |
| Beryllium, Total Recoverable | µg/L | Grab | Single Sample | 0.8 |
| Cadmium, Total Recoverable | µg/L | Grab | Single Sample | 0.03 |
| Chromium, Total Recoverable | µg/L | Grab | Single Sample | 3 |
| Copper, Total Recoverable | µg/L | Grab | Single Sample | 2 |
| Lead, Total Recoverable | µg/L | Grab | Single Sample | 0.3 |
| Mercury, Total Recoverable | µg/L | Grab | Single Sample | 0.005 |
| Nickel, Total Recoverable | µg/L | Grab | Single Sample | 2 |
| Selenium, Total Recoverable | µg/L | Grab | Single Sample | 1 |
| Silver, Total Recoverable | µg/L | Grab | Single Sample | 0.2 |
| Thallium, Total Recoverable | µg/L | Grab | Single Sample | 0.2 |
| Zinc, Total Recoverable | µg/L | Grab | Single Sample | 8 |
| ***Parameters (Nutrients) with Monitoring Required July, August, September from 2020 – 2022*** | | | | |
| Nitrate + Nitrite, as N | mg/L | Grab | Single Sample | 0.02 |
| Kjeldahl Nitrogen, as N | mg/L | Grab | Single Sample | 0.225 |
| Total Nitrogen, as N (3) | mg/L | Calculated | Single Sample | 0.245 |
| Total Phosphorus, as P | mg/L | Grab | Single Sample | 0.003 |

(1) See Definition section at end of permit for explanation of terms.
(2) See Circular DEQ-7 for minimum RRVs.
(3) May be determined by persulfate digestion (grab sampling) or calculated as the sum of nitrate + nitrite (as N) and total Kjeldahl nitrogen concentrations. If persulfate digestion is used, then it is not required to sample total Kjeldahl nitrogen.

Reporting Requirements

**Load Calculations**

Effluent limitations or monitoring requirements that are expressed in terms of load (lb/day) must be based on total mass of the discharge in accordance with the definition of daily discharge in Part V of this permit. The total mass shall be calculated using the following equation:

$$Load = effluent\ flow\ rate\ x\ \ parameter\ concentration\ x\ \ conversion\ factor$$

$$\frac{lb}{day} \quad = \quad mgd \ \ x \quad \frac{mg}{L} \quad x \quad 8.34 \frac{lb \bullet L}{Mgal \bullet mg}$$

**Average Monthly Limit (AML)**

The AML or monthly average is the arithmetic average or mean (except *E. coli*) of all 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 monthly average and reported on the Discharge Monitoring Report.

**Average Weekly Limit (AWL)**

The AWL or weekly average is the arithmetic average or mean (except *E. coli*) of all the daily discharge samples collected during a calendar week, as defined in Part V of the permit. If only one sample is collected during the calendar week, it is considered the weekly average. The highest weekly average of the monitoring period shall be reported on the weekly average blank on the Discharge Monitoring Report. In cases where only one sample is collected during the entire monitoring period, that sample shall be reported as both the monthly and weekly average.

**Composite Samples**

Composite samples shall, as a minimum, be composed of four 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 samples may be composed of constant volume aliquots collected at regular intervals (simple composite) or flow proportioned.

Whole Effluent Toxicity Testing – Acute Toxicity

Starting in the first calendar quarter following the effective date of the permit, the permittee shall, at least once each quarter conduct an acute static replacement toxicity test on a composite/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. Samples shall be collected on a two-day progression; i.e., if the first quarterly sample is on a Monday, the second quarter sample shall be on a Wednesday, etc. Saturdays, Sundays and Holidays will be skipped in the progression.

The static toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of Methods for Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms, EPA-600/4-90/027 and the "Region VIII EPA NPDES Acute Test Conditions-Static Renewal Whole Effluent Toxicity". The permittee shall conduct an acute 48-hour static renewal toxicity test using *Ceriodaphnia dubia* and an acute 96-hour static renewal toxicity test using fathead minnows (*Pimephales promelas*). The control of pH in the toxicity test utilizing $CO_2$ 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 (a resample test) shall be conducted within 14 days of the date the permittee is informed of the test failure. If acute toxicity occurs in the resample test, then the permittee is required to:

a. Increase the WET testing frequency from quarterly to monthly until further notified by DEQ; and
b. Undertake a Toxicity Identification Evaluation (TIE)/Toxicity Reduction Evaluation (TRE).

The quarterly results from the laboratory shall be reported along with the Discharge Monitoring Report (DMR) 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 DMRs respectively). The format for the laboratory report shall be consistent with the latest revision of *the Region VIII Guidance for Acute Whole Effluent Reporting* and shall include all chemical and physical data as specified.

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

D. Special Conditions

1. Compliance Schedule

   a. Final effluent limits for di(2-ethylhexyl) phthalate will be effective starting August 1, 2024.
   b. Upstream monitoring of di(2-ethylhexyl) phthalate will be required monthly.
   c. Great Falls must submit **annual reports** during each year of the compliance schedule. The annual reports must summarize ongoing evaluation of potential sources of di(2-ethylhexyl) phthalate, potential control, instream concentrations, and mixing availability.
   d. Great Falls must submit annual reports by January 28$^{th}$ of the years 2020 - 2024.

2. Sewage Sludge:

   The use or disposal of sewage sludge must be in conformance with 40 CFR Part 503.

3. Toxicity Identification Evaluation (TIE) / Toxicity Reduction Evaluation (TRE):

   If toxicity is detected in two consecutive discharges, and it is determined by DEQ that a TIE/TRE is necessary, the permittee shall be so notified and shall initiate a TIE/TRE immediately thereafter. The purpose of the TIE/TRE will be to establish the cause(s) of the toxicity, locate the source(s) of the toxicity, and control or provide treatment for the toxicity.

   If the TIE/TRE establishes that the toxicity cannot be eliminated, the permittee shall submit a proposed compliance plan to DEQ. The plan shall include the proposed approach to control toxicity and a proposed compliance schedule for achieving control. If the approach and schedule are acceptable to DEQ, this permit may be reopened and modified.

   If the TIE/TRE shows that toxicity is caused by a toxicant(s) that may be controlled with specific numerical limitations, the permittee may:

   a. Submit an alternative control program for compliance with the numerical requirements;

b. If necessary, provide a modified whole effluent testing protocol which compensates for the pollutant(s) being controlled numerically.

If acceptable to DEQ, this permit may be reopened and modified to incorporate any additional numerical limitations, a modified compliance schedule if judged necessary by DEQ, and/or a whole effluent protocol.

4. Cyanide:

a. Monthly effluent monitoring for Cyanide is required through end of December 2021, then monitoring is required every two weeks beginning January 1, 2021 through April 30, 2021, then quarterly monitoring is required thereafter.

b. If an effluent sample result indicates Cyanide is present at a concentration equal to or greater than the applicable water quality standard, the City must, within 60 days after receipt of the sample results, submit to DEQ any and all information that demonstrates the reported value(s) was caused by sampling or testing contamination or any other factor not related to the character of effluent. If, after consideration of the information submitted by the City, DEQ chooses to reopen the permit for the sole purpose of proposing a permit limit and/or revising the monitoring requirements for Cyanide, DEQ will notify the City. The City may then submit any supplemental permit information addressing Cyanide, which may include a request for a mixing zone. DEQ will consider all submitted information and evaluate any requested mixing zone in accordance with Title 17, chapter 30, subchapter 5, ARM.

E. Pretreatment Requirements

1. The Permittee shall operate an industrial pretreatment program in accordance with the following permit requirements developed pursuant to Section 402(b)(8) of the Clean Water Act, the General Pretreatment Regulations (40 CFR Part 403), and the approved pretreatment program submitted by the Permittee. The pretreatment program was approved in October 1985 and has subsequently incorporated substantial modifications as approved by the Approval Authority. The approved pretreatment program, and any approved modifications thereto, is hereby incorporated by reference and shall be implemented in a manner consistent with the following requirements:

   a. Industrial user information shall be updated at a minimum of once per year or at that frequency necessary to ensure that all Industrial Users are properly permitted and/or controlled. The records shall be maintained and updated as necessary.

   b. The Permittee shall sample and inspect each Significant Industrial User (SIU) at least once per calendar year (40 CFR Section 403.8(f)(2)(v)). This is in addition to any industrial self-monitoring activities;

   c. The Permittee shall evaluate, at least every two years, whether each Significant Industrial User needs a plan to control slugs or spills or needs to update such a plan. Where needed, the Permittee shall require the SIU to prepare or update, and then implement the plan. Where a slug prevention plan is required, the Permittee shall ensure that the plan contains at least the minimum elements required in 40 CFR Section 403.8(f)(2)(vi);

   d. The Permittee shall investigate instances of non-compliance with Pretreatment Standards and requirements indicated in reports and notices required under 40 CFR Section 403.12, or indicated by analysis, inspection, and surveillance activities.

   e. The Permittee shall enforce all applicable Pretreatment Standards and requirements and obtain remedies for noncompliance by any industrial user;

f. The Permittee shall control, through the legal authority in the approved pretreatment program, the contribution to the POTW by each industrial user to ensure compliance with applicable Pretreatment Standards and requirements. In the case of industrial users identified as significant under 40 CFR Section 403.3(v), this control shall be achieved through permit, order, or similar means and shall contain, at a minimum, the following conditions:

1) Statement of duration (in no case more than five (5) years);

2) Statement of non-transferability without, at a minimum, prior notification to the Permittee and provision of a copy of the existing control mechanism to the new owner or operator;

3) Effluent limits based on applicable Pretreatment Standards, Categorical Pretreatment Standards, local limits, and State and local law;

4) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable Pretreatment Standards in 40 CFR Part 403, Categorical Pretreatment Standards, local limits, and State and local law; and,

5) Statement of applicable civil and criminal penalties for violation of Pretreatment Standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond deadlines mandated by federal statute or regulation.

g. The Permittee shall provide adequate staff, equipment, and support capabilities to carry out all elements of the pretreatment program as required by 40 CFR Section 403.8(f)(3);

h. The approved program shall not be substantially modified by the Permittee without the approval of the EPA. Substantial and non-substantial modifications shall follow the procedures outlined in 40 CFR Section 403.18;

i. The Permittee shall develop, implement, and maintain an enforcement response plan as required by 40 CFR Section 403.8(f)(5); and

j. The Permittee shall notify all Industrial Users of the users' obligations to comply with applicable requirements under Subtitles C and D of the Resource Conservation and Recovery Act (RCRA) as required by 40 CFR Section 403.8(f)(2)(iii).

2. The Permittee shall establish and enforce specific local limits to implement the provisions of 40 CFR Section 403.5(a) and (b), as required by 40 CFR Section 403.5(c). The Permittee shall continue to develop these limits as necessary and effectively enforce such limits.

In accordance with EPA policy and with the requirements of 40 CFR sections 403.8(f)(4) and 403.5(c), the Permittee shall determine if existing technically based local limits are adequate to implement the general and specific prohibitions of 40 CFR sections 403.5(a) and (b).

If a local limits re-evaluation is necessary, this evaluation should be conducted in accordance with the latest revision of the "EPA Region VIII Strategy for Developing Technically Based Local Limits", and after review of the "Guidance Manual on the Development and implementation of Local Discharge Limitations Under the Pretreatment Program" December 1987. Where the Permittee determines that revised or new local limits are necessary, the Permittee shall submit the proposed local limits to the EPA in approvable form based upon the findings of the technical evaluation within two-hundred and seventy (270) days from the effective date of this permit.

3. Additional Requirements:

   a. The Permittee shall analyze the treatment facility influent and effluent for the presence of the toxic pollutants listed in 40 CFR Part 122 Appendix D (NPDES Application Testing Requirements) Table II at least once per year and the toxic pollutants in Table III at least four times per year. If, based upon information available to the Permittee, there is reason to suspect the presence of any toxic or hazardous pollutant listed in Table V, or any other pollutant in a quantity or concentration known or suspected to adversely affect POTW operation, receiving water quality, or solids disposal procedures, analysis for those pollutants shall be performed at least four times per year on both the influent and the effluent.

      Along with the Permittee's pretreatment annual report, the Permittee will submit a list of compounds included in Table V that are suspected or known to be present in its influent wastewater. This determination shall be based on a review of the Permittee's pretreatment program records. The EPA and/or the Department may review and comment on the list and the list may be revised if in the opinion of the EPA and/or the Department the list is incomplete. The Permittee will perform analysis four times a year on the influent for the revised list of compounds for which there are acceptable testing procedures.

   b. Where the pollutants monitored in accordance with this section are reported as being above the method detection limit, the results for these pollutants shall be reported in the Permittee's pretreatment annual report.

   c. The Permittee shall analyze the treatment facility sludge (biosolids) prior to disposal, for the presence of the toxic pollutants listed in 40 CFR Part 122 Appendix D (NPDES Application Testing Requirements) Table III at least once per year. If the Permittee does not dispose of biosolids during the calendar year, the Permittee shall certify to that in the Pretreatment Annual Report and the monitoring requirements in this paragraph shall be suspended for that calendar year.

      The Permittee shall review the pollutants in 40 CFR Part 122, Appendix D, Tables II and V. If any of the pollutants in these tables were above detection in the influent samples during the previous 2 years or last 2 analyses, whichever is greater, the Permittee shall sample and analyze sewage sludge for these pollutants. The Permittee shall perform this evaluation and analysis at least once per year. Pollutants that are analyzed by method 601, Purgeable Halocarbons, are excluded from this requirement.

      The Permittee shall use sample collection and analysis procedures as approved for use under 40 CFR Part 503.

      The Permittee shall report the results for these pollutants in the Permittee's pretreatment annual report.

   d. All analyses shall be in accordance with test procedures established in 40 CFR Part 136. Where analytical techniques are not specified or approved under 40 CFR Part 136, the Permittee shall use its best professional judgment and guidance from the State and EPA regarding analytical procedures. All analytical procedures and method detection limits must be specified when reporting the results of such analyses. Sampling methods shall be those defined in 40 CFR Part 136, 40 CFR Part 403, as defined in this permit, or as specified by the Approval Authority. Where sampling methods are not specified, the influent and effluent samples collected shall be composite samples consisting of at least twelve (12) aliquots collected at approximately equal intervals over a representative 24-hour period and composited according to flow. Where automated composite sampling is inappropriate, at least four (4) grab samples shall be manually taken at equal intervals over a representative 24-hour period, and composited prior to analysis using approved methods.

4. The Permittee shall prepare annually a list of industrial users which, during the preceding twelve (12) months, have significantly violated Pretreatment Standards or Requirements. This list is to be published annually in the largest newspaper in the Permittee's service area as required by 40 CFR Section 403.8(f)(2)(viii).

   In addition, on or before March 28, the Permittee shall submit a pretreatment program annual report to the EPA and the Department which contains the following information:

   a. An updated list of all Significant Industrial users as defined at 40 CFR 403.3(v). For each Significant Industrial User listed, the following information shall be included:

      1) All applicable Standard Industrial Classification (SIC) codes and categorical determinations, as appropriate. In addition, a brief description of the industry and general activities;

      2) Whether each significant Industrial User has an unexpired control mechanism and an explanation as to why any SIUs are operating without a current, unexpired control mechanism (e.g. permit);

      3) A summary of all monitoring activities performed within the previous twelve (12) months. The following information shall be reported:

         Total number of Significant Industrial Users inspected; and
         Total number of Significant Industrial Users sampled

   b. Additional Requirements:

      1) For all industrial users that were in Significant Non-Compliance during the previous twelve (12) months, provide the name of the violating industrial user, indicate the nature of the violations, the type and number of actions taken (warning letter, notice of violation, administrative order, criminal or civil suit, fines or penalties collected, etc.) and current compliance status. If the industrial user was put on a schedule to attain compliance with effluent limits, indicate the date the schedule was issued, and the date compliance is to be attained. Determination of Significant Non-Compliance shall be performed as defined at 40 CFR Section 403.8(f)(2)(viii).

      2) A summary of all enforcement actions not covered by the paragraph above conducted in accordance with the approved Enforcement Response Plan.

   c. A list of all Significant Industrial Users whose authorization to discharge was terminated or revoked during the preceding twelve (12) month period and the reason for termination;

   d. A report on any Interference, Pass Through, upset or MPDES permit violations known or suspected to be caused by non-domestic discharges of pollutant and actions taken by the Permittee in response;

   e. Verification of publication of industrial users in Significant Non-compliance;

   f. Identification of the specific locations, if any, designated by the Permittee for receipt (discharge) of trucked or hauled waste;

   g. Information as required by the EPA or the Department on the discharge to the POTW from the following activities:

      1) Ground water clean-up from underground storage tanks;
      2) Trucked or hauled waste; and,
      3) Groundwater cleanup from RCRA or Superfund sites.

   h. A description of all changes made during the previous calendar year to the Permittee's pretreatment program that were not submitted as substantial or non-substantial modifications to the EPA.

i. The Permittee shall evaluate actual pollutants loadings against the approved Maximum Allowable Head works Loadings (MAHLs). Where the actual loading exceeds the MAHL, the Permittee shall immediately begin a program to either revise the existing local limit and/or undertake such other studies as necessary to evaluate the cause(s) of the exceedance. The Permittee shall provide a summary of its intended action.

j. Other information that may be deemed necessary by EPA.

5. The Permittee shall prohibit the introduction of the following pollutants into the POTW:

a. Pollutants which create a fire or explosion hazard in the publicly owned treatment works (POTW), including, but not limited to, waste streams with a closed cup flashpoint of less than sixty (60) degrees Centigrade (140 degrees Fahrenheit) using the test methods specified in 40 CFR Section 261.21;

b. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works are specifically designed to accommodate such discharges;

c. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW, or other interference with the operation of the POTW;

d. Any pollutant, including oxygen demanding pollutants (e.g., BOD), released in a discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW:

e. Heat in amounts which will inhibit biological activity in the POTW resulting in Interference but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds forty (40) degrees Centigrade (104 degrees Fahrenheit) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits;

f. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause Interference or Pass Through;

g. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

h. Any trucked or hauled pollutants, except at discharge points designated by the POTW; and

i. Any specific pollutant which exceeds a local limitation established by the POTW in accordance with the requirements of 40 CFR Section 403.5(c) and (d);

j. Any other pollutant which may cause Pass Through or Interference.

6. The Permittee shall provide EPA and the Department with adequate notice of any substantial change in the volume or character of pollutants being introduced into the treatment works by any Significant Industrial User introducing pollutants into the treatment works at the time of application for the discharge permit. For the purposes of this section, “substantial change” shall mean a level of change which has a reasonable probability of affecting the Permittee’s ability to comply with its permit conditions or to cause a violation of stream standards applied to the receiving water.

Adequate notice shall include information on:

a. The quality and quantity of effluent to be introduced into the treatment works, and,

b. Any anticipated impact of the change on the quality or quantity of effluent to be discharged from the publicly owned treatment works.

7. Section 309(f) of the Clean Water Act provides that the EPA may issue a notice to the POTW stating that a determination has been made that appropriate enforcement action must be taken against an industrial user for noncompliance with any Pretreatment Standards and requirements. The notice provides the POTW with thirty (30) days to commence such action. The issuance of such permit notice shall not be construed to limit the authority of the permit issuing authority or Approval Authority.

8. The EPA and the Department retain, at all times, the right to take legal action against any source of non-domestic discharge, whether directly or indirectly controlled by the Permittee, for violations of a permit, order, or similar enforceable mechanism issued by the Permittee, violations of any Pretreatment Standard or Requirement, or for failure to discharge at an acceptable level under national standards issued by the EPA under 40 CFR, Chapter I, Subchapter N. In those cases where a MPDES permit violation has occurred because of the failure of the Permittee to properly develop and enforce Pretreatment Standards and Requirements as necessary to protect the POTW, EPA and/or the Department shall hold the Permittee responsible and may take legal action against the Permittee as well as the sources(s) of non-domestic discharge contributing to the permit violation.

## 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. Sludge samples shall be collected at a location representative of the quality of sludge immediately prior to use-disposal practice.

### 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. See Part I.C of this permit for any applicable sludge monitoring procedures. 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

Monitoring results must be reported within a Discharge Monitoring Report (DMR). Monitoring results must be submitted electronically (NetDMR) web-based application) no later than the 28th day of the month following the end of the monitoring period. If no discharge occurs during the entire reporting period, "No Discharge" must be reported within the respective DMR. All other reports must be signed and certified in accordance with Part IV.G 'Signatory Requirements' of this permit and submitted to DEQ at the following address:

Montana Department of Environmental Quality
Water Protection Bureau
PO Box 200901
Helena, Montana 59620-0901

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 must be submitted 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 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) 444-5546 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) 444-5546.

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 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 and the Director 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. Sludge shall not be directly blended with or enter either the final plant discharge and/or waters of the United States.

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.

## 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 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 modifying, revoking 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 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 and the Director. 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 Rights
The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege.

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 rates established under 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. Sewage Sludge: There have been substantial changes (or such changes are planned) in sludge use or disposal practices; applicable management practices or numerical limitations for pollutants in sludge have been promulgated which are more stringent than the requirements in this permit; and/or it has been determined that the permittee's sludge use or disposal practices do not comply with existing applicable state or federal regulations.
6. 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.
7. 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. **"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. **"Average weekly limitation"** means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.
8. **"$BOD_5$"** means the five-day measure of pollutant parameter biochemical oxygen demand.
9. **"Bypass"** means the intentional diversion of waste streams from any portion of a treatment facility.
10. **"$CBOD_5$"** means the five-day measure of pollutant parameter carbonaceous biochemical oxygen demand.
11. **"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.
12. **"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.
13. **"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.
14. **"Department"** means the Montana Department of Environmental Quality (MDEQ). Established by 2-15-3501, MCA.
15. **"Director"** means the Director of the Montana Department of Environmental Quality.
16. **"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.

17. **"EPA"** means the United States Environmental Protection Agency.
18. **"Federal Clean Water Act"** means the federal legislation at 33 USC 1251, *et seq.*
19. **"Geometric Mean"** means the value obtained by taking the Nth root of the product of the measured values.
20. **"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.
21. **"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.
22. **"Industrial User"** means a source of Indirect Discharge.
23. **"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.
24. **"Instantaneous Measurement"**, for monitoring requirements, means a single reading, observation, or measurement.
25. **"Interference"** means a discharge which, alone or in conjunction with other contributing discharges
    a. Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
    b. Therefore causes a violation of any requirement of the POTW's MPDES permit (including an increase in the magnitude or duration of a violation) or causes the prevention of sewage sludge use or disposal in compliance with the following statutes and regulations: Section 405 of the Clean Water Act; 40 CFR Part 503 - Standards for the Use and Disposal of Sewage Sludge; Resource Conservation and Recovery Act (RCRA); 40 CFR Part 258 - Criteria for Municipal Solid Waste Landfills; and/or any State regulations regarding the disposal of sewage sludge.
26. **"Maximum daily discharge limitation"** means the highest allowable daily discharge.
27. **"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))
28. **"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.
29. **"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.
30. **"Pass through"** means a discharge which exits the POTW into waters of the State of Montana in quantities or concentrations which, alone or in conjunction with other discharges, is a cause of a violation of any requirement of the POTW's MPDES permit (including an increase in the magnitude or duration of a violation).
31. **"POTW"** means a publicly owned treatment works.
32. **"Regional Administrator"** means the administrator of Region VIII of EPA, which has jurisdiction over federal water pollution control activities in the state of Montana.
33. **"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.
34. **"Sewage Sludge"** means any solid, semi-solid or liquid residue generated during the treatment of domestic sewage and/or a combination of domestic sewage and industrial waste of a liquid nature in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived

from sewage sludge. Sewage sludge does not include ash generated during the incineration of sewage sludge or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

35. **"TIE"** means a toxicity identification evaluation.
36. **"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.
37. **"TRE"** means a toxicity reduction evaluation.
38. **"TSS"** means the pollutant parameter total suspended solids.
39. **"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.