

**BOARD OF ENVIRONMENTAL REVIEW
JUNE 21, 2024**

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GENERAL PUBLIC COMMENT

BOARD CHAIR UPDATE

**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES**

APRIL 19, 2024

Call to Order

Chair Simpson called the meeting to order at 9:00 a.m.

Attendance

Board Members Present

By Zoom: Chair Dave Simpson; Vice Chair Stacy Aguirre; Board Members Julia Altemus, Jennifer Rankosky, Jon Reiten, and Joe Smith.

Roll was called and a quorum was present.

Chair Simpson announced that the Governor has appointed Amanda Knuteson to replace Lee Bruner on the Board.

Board Attorney Present

Terisa Oomens

DEQ Personnel Present

Board Secretary: Sandy Moisey Scherer

Board Liaison: Deputy Director James Fehr

DEQ Communications: Moira Davin, Rebecca Harbage

DEQ Legal: Catherine Armstrong, Kirsten Bowers, Sarah Christopherson, Loryn Johnson, Sam King, Jeremiah Langston,
Jon Morgan, Kurt Moser, Aaron Pettis, and Kaitlin Whitfield

DEQ Air, Energy and Mining: Sonja Nowakowski, Anne Spezia

Other Parties Present

Laurie Crutcher, Crutcher Court Reporting

Aislinn Brown, Elena Hagen – Montana DOJ Agency Legal Services Bureau

Vicki Marquis, Mark Stermitz – Crowley Fleck

Graham Coppes – Ferguson & Coppes PLLC

David Kim Wilson, Robert Farris-Olsen – Morrison Sherwood Wilson & Deola

Frank Tabish, LHC MT

Jeff, LHC MT

Todd Briggs - Westmoreland

David Smith - MT Contractors Association

Gayla Nicholson

Jon, Clearwater MT

Ken Stoeber - TMC-Belgrade

Terry Martin-Denning

Libby Langston

Gayla Nicholson

I. ADMINISTRATIVE MATERIALS

A. Review and Approve Minutes

A.1. The Board will vote on adopting the February 16, 2024, Meeting Minutes.

Board member Smith moved to APPROVE the February 16, 2024, meeting minutes. Board member Reiten SECONDED. The motion PASSED unanimously.

There was no board discussion or public comment.

II. BRIEFING ITEMS

Chair Simpson and Board Counsel Oomens offered clarification regarding cases.

Board Counsel Oomens said that the District Court has received the remand for BER 2016-03 SM (Western Energy). The District Court will remand a portion of the case back to the BER, but will be delayed as the judge has a couple of trials back-to-back - the remand will hopefully be received in the next couple of months.

Chair Simpson said he had received information regarding the DEQ v. Board litigation (Selenium). There were three orders issued by the Court and legal counsel for the BER, Dana Hupp, sent a summary. Board member Altemus asked that this summary be sent to Board members and Chair Simpson said that he would have the Board Secretary send on his behalf.

The Board did not have any questions.

III. ACTION ITEMS

a. In the Matter of: Notice of Appeal and Request for Hearing by the Western Sugar Cooperative regarding its Montana Pollution Discharge Elimination System Permit No. MT0000281, BER 2020-05 WQ

Chair Simpson asked if the parties were present. Kurt Moser of DEQ and Vicki Marquis of Crowley Fleck were present.

Vice Chair Aguirre moved to REMAND the matter to DEQ for further consideration in accordance with the terms of the Settlement Agreement. Board member Rankosky SECONDED. The motion PASSED unanimously.

b. **In the Matter of Appeal and Request for Hearing by Protect the Clearwater Regarding Issuance of Opencut Mining Permit #3473, BER 2023-03 OC**

Chair Simpson asked if the parties were present. Kaitlin Whitfield of DEQ, Graham Coppes of Ferguson & Coppes, and Mark Stermitz of Crowley Fleck were in attendance and presented oral argument before the Board.

Discussion ensued.

Chair Simpson motioned to REMAND this matter back to the Hearing Examiner for more clarification. Board member Altemus SECONDED.

Discussion ensued.

Chair Simpson restated his motion to REMAND the matter back to the Hearing Examiner with specific attention to: 1) Whether there was agreement regarding facts to support summary judgment; 2) With respect to residences (that a number is given), and a map showing the location of the proposed gravel pit relative to other features (including the river, water bodies, and dwellings), and 3) Definitive information on the water table, and how it relates to the depth of the pit (i.e., the elevation to – difference in elevation between the groundwater surface and the bottom of the pit); and also a re-examination of the word “affect” and how we deal with it in this context. Board member Reiten SECONDED.

The motion PASSED 5-1, with Vice Chair Aguirre dissenting.

IV. NEW CONTESTED CASES

a. **In the Matter of: Notice of Appeal and Request for Hearing on TMC Inc., Permit No. 3462/Black Pit, Case No. BER 2024-01 OC.**

b. **In the Matter of: Notice of Appeal of DEQ Opencut Mining Permit No. 3462, Decision (3/1/24) and Environmental Assessment, Case No. BER 2024-02 OC.**

c. **In the Matter of: Notice of Appeal and Request for Hearing by Gateway Conservation Alliance Regarding Issuance of Opencut Mining Permit No. 3462, Case No. BER 2024-03 OC.**

Chair Simpson moved to ASSIGN these three new contested cases in entirety to a Hearing Examiner at Agency Legal Services. Board member Rankosky SECONDED.

Discussion ensued.

Chair Simpson amended his motion to ASSIGN the three new contested cases to a Hearing Examiner at Agency Legal, but the hearing would be heard before a full Board. Board member Reiten SECONDED. The motion PASSED unanimously.

V. BER AUTHORITIES MEMO

Chair Simpson performed a review and analysis of current law regarding power, authorities, and responsibilities of the BER, which is a quasi-judicial board. The purpose was to support a decision to propose a bill in the 2025 legislature to address and clarify matters. From his analysis and review, Chair Simpson concluded that there is no immediate need for clarification of legislative powers.

Chair Simpson proposed the Board schedule a hearing on the opencut statute and rules for the benefit of the Board, to understand how the process works, and to probe as to whether there are any changes to the rules that might be appropriate to eliminate some of the controversies that have come up consistently with the opencut statute. This would be a general examination of the program, and the issues that it brings to the Board.

Discussion ensued. Chair Simpson mentioned that specific cases would not be addressed in this meeting.

Chair Simpson motioned that the Board PROCEED with a hearing to review the Opencut review permit process, permit review process, and move forward with developing an agenda; and to schedule a hearing either at the next regular meeting or at a separate meeting. Board member Reiten SECONDED. The motion PASSED unanimously.

Vi. GENERAL PUBLIC COMMENT

None.

VI. BOARD CHAIR UPDATE

Chair Simpson mentioned that the Selenium case, litigation and the BER responsibilities had been discussed earlier in the meeting.

VI. ADJOURNMENT

Board member Smith MOVED to adjourn the Board Meeting; Board member Altemus SECONDED. The motion PASSED unanimously. The meeting was adjourned at 11:40 A.M.

Board of Environmental Review April 19, 2024, minutes approved:

/s/

DAVID SIMPSON
CHAIR
BOARD OF ENVIRONMENTAL REVIEW

DATE

Dana L. Hupp
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Electronically Filed with the
Montana Board of Environmental Review
4/26/24 at 11:05 AM
By: Sandy Moisey Scherer
Docket No: BER 2021-07 WQ

Attorneys for Sidney Sugars Incorporated

STATE OF MONTANA BOARD OF ENVIRONMENTAL REVIEW

<p>IN THE MATTER OF:</p> <p>SIDNEY SUGARS INCORPORATED APPEAL OF MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT NO. MT0000248</p>	<p>CASE No. BER 2021-07 WQ</p> <p>UNOPPOSED MOTION TO DISMISS APPEAL WITHOUT PREJUDICE</p>
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Sidney Sugars Incorporated (“SSI”) hereby moves the Hearing Examiner to dismiss the above-captioned appeal without prejudice.

The Montana Department of Environmental Quality (“DEQ”) and SSI entered into an Administrative Order on Consent on April 25, 2024 related to the closure of SSI’s Sidney, Montana facility and SSI’s use of its Montana Pollutant Discharge Elimination System (“MPDES”) Permit associated with the closure.

It is no longer necessary for SSI to maintain this appeal given the status of the facility and the fact that the parties have entered into the AOC.

Counsel for the DEQ has been contacted and does not oppose this Motion.

Respectfully submitted this 26 day of April 2024.

WORDEN THANE P.C.
*Attorneys for Sidney Sugars
Incorporated*

/s/Dana L. Hupp
Dana L. Hupp

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2024, I served a copy of the preceding document by e-mail on the following:

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/s/Dana L. Hupp

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STATE OF MONTANA BOARD OF ENVIRONMENTAL REVIEW

<p>IN THE MATTER OF:</p> <p>SIDNEY SUGARS INCORPORATED APPEAL OF MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT NO. MT0000248</p>	<p>CASE No. BER 2021-07 WQ</p> <p>ORDER ON UNOPPOSED MOTION TO DISMISS APPEAL</p>
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Before the Hearing Examiner is Sidney Sugars Incorporated's Unopposed Motion to Dismiss Appeal without prejudice. The Hearing Examiner finds good cause to grant the Motion.

Accordingly, IT IS ORDERED:

The Appeal is DISMISSED without prejudice.

DATED this 29th day of April, 2024.


Aislinn Brown, Hearing Examiner

c: Kirsten Bowers
Dana Hupp

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Attorney for DEQ

Attorneys for CHS Inc.

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

IN THE MATTER OF: RENEWAL OF MPDES PERMIT NO. MT0000264, ISSUED SEPTEMBER 20, 2022, TO CHS, INC. FOR DISCHARGES FROM THE LAUREL REFINERY	CASE NOS. BER 2022-07-WQ STIPULATION FOR ENTRY OF FINAL AGENCY DECISION
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COME NOW Appellant CHS Inc. (“CHS”) and the Montana Department of Environmental Quality (“DEQ”), collectively (“Parties”), and hereby stipulate and agree as follows:

1. Pursuant to Mont. Code Ann. § 75-5-403, the Board of Environmental Review (“Board”) has authority to hear contested case appeals of DEQ’s Montana Pollutant Discharge Elimination System (“MPDES”) permitting decisions, such that the Board may affirm, modify, or reverse a permitting action of DEQ.

2. DEQ is a department of the executive branch of state government, duly created and existing under the authority of Mont. Code Ann. § 2-15-3501. The Department has statutory authority to administer Montana's water quality statutes, including the review and issuance of MPDES Permits under Mont. Code Ann. § 75-5-402 and ARM 17.30.1301.

3. CHS is a cooperative association registered to do business in Montana, located in Yellowstone County, Montana, and is the owner and operator of the MPDES permitted facility which has been issued MPDES Permit No. MT0000264.

4. On September 30, 2022, DEQ issued a renewal of MPDES Permit No. MT0000264 for CHS's Laurel Refinery, with an effective date of November 1, 2022 (the "2022 Permit").

5. On October 31, 2022, CHS timely appealed certain provisions of the 2022 Permit before the Board. *See* Notice of Appeal and Request for Hearing (October 31, 2022).

6. On July 5, 2023, the Hearing Examiner granted in part and denied in part Conservation Groups' Motion to Intervene, indicating that the Groups could be heard with respect to the appeal issue regarding Hydrogen Sulfide limits and the related Hydrogen Sulfide compliance schedule.

7. On February 27, 2024, the Hearing Examiner issued an Order Granting Joint Motion for 60-day Stay and required DEQ and CHS to file a status report on April 22, 2024. The purpose of the 60-day stay was for the Parties to discuss settlement prior to the close of discovery.

8. On April 22, 2024, DEQ and CHS filed a Joint Status Report and Motion, informing the Hearing Examiner that a settlement agreement had been reached in principle and requesting the Hearing Examiner vacate the Scheduling Order, and indicating the Parties would file the settlement agreement and all related motions by May 24, 2024.

9. On April 23, 2024, the Hearing Examiner vacated the Scheduling Order and ordered the parties to submit the settlement agreement and related motions by May 24, 2024.

10. As pertinent to CHS's Appeal Issue No. 1, CHS agrees to withdraw its appeal of the 2022 Permit's Technology Based Effluent Limitations (or "TBELs").

11. As pertinent to CHS's Appeal Issue No. 2, regarding effluent limitations for Hydrogen Sulfide, the Hydrogen Sulfide compliance schedule will be removed from the 2022 Permit and CHS agrees to withdraw its appeal of the related Hydrogen Sulfide limitations.

12. As pertinent to CHS's Appeal Issue No. 3, DEQ agrees to remove the requirement to sample for and report the levels of beta-emitters in millirems per

year (mrems/yr), and instead require the data be reported in picocuries per liter (pCi/L). MPDES permits require that monitoring be conducted in accordance with 40 CFR Part 136 test methods. 40 CFR Part 136 requires that beta emitters be analyzed using units of pCi/L. In addition, and pursuant to 40 CFR Part 136, DEQ agrees that the sampling type for alpha emitters, beta emitters, and radium in the receiving water should be corrected to “Grab” rather than “Instantaneous.”

13. The modified 2022 Permit attached hereto as Exhibit A appropriately incorporates the modifications to the appealed 2022 Permit as contemplated in this Stipulation.

14. Exhibit B, a track changes/redline version of the modified 2022 Permit, has been attached to this Stipulation to better highlight the Parties’ proposed changes to the modified Permit.

15. The Parties request the Board adopt, as the final agency decision, the modified 2022 Permit attached hereto as Exhibit A, pursuant to its authority to hear contested case appeals of MPDES Permits under Mont. Code Ann. § 75-5-403(2) and ARM 17.30.1370(4).

16. Each of the signatories to this Stipulation represents that he or she is authorized to enter this Stipulation and to bind the Parties represented by him or her to the terms of this Stipulation.

17. CHS's Appeal Issues Nos. 1, 2, and 3 have been fully and finally compromised and settled by agreement of the Parties and the Parties herein stipulate to and respectfully request the Board's entry of a final agency decision as set forth herein.

18. Pursuant to its authority to hear contested case appeals of MPDES Permits under Mont. Code Ann. § 75-5-403(2) and ARM 17.30.1370(4), the Board may adopt, as its final agency decision, the modified 2022 Permit attached hereto as Exhibit A, as well as the attached (Proposed) Board Order for Final Agency Decision.

19. All conditions of the modified 2022 Permit, attached hereto as Exhibit A, will be fully effective and enforceable upon approval of the Board.

20. The Parties shall each pay their own attorney fees and costs.

21. The Board's Decision shall represent the FINAL AGENCY DECISION for purposes of the Montana Administrative Procedure Act, Section 2-4-623, MCA.

DATED this 24th day of May,
2024.

/s/ Kurt R. Moser

Kurt R. Moser

Montana Department of Environmental Quality

1520 East Sixth Avenue

P.O. Box 200901

Helena, MT 59620-0901

Attorney for DEQ

DATED this 24th day of May,
2024.

/s/ Victoria A. Marquis
Victoria Marquis
Selena Z. Sauer
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Attorneys for CHS Inc.

CERTIFICATE OF SERVICE

I hereby certify that this 24th day of May, 2024, I caused to be served a true and correct copy of the foregoing document and any attachments to all parties or their counsel of record as set forth below:

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/s/ Catherine Armstrong
 Catherine Armstrong
 MT-Department of Environmental Quality

**MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

AUTHORIZATION TO DISCHARGE UNDER THE
MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM

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

CHS, Inc.

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

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

to receiving waters named **Yellowstone River**

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

This permit shall become effective: **November 1, 2022**

This permit and the authorization to discharge shall expire at midnight, **October 31, 2027**

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.

<u>Outfall</u>	<u>Description</u>
002	<p>Location: Lower port primary diffuser, discharging into the Yellowstone River, located at 45°39'22.32" N latitude, 108°45'10.86" W longitude.</p> <p>Mixing Zone: None. There are no effluent limits that require a mixing zone.</p> <p>Treatment Works: Refinery wastewater treatment plant.</p>
003	<p>Location: Upper port secondary diffuser, discharging into the Yellowstone River, located at 45°39'22.32" N latitude, 108°45'10.86" W longitude.</p> <p>Mixing Zone: Acute mixing for 100 feet to provide 6.9% dilution, and chronic mixing for 1,000 feet to provide 27% dilution, for Total Residual Chlorine.</p> <p>Treatment Works: Refinery wastewater treatment plant.</p>

B. Effluent Limitations

Outfall 002 – Lower Port Primary Diffuser to Yellowstone River

Beginning November 1, 2022, until the end of the permit, CHS Laurel Refinery will be required to meet the following effluent limits at Outfall 002:

Table 1. Outfall 002 - Final Effluent Limits

Parameter <i>TR = Total Recoverable</i>	Units	Effluent Limits	
		Maximum Daily	Average Monthly
BOD ₅	lb/day	620	331
COD	lb/day	4,425	2,288
Net TSS	lb/day	532	339
Oil and Grease	mg/L	10	--
	lb/day	242	128
Phenol	lb/day	4.5	2.2
Ammonia, Total as N	lb/day	418	191
Chromium, TR	lb/day	9.1	5.2
Chromium, Hexavalent	lb/day	0.99	0.36
Sulfide	lb/day	3.9	1.8
Hydrogen Sulfide (H ₂ S) ⁽¹⁾	µg/L	3.5	1.5
Arsenic, TR ⁽²⁾	µg/L	19	13
pH	s.u.	Between 6.0 and 9.0, all times	
Whole Effluent Toxicity, Acute, LC ₅₀	% effluent	No acute toxicity	
Footnote: (1) Any calculated results that show “non-detect” for H ₂ S at the RRV of 20 µg/L is considered compliance with the effluent limit. (2) The arsenic limits become effective November 1, 2025 .			

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

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

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

At any time there is discharge from both Outfall 002 and 003, the effluent limits for Outfall 003 will apply. CHS will inform DEQ of the beginning and end of the dual discharge.

Outfalls 003 – Upper port secondary diffuser to Yellowstone River

Beginning November 1, 2022, until the end of the permit, CHS Laurel Refinery will be required to meet the following effluent limits at Outfall 003:

Table 2. Outfall 003 - Final Effluent Limits

Parameter <i>TR = Total Recoverable</i>	Units	Effluent Limits	
		Maximum Daily	Average Monthly
BOD ₅	lb/day	620	331
COD	lb/day	4,425	2,288
Net TSS	lb/day	532	339
Oil and Grease	mg/L	10	--
	lb/day	242	128
Phenol	lb/day	4.5	2.2
Ammonia, Total as N	lb/day	418	191
Sulfide	lb/day	3.9	1.8
Hydrogen Sulfide (H ₂ S) ⁽¹⁾	µg/L	3.3	1.6
Chromium, TR	lb/day	9.1	5.2
Hexavalent Chromium	lb/day	0.99	0.36
Total Residual Chlorine (net) ⁽²⁾	µg/L	400	170
Arsenic, TR ⁽³⁾	µg/L	19	13
pH	s.u.	Between 6.0 and 9.0, all times	
Whole Effluent Toxicity, Acute, LC ₅₀	% effluent	No acute toxicity	
Footnote:			
(1) Any calculated results that show “non-detect” for H ₂ S at the RRV of 20 µg/L is considered compliance with the effluent limit.			
(2) CHS may demonstrate compliance with the TRC limit by discounting the manganese oxide interference and reporting the net TRC concentration. Any results less than the RL of 50 µg/L are considered compliance with the effluent limit.			
(3) The arsenic limits become effective November 1, 2025 .			

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

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

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

C. Monitoring Requirements

Samples shall be collected, preserved, and analyzed in accordance with approved procedures listed in 40 CFR 136. Data supplied by CHS must meet either provide a detect or non-detect at the required Reporting Level (RL) which is either the Required Reporting Value (RRV) listed in Circular DEQ-7 or another detection level that is DEQ’s best determination of a level that can be achieved using EPA-approved methods or methods approved by DEQ.

Results shall be submitted electronically on NetDMRs by the 28th of the of the month following the end of the monitoring period.

1. *Outfalls 002 and 003*

Samples will reflect the nature of the discharge. As a minimum, the constituents shall be monitored at the frequencies and with the types of measurements indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge.

Self-monitoring of effluent shall be conducted following final treatment, at the outlet of the discharge pumps prior to the forced main unless another location is requested and approved by DEQ in writing. If there is no discharge from an outfall for the month, “No Discharge” shall be indicated for that outfall.

Table 3. Summary of Effluent Monitoring Requirements ⁽¹⁾ – Outfalls 002 and 003

Parameter	Units	Monitoring Frequency	Type	Reporting Requirement	RL
Flow	MGD	Continuous	Instantaneous ⁽²⁾	Daily Max & Mo Avg	--
pH	s.u.	1/Day	Instantaneous ⁽²⁾	Daily Min & Daily Max	0.1
BOD ₅	mg/L	1/Week	Composite	Daily Max & Mo Avg	--
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
COD	mg/L	1/Week	Composite	Daily Max & Mo Avg	--
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
TSS – Intake Water	mg/L	1/Week	Composite	None	--
TSS – Effluent Gross	mg/L	1/Week	Composite	None	--
TSS – Net ⁽³⁾	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Oil and Grease	mg/L	1/Week	Grab	Daily Max & Mo Avg	1
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Phenol	µg/L	1/Month	Grab	Daily Max & Mo Avg	10
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Ammonia (as N)	mg/L	1/Week	Composite	Daily Max & Mo Avg	0.07
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Sulfide, Total	µg/L	1/Week	Composite	Daily Max & Mo Avg	--
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Sulfide, Dissolved	µg/L	1/Week	Composite	Daily Max & Mo Avg	--
Hydrogen Sulfide (H ₂ S) ⁽⁴⁾	µg/L	1/Week	Calculated	Daily Max & Mo Avg	20
Chromium, TR	µg/L	1/Month	Composite	Daily Max & Mo Avg	10
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Chromium, Hexavalent	µg/L	1/Month	Composite	Daily Max & Mo Avg	2
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Arsenic, TR	µg/L	1/Week	Composite	Daily Max & Mo Avg	1
Total Residual Chlorine, Net	µg/L	1/Week	Grab	Daily Max & Mo Avg	50

Parameter	Units	Monitoring Frequency	Type	Reporting Requirement	RL
Fluoride	mg/L	1/Quarter	Composite	Report	200
Aluminum, Dissolved	µg/L	1/Quarter	Composite	Report	9
Cyanide	µg/L	1/Quarter	Grab	Report	3
Iron, TR	µg/L	1/Quarter	Composite	Report	20
Lead, TR	µg/L	1/Quarter	Composite	Report	0.3
Mercury, TR	µg/L	1/Quarter	Composite	Report	0.005
Selenium, TR	µg/L	1/Quarter	Composite	Report	1
Alpha Emitters	pCi/L	2/Year	Composite	Report	--
Beta Emitters	pCi/L	2/Year	Composite	Report	--
Radium 228 + total	pCi/L	2/Year	Composite	Report	--
Nitrate + Nitrite (Nov 1 – July 31)	mg/L	1/Quarter	Composite	Daily Max & Mo Avg	0.02
Nitrate + Nitrite (Aug 1 – Oct 31)	mg/L	1/Week ⁽⁵⁾	Composite	Daily Max & Mo Avg	0.02
Total Kjeldahl Nitrogen (TKN)	mg/L	1/Week ⁽⁵⁾	Composite	Mo Avg	0.225
TN ⁽⁶⁾	mg/L	1/Month ⁽⁵⁾	Calculated	Mo Avg	0.245
	lb/day	1/Month ⁽⁵⁾	Calculated	Mo Avg	--
TP	mg/L	1/Week ⁽⁵⁾	Composite	Mo Avg	0.003
	lb/day	1/Month ⁽⁵⁾	Calculated	Mo Avg	--
Temperature	° C	1/Month	Instantaneous	Daily Max & Mo Avg	0.1
Whole Effluent Toxicity, Acute	% Effluent	1/Quarter ⁽⁷⁾	Grab	Pass/Fail	--

Footnotes: RL = Reporting Level

- (1) The effluent monitoring location must be after all treatment has been completed (*i.e.*, downstream from all treatment units, and prior to entry to the receiving waters).
- (2) Requires recording device or totalizer.
- (3) Mass-based net TSS calculated by first determining mass-based net TSS discharge on a daily basis, then determining daily maximum and monthly average for the month.
- (4) H₂S concentrations are calculated based on the dissolved sulfide concentration and the sample pH and other parameters at time of sampling, in accordance with Standard Methods 4500-S₂-H, unless another method is proposed by CHS and accepted by DEQ. Field data (pH, conductivity (µmhos/cm) and temperature), taken of an unpreserved water sample shall be recorded at the time the dissolved sulfide sample is collected. This field data must be used in the H₂S calculations.
- (5) Monitoring required only during the summer season of August 1 – October 31st.
- (6) TN is the sum of Nitrate+Nitrite and TKN.
- (7) Per the 2021/2022 TIE/TRE, two species conducted at least monthly unless CHS is approved to revert to quarterly. At minimum, failure of any acute Whole Effluent Toxicity (WET) test requires that the permittee comply with the Permit's Special Conditions.

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

2. Yellowstone River – Ambient Conditions

As a minimum, the following constituents shall be monitored for the Yellowstone River at the frequency and with the type of measurement indicated. Results must be

provided on NetDMRs by the 28th of the month following the end of the monitoring period. CHS must use a sufficiently sensitive method to detect the parameters at or above the RRV as specified in Circular DEQ-7 or other Reporting Level specified by DEQ; if this is not possible for any of the samples an explanation must be provided.

Upstream Monitoring Requirements as specified in this section shall be conducted beginning in **2022** through **2025**. CHS shall submit a topo map or aerial photo indicating the ambient monitoring location. If the sample location is changed, CHS shall submit a revised monitoring location prior to taking the next sample.

Table 4. Upstream Monitoring Requirements for Yellowstone River

Parameter	Units	Monitoring Frequency	Type	RL
Sulfide, Dissolved	µg/L	1/Quarter	Grab	--
Hydrogen Sulfide (H ₂ S)	µg/L	1/Quarter ⁽¹⁾	Calculated	20
pH	s.u.	1/Quarter ⁽¹⁾	Instantaneous	0.1
Conductivity	µmhos/cm	Optional for H ₂ S ⁽¹⁾	Instantaneous/Grab	--
Total Dissolved Solids	mg/L	Optional for H ₂ S ⁽¹⁾	Grab	--
Temperature	°C	1/Quarter ⁽¹⁾	Instantaneous	0.1
Hardness, as CaCO ₃	mg/L	1/Quarter	Grab	--
Total Nitrogen ⁽²⁾	µg/L	1/Month ⁽³⁾	Grab or Calculated	0.245
Total Phosphorus	µg/L	1/Month ⁽³⁾	Grab	0.003
Aluminum, Dissolved	µg/L	1/Quarter	Grab	9
Cyanide	µg/L	1/Quarter	Grab	3
Iron, TR	µg/L	1/Quarter	Grab	20
Lead, TR	µg/L	1/Quarter	Grab	0.3
Mercury	µg/L	1/Quarter	Grab	0.005
Selenium	µg/L	1/Quarter	Grab	1
Alpha emitters	pCi/L	1/Quarter	Grab	--
Beta emitters	pCi/L	1/Quarter	Grab	--
Radium, 228 and total	pCi/L	1/Quarter	Grab	--

Footnotes: RL = Reporting Level

- (1) H₂S concentrations are calculated based on the dissolved sulfide concentration and pH (using look-up table), and potentially TDS and other field parameters (for equation method) in accordance with Standard Methods 4500-S²-H, unless another method is proposed by CHS and accepted by DEQ. Field data taken of an unpreserved water sample shall be recorded *at the time the dissolved sulfide sample is collected*. This field data must be used to calculate the H₂S concentration from the laboratory-provided dissolved sulfide data.
- (2) TN can be determined by either the persulfate method or the sum of Nitrate + Nitrite and TKN, as long as the method is capable of having a detect or meeting the RRV.
- (3) Monitoring required only during the Yellowstone summer season of August 1 – October 31st.

3. *Whole Effluent Toxicity (WET) Monitoring – Acute Toxicity*

CHS is required to continue monthly two-species WET testing and the Toxicity Identification Evaluation/Toxicity Reduction Evaluation (TIE/TRE) investigations until they have identified and reduced the source of toxicity and can demonstrate treatment improvements that are sufficient to pass two-species WET tests for at least six months. At this point CHS can request to revert to two-species on a quarterly basis and DEQ will review and approve or disapprove, in writing.

For each WET test, CHS shall conduct an acute static renewal toxicity test on a grab sample of the effluent. Testing will employ two species and will consist of five effluent concentrations (100, 50, 25, 12.5, 6.25 percent effluent) and a control. Dilution water and the control shall consist of the receiving water.

The toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, EPA-821-R-02-012 and the *Region VIII EPA NPDES Acute Test Conditions - Static Renewal Whole Effluent Toxicity Test* testing protocols. The permittee shall conduct an acute 48-hour static renewal toxicity test using *Ceriodaphnia* sp. and an acute 96-hour static renewal toxicity test using fathead minnows (*Pimephales promelas*). The control of pH in the toxicity test utilizing CO₂ 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.

Furthermore, if CHS can demonstrate in the TIE/TRE that chlorine is a contributing factor for the acute test failures, DEQ may consider sample pre-treatment for removal of chlorine. CHS may provide parallel acute tests, but not replace existing tests, until DEQ has approved this revision, in writing.

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 DEQ. 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 (not as part of the accelerated testing for a TIE/TRE), an additional test is required to be conducted within 14 days of the date of the initial sample. Should acute toxicity occur in the second test, testing shall occur once a month until further notified by DEQ. In all cases, the results of all toxicity tests must be submitted to the Department in accordance with Part II of this permit. All WET tests including retests must be two species.

Failure to initiate or conduct an adequate TIE/TRE, or delays in the conduct of such tests, shall not be considered a justification for noncompliance with the whole effluent toxicity limits contained in Part I.B of this permit. A TRE plan

needs to be submitted to DEQ within 45 days after confirmation of the continuance of the effluent toxicity.

The quarterly WET test results from the laboratory shall be reported along with the NetDMR report no later than the 28th day of the month following the completed reporting period. The format for the laboratory report shall be consistent with the latest revision of the EPA form Region VIII Guidance for Acute Whole Effluent Reporting and shall include all chemical and physical data as specified.

CHS is not eligible to further reduce the frequency to semi-annual during this permit cycle. CHS must continue the accelerated testing until they are able to prove the TIE/TRE was successful (by passing six months of two-species tests); at that time DEQ will review and, if appropriate, approve the reduction to quarterly two-species tests.

D. Special Conditions

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

Should the effluent exceed the acute toxicity limitation in a routine test and is confirmed as persistent by the additional test, a TIE/TRE shall be undertaken by the permittee to establish the cause of the toxicity, locate the source(s) of the toxicity, and develop control of, or treatment for the toxicity. Failure to conduct an adequate TIE/TRE, or delays in the conduct of such tests, shall not be considered a justification for noncompliance with the whole effluent toxicity limits. A TRE plan needs to be submitted to DEQ within 45 days after confirmation of the continuance of the effluent toxicity.

2. *Arsenic*

Beginning in January 2023, CHS shall submit an annual report to DEQ no later than January 28th for each year, with the final report due November 14, 2025. The report shall summarize the progress made in achieving compliance with the arsenic effluent limits over the previous year and the actions planned for the upcoming year.

The first year's annual report will include a Standard Operating Procedure for collecting data and computing the Hydrogen Sulfide concentrations for both the effluent and the ambient conditions. The raw data, computations, and results for the monthly NetDMR hydrogen sulfide values will be attached as a report in FACTS or NetDMR.

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

A. Representative Sampling

Samples taken in compliance with the monitoring requirements established under Part I of the permit shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

B. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under Part 136, Title 40 of the Code of Federal Regulations, unless other test procedures have been specified in this permit. All flow-measuring and flow-recording devices used in obtaining data submitted in self-monitoring reports must indicate values within 10 percent of the actual flow being measured.

C. Penalties for Tampering

The Montana Water Quality Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

D. Reporting of Monitoring Results

Monitoring results must be reported 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. Whole effluent toxicity (biomonitoring) results must be reported with copies of the laboratory analysis report on forms from the most recent version of EPA Region VIII's "Guidance for Whole Effluent Reporting." If no discharge occurs during the 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 the permit must be submitted to the Department in either electronic or paper format and be postmarked no later than 14 days following each schedule date unless otherwise specified in the permit.

F. Additional Monitoring by the Permittee

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

G. Records Contents

Records of monitoring information shall include:

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

H. Retention of Records

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

I. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee shall report any serious incidents of noncompliance as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the Water Protection Bureau at (406) 444-5546 or the Office of Disaster and Emergency Services at (406) 324-4777. The following examples are considered serious incidents:
 - a. Any noncompliance which may seriously endanger health or the environment;
 - b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part III.G of this permit, "Bypass of Treatment Facilities"); or
 - c. Any upset which exceeds any effluent limitation in the permit (see Part III.H of this permit, "Upset Conditions").

2. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:
 - a. a description of the noncompliance and its cause;
 - b. the period of noncompliance, including exact dates and times;
 - c. the estimated time noncompliance is expected to continue if it has not been corrected; and
 - d. steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
3. The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Protection Bureau, by phone, (406) 444-5546.
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 Director, or an authorized representative thereof, upon the presentation of credentials and other documents as may be required by law, to:

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

III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply

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

B. Penalties for Violations of Permit Conditions

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

C. Need to Halt or Reduce Activity not a Defense

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

D. Duty to Mitigate

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

E. Proper Operation and Maintenance

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

F. Removed Substances

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

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III.G.2 and III.G.3 of this permit.
2. Notice:
 - a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.
 - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.I of this permit, "Twenty-four Hour Reporting".
3. Prohibition of bypass:
 - a. Bypass is prohibited and the Department may take enforcement action against a permittee for a bypass, unless:
 - 1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - 2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - 3) The permittee submitted notices as required under Part III.G.2 of this permit.
 - b. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in Part III.G.3.a of this permit.

H. Upset Conditions

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

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

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

I. Toxic Pollutants

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

J. Changes in Discharge of Toxic Substances

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

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

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

IV. GENERAL REQUIREMENTS

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

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

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

H. Penalties for Falsification of Reports

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

I. Availability of Reports

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

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

J. Oil and Hazardous Substance Liability

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

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges.

L. Severability

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

M. Transfers

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

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

N. Fees

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

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

O. Reopener Provisions

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

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

V. DEFINITIONS

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

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

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

EXHIBIT B.

Major Industrial
Permit No.: MT0000264

**MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

AUTHORIZATION TO DISCHARGE UNDER THE
MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM

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

CHS, Inc.

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

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

to receiving waters named **Yellowstone River**

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

This permit shall become effective: **November 1, 2022**

This permit and the authorization to discharge shall expire at midnight, **October 31, 2027**

~~FOR THE MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY~~

~~Jon Kenning, Chief
Water Protection Bureau
Water Quality Division~~

Modified Pursuant to Board Order on: _____
Issuance Date: September 30, 2022

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I. EFFLUENT LIMITATIONS, MONITORING REQUIREMENTS & OTHER CONDITIONS

A. Description of Discharge Points and Mixing Zone

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

<u>Outfall</u>	<u>Description</u>
002	<p>Location: Lower port primary diffuser, discharging into the Yellowstone River, located at 45°39'22.32" N latitude, 108°45'10.86" W longitude.</p> <p>Mixing Zone: None. There are no effluent limits that require a mixing zone.</p> <p>Treatment Works: Refinery wastewater treatment plant.</p>
003	<p>Location: Upper port secondary diffuser, discharging into the Yellowstone River, located at 45°39'22.32" N latitude, 108°45'10.86" W longitude.</p> <p>Mixing Zone: Acute mixing for 100 feet to provide 6.9% dilution, and chronic mixing for 1,000 feet to provide 27% dilution, for Total Residual Chlorine.</p> <p>Treatment Works: Refinery wastewater treatment plant.</p>

B. Effluent Limitations

Outfall 002 – Lower Port Primary Diffuser to Yellowstone River

Beginning November 1, 2022, until the end of the permit, CHS Laurel Refinery will be required to meet the following effluent limits at Outfall 002:

Table 1. Outfall 002 - Final Effluent Limits

Parameter <i>TR = Total Recoverable</i>	Units	Effluent Limits	
		Maximum Daily	Average Monthly
BOD ₅	lb/day	620	331
COD	lb/day	4,425	2,288
Net TSS	lb/day	532	339
Oil and Grease	mg/L	10	--
	lb/day	242	128
Phenol	lb/day	4.5	2.2
Ammonia, Total as N	lb/day	418	191
Chromium, TR	lb/day	9.1	5.2
Chromium, Hexavalent	lb/day	0.99	0.36
Sulfide	lb/day	3.9	1.8
Hydrogen Sulfide (H ₂ S) ⁽¹⁾	µg/L	3.5	1.5
Arsenic, TR ⁽²⁾	µg/L	19	13
pH	s.u.	Between 6.0 and 9.0, all times	
Whole Effluent Toxicity, Acute, LC ₅₀	% effluent	No acute toxicity	
Footnote:			
(1) The H₂S limits become effective November 1, 2025. Any calculated results that show "non-detect" for H ₂ S at the RRV of 20 µg/L is considered compliance with the effluent limit.			
(2) The arsenic limits become effective November 1, 2025.			

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

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

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

At any time there is discharge from both Outfall 002 and 003, the effluent limits for Outfall 003 will apply. CHS will inform DEQ of the beginning and end of the dual discharge.

Outfalls 003 – Upper port secondary diffuser to Yellowstone River

Beginning November 1, 2022, until the end of the permit, CHS Laurel Refinery will be required to meet the following effluent limits at Outfall 003:

Table 2. Outfall 003 - Final Effluent Limits

Parameter <i>TR = Total Recoverable</i>	Units	Effluent Limits	
		Maximum Daily	Average Monthly
BOD ₅	lb/day	620	331
COD	lb/day	4,425	2,288
Net TSS	lb/day	532	339
Oil and Grease	mg/L	10	--
	lb/day	242	128
Phenol	lb/day	4.5	2.2
Ammonia, Total as N	lb/day	418	191
Sulfide	lb/day	3.9	1.8
Hydrogen Sulfide (H ₂ S) ⁽¹⁾	µg/L	3.3	1.6
Chromium, TR	lb/day	9.1	5.2
Hexavalent Chromium	lb/day	0.99	0.36
Total Residual Chlorine (net) ⁽²⁾	µg/L	400	170
Arsenic, TR ⁽³⁾	µg/L	19	13
pH	s.u.	Between 6.0 and 9.0, all times	
Whole Effluent Toxicity, Acute, LC ₅₀	% effluent	No acute toxicity	
Footnote:			
(1) The H₂S limits become effective November 1, 2025. Any calculated results that show "non-detect" for H ₂ S at the RRV of 20 µg/L is considered compliance with the effluent limit.			
(2) CHS may demonstrate compliance with the TRC limit by discounting the manganese oxide interference and reporting the net TRC concentration. Any results less than the RL of 50 µg/L are considered compliance with the effluent limit.			
(3) The arsenic limits become effective November 1, 2025.			

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

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

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

C. Monitoring Requirements

Samples shall be collected, preserved, and analyzed in accordance with approved procedures listed in 40 CFR 136. Data supplied by CHS must meet either provide a detect or non-detect at the required Reporting Level (RL) which is either the Required Reporting Value (RRV) listed in Circular DEQ-7 or another detection level that is DEQ's best determination of a level that can be achieved using EPA-approved methods or methods approved by DEQ.

Results shall be submitted electronically on NetDMRs by the 28th of the of the month following the end of the monitoring period.

1. *Outfalls 002 and 003*

Samples will reflect the nature of the discharge. As a minimum, the constituents shall be monitored at the frequencies and with the types of measurements indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge.

Self-monitoring of effluent shall be conducted following final treatment, at the outlet of the discharge pumps prior to the forced main unless another location is requested and approved by DEQ in writing. If there is no discharge from an outfall for the month, “No Discharge” shall be indicated for that outfall.

Table 3. Summary of Effluent Monitoring Requirements ⁽¹⁾ – Outfalls 002 and 003

Parameter	Units	Monitoring Frequency	Type	Reporting Requirement	RL
Flow	MGD	Continuous	Instantaneous ⁽²⁾	Daily Max & Mo Avg	--
pH	s.u.	1/Day	Instantaneous ⁽²⁾	Daily Min & Daily Max	0.1
BOD ₅	mg/L	1/Week	Composite	Daily Max & Mo Avg	--
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
COD	mg/L	1/Week	Composite	Daily Max & Mo Avg	--
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
TSS – Intake Water	mg/L	1/Week	Composite	None	--
TSS – Effluent Gross	mg/L	1/Week	Composite	None	--
TSS – Net ⁽³⁾	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Oil and Grease	mg/L	1/Week	Grab	Daily Max & Mo Avg	1
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Phenol	µg/L	1/Month	Grab	Daily Max & Mo Avg	10
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Ammonia (as N)	mg/L	1/Week	Composite	Daily Max & Mo Avg	0.07
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Sulfide, Total	µg/L	1/Week	Composite	Daily Max & Mo Avg	--
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Sulfide, Dissolved	µg/L	1/Week	Composite	Daily Max & Mo Avg	--
Hydrogen Sulfide (H ₂ S) ⁽⁴⁾	µg/L	1/Week	Calculated	Daily Max & Mo Avg	20
Chromium, TR	µg/L	1/Month	Composite	Daily Max & Mo Avg	10
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Chromium, Hexavalent	µg/L	1/Month	Composite	Daily Max & Mo Avg	2
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Arsenic, TR	µg/L	1/Week	Composite	Daily Max & Mo Avg	1
Total Residual Chlorine, Net	µg/L	1/Week	Grab	Daily Max & Mo Avg	50

Parameter	Units	Monitoring Frequency	Type	Reporting Requirement	RL
Fluoride	mg/L	1/Quarter	Composite	Report	200
Aluminum, Dissolved	µg/L	1/Quarter	Composite	Report	9
Cyanide	µg/L	1/Quarter	Grab	Report	3
Iron, TR	µg/L	1/Quarter	Composite	Report	20
Lead, TR	µg/L	1/Quarter	Composite	Report	0.3
Mercury, TR	µg/L	1/Quarter	Composite	Report	0.005
Selenium, TR	µg/L	1/Quarter	Composite	Report	1
Alpha Emitters	pCi/L	2/Year	Composite	Report	--
Beta Emitters	pCi/L mrem/yr	2/Year	Composite	Report	--
Radium 228 + total	pCi/L	2/Year	Composite	Report	--
Nitrate + Nitrite (Nov 1 – July 31)	mg/L	1/Quarter	Composite	Daily Max & Mo Avg	0.02
Nitrate + Nitrite (Aug 1 – Oct 31)	mg/L	1/Week ⁽⁵⁾	Composite	Daily Max & Mo Avg	0.02
Total Kjeldahl Nitrogen (TKN)	mg/L	1/Week ⁽⁵⁾	Composite	Mo Avg	0.225
TN ⁽⁶⁾	mg/L	1/Month ⁽⁵⁾	Calculated	Mo Avg	0.245
	lb/day	1/Month ⁽⁵⁾	Calculated	Mo Avg	--
TP	mg/L	1/Week ⁽⁵⁾	Composite	Mo Avg	0.003
	lb/day	1/Month ⁽⁵⁾	Calculated	Mo Avg	--
Temperature	° C	1/Month	Instantaneous	Daily Max & Mo Avg	0.1
Whole Effluent Toxicity, Acute	% Effluent	1/Quarter ⁽⁷⁾	Grab	Pass/Fail	--
Footnotes: RL = Reporting Level					
(1) The effluent monitoring location must be after all treatment has been completed (<i>i.e.</i> , downstream from all treatment units, and prior to entry to the receiving waters).					
(2) Requires recording device or totalizer.					
(3) Mass-based net TSS calculated by first determining mass-based net TSS discharge on a daily basis, then determining daily maximum and monthly average for the month.					
(4) H ₂ S concentrations are calculated based on the dissolved sulfide concentration and the sample pH and other parameters at time of sampling, in accordance with Standard Methods 4500-S ₂ -H, unless another method is proposed by CHS and accepted by DEQ. Field data (pH, conductivity (µmhos/cm) and temperature), taken of an unpreserved water sample shall be recorded at the time the dissolved sulfide sample is collected. This field data must be used in the H ₂ S calculations.					
(5) Monitoring required only during the summer season of August 1 – October 31st.					
(6) TN is the sum of Nitrate+Nitrite and TKN.					
(7) Per the 2021/2022 TIE/TRE, two species conducted at least monthly unless CHS is approved to revert to quarterly. At minimum, failure of any acute Whole Effluent Toxicity (WET) test requires that the permittee comply with the Permit's Special Conditions.					

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

2. Yellowstone River – Ambient Conditions

As a minimum, the following constituents shall be monitored for the Yellowstone River at the frequency and with the type of measurement indicated. Results must be

provided on NetDMRs by the 28th of the month following the end of the monitoring period. CHS must use a sufficiently sensitive method to detect the parameters at or above the RRV as specified in Circular DEQ-7 or other Reporting Level specified by DEQ; if this is not possible for any of the samples an explanation must be provided.

Upstream Monitoring Requirements as specified in this section shall be conducted beginning in 2022 through 2025. CHS shall submit a topo map or aerial photo indicating the ambient monitoring location. If the sample location is changed, CHS shall submit a revised monitoring location prior to taking the next sample.

Table 4. Upstream Monitoring Requirements for Yellowstone River

Parameter	Units	Monitoring Frequency	Type	RL
Sulfide, Dissolved	µg/L	1/Quarter	Grab	--
Hydrogen Sulfide (H ₂ S)	µg/L	1/Quarter ⁽¹⁾	Calculated	20
pH	s.u.	1/Quarter ⁽¹⁾	Instantaneous	0.1
Conductivity	µmhos/cm	Optional for H ₂ S ⁽¹⁾	Instantaneous/Grab	--
Total Dissolved Solids	mg/L	Optional for H ₂ S ⁽¹⁾	Grab	--
Temperature	°C	1/Quarter ⁽¹⁾	Instantaneous	0.1
Hardness, as CaCO ₃	mg/L	1/Quarter	Grab	--
Total Nitrogen ⁽²⁾	µg/L	1/Month ⁽³⁾	Grab or Calculated	0.245
Total Phosphorus	µg/L	1/Month ⁽³⁾	Grab	0.003
Aluminum, Dissolved	µg/L	1/Quarter	Grab	9
Cyanide	µg/L	1/Quarter	Grab	3
Iron, TR	µg/L	1/Quarter	Grab	20
Lead, TR	µg/L	1/Quarter	Grab	0.3
Mercury	µg/L	1/Quarter	Grab	0.005
Selenium	µg/L	1/Quarter	Grab	1
Alpha emitters	pCi/L	1/Quarter	InstantaneousGrab	--
Beta emitters	pCi/L mrem/yr	1/Quarter	InstantaneousGrab	--
Radium, 228 and total	pCi/L	1/Quarter	InstantaneousGrab	--

Footnotes: RL = Reporting Level
(1) H₂S concentrations are calculated based on the dissolved sulfide concentration and pH (using look-up table), and potentially TDS and other field parameters (for equation method) in accordance with Standard Methods 4500-S²-H, unless another method is proposed by CHS and accepted by DEQ. Field data taken of an unpreserved water sample shall be recorded *at the time the dissolved sulfide sample is collected*. This field data must be used to calculate the H₂S concentration from the laboratory-provided dissolved sulfide data.
(2) TN can be determined by either the persulfate method or the sum of Nitrate + Nitrite and TKN, as long as the method is capable of having a detect or meeting the RRV.
(3) Monitoring required only during the Yellowstone summer season of August 1 – October 31st.

3. *Whole Effluent Toxicity (WET) Monitoring – Acute Toxicity*

CHS is required to continue monthly two-species WET testing and the Toxicity Identification Evaluation/Toxicity Reduction Evaluation (TIE/TRE) investigations until they have identified and reduced the source of toxicity and can demonstrate treatment improvements that are sufficient to pass two-species WET tests for at least six months. At this point CHS can request to revert to two-species on a quarterly basis and DEQ will review and approve or disapprove, in writing.

For each WET test, CHS shall conduct an acute static renewal toxicity test on a grab sample of the effluent. Testing will employ two species and will consist of five effluent concentrations (100, 50, 25, 12.5, 6.25 percent effluent) and a control. Dilution water and the control shall consist of the receiving water.

The toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, EPA-821-R-02-012 and the *Region VIII EPA NPDES Acute Test Conditions - Static Renewal Whole Effluent Toxicity Test* testing protocols. The permittee shall conduct an acute 48-hour static renewal toxicity test using *Ceriodaphnia* sp. and an acute 96-hour static renewal toxicity test using fathead minnows (*Pimephales promelas*). The control of pH in the toxicity test utilizing CO₂ 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.

Furthermore, if CHS can demonstrate in the TIE/TRE that chlorine is a contributing factor for the acute test failures, DEQ may consider sample pre-treatment for removal of chlorine. CHS may provide parallel acute tests, but not replace existing tests, until DEQ has approved this revision, in writing.

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 DEQ. 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 (not as part of the accelerated testing for a TIE/TRE), an additional test is required to be conducted within 14 days of the date of the initial sample. Should acute toxicity occur in the second test, testing shall occur once a month until further notified by DEQ. In all cases, the results of all toxicity tests must be submitted to the Department in accordance with Part II of this permit. All WET tests including retests must be two species.

Failure to initiate or conduct an adequate TIE/TRE, or delays in the conduct of such tests, shall not be considered a justification for noncompliance with the whole effluent toxicity limits contained in Part I.B of this permit. A TRE plan

needs to be submitted to DEQ within 45 days after confirmation of the continuance of the effluent toxicity.

The quarterly WET test results from the laboratory shall be reported along with the NetDMR report no later than the 28th day of the month following the completed reporting period. The format for the laboratory report shall be consistent with the latest revision of the EPA form Region VIII Guidance for Acute Whole Effluent Reporting and shall include all chemical and physical data as specified.

CHS is not eligible to further reduce the frequency to semi-annual during this permit cycle. CHS must continue the accelerated testing until they are able to prove the TIE/TRE was successful (by passing six months of two-species tests); at that time DEQ will review and, if appropriate, approve the reduction to quarterly two-species tests.

D. Special Conditions

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

Should the effluent exceed the acute toxicity limitation in a routine test and is confirmed as persistent by the additional test, a TIE/TRE shall be undertaken by the permittee to establish the cause of the toxicity, locate the source(s) of the toxicity, and develop control of, or treatment for the toxicity. Failure to conduct an adequate TIE/TRE, or delays in the conduct of such tests, shall not be considered a justification for noncompliance with the whole effluent toxicity limits. A TRE plan needs to be submitted to DEQ within 45 days after confirmation of the continuance of the effluent toxicity.

2. *Arsenic ~~and Hydrogen Sulfide~~*

Beginning in January 2023, CHS shall submit an annual report to DEQ no later than January 28th for each year, with the final report due November 14, 2025. The report shall summarize the progress made in achieving compliance with the arsenic ~~and hydrogen sulfide~~ effluent limits over the previous year and the actions planned for the upcoming year.

The first year's annual report will include a Standard Operating Procedure for collecting data and computing the Hydrogen Sulfide concentrations for both the effluent and the ambient conditions. The raw data, computations, and results for the monthly NetDMR hydrogen sulfide values will be attached as a report in FACTS or NetDMR.

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

- A. Representative Sampling
Samples taken in compliance with the monitoring requirements established under Part I of the permit shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.
- B. Monitoring Procedures
Monitoring must be conducted according to test procedures approved under Part 136, Title 40 of the Code of Federal Regulations, unless other test procedures have been specified in this permit. All flow-measuring and flow-recording devices used in obtaining data submitted in self-monitoring reports must indicate values within 10 percent of the actual flow being measured.
- C. Penalties for Tampering
The Montana Water Quality Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.
- D. Reporting of Monitoring Results
Monitoring results must be reported 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. Whole effluent toxicity (biomonitoring) results must be reported with copies of the laboratory analysis report on forms from the most recent version of EPA Region VIII's "Guidance for Whole Effluent Reporting." If no discharge occurs during the 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 the permit must be submitted to the Department in either electronic or paper format and be postmarked no later than 14 days following each schedule date unless otherwise specified in the permit.

- F. Additional Monitoring by the Permittee
If the permittee monitors any pollutant more frequently than required by this permit, using approved analytical methods as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report. Such increased frequency shall also be indicated.
- G. Records Contents
Records of monitoring information shall include:
1. The date, exact place, and time of sampling or measurements;
 2. The initials or name(s) of the individual(s) who performed the sampling or measurements;
 3. The date(s) analyses were performed;
 4. The time analyses were initiated;
 5. The initials or name(s) of individual(s) who performed the analyses;
 6. References and written procedures, when available, for the analytical techniques or methods used; and
 7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.
- H. Retention of Records
The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time. Data collected on site, Discharge Monitoring Reports, and a copy of this MPDES permit must be maintained on site during the duration of activity at the permitted location.
- I. Twenty-four Hour Notice of Noncompliance Reporting
1. The permittee shall report any serious incidents of noncompliance as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the Water Protection Bureau at (406) 444-5546 or the Office of Disaster and Emergency Services at (406) 324-4777. The following examples are considered serious incidents:
 - a. Any noncompliance which may seriously endanger health or the environment;
 - b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part III.G of this permit, "Bypass of Treatment Facilities"); or
 - c. Any upset which exceeds any effluent limitation in the permit (see Part III.H of this permit, "Upset Conditions").

2. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:
 - a. a description of the noncompliance and its cause;
 - b. the period of noncompliance, including exact dates and times;
 - c. the estimated time noncompliance is expected to continue if it has not been corrected; and
 - d. steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
3. The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Protection Bureau, by phone, (406) 444-5546.
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 Director, or an authorized representative thereof, upon the presentation of credentials and other documents as may be required by law, to:

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

III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply

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

B. Penalties for Violations of Permit Conditions

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

C. Need to Halt or Reduce Activity not a Defense

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

D. Duty to Mitigate

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

E. Proper Operation and Maintenance

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

- F. Removed Substances
Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard.
- G. Bypass of Treatment Facilities
1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III.G.2 and III.G.3 of this permit.
 2. Notice:
 - a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.
 - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.I of this permit, "Twenty-four Hour Reporting".
 3. Prohibition of bypass:
 - a. Bypass is prohibited and the Department may take enforcement action against a permittee for a bypass, unless:
 - 1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - 2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - 3) The permittee submitted notices as required under Part III.G.2 of this permit.
 - b. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in Part III.G.3.a of this permit.
- H. Upset Conditions
1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III.H.2 of this permit are met. No determination made

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

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

I. Toxic Pollutants

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

J. Changes in Discharge of Toxic Substances

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

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

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

IV. GENERAL REQUIREMENTS

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

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

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

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

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

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

- J. Oil and Hazardous Substance Liability
Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.
- K. Property Rights
The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges.
- L. Severability
The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
- M. Transfers
This permit may be automatically transferred to a new permittee if:
1. The current permittee notifies the Department at least 30 days in advance of the proposed transfer date;
 2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them;
 3. The Department does not notify the existing permittee and the proposed new permittee of an intent to revoke or modify and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part IV.M.2 of this permit; and
 4. Required annual and application fees have been paid.
- N. Fees
The permittee is required to submit payment of an annual fee as set forth in ARM 17.30.201. If the permittee fails to pay the annual fee within 90 days after the due date for the payment, the Department may:
1. Impose an additional assessment computed at the rate established under ARM 17.30.201; and,
 2. Suspend the processing of the application for a permit or authorization or, if the nonpayment involves an annual permit fee, suspend the permit, certificate or authorization for which the fee is required. The Department may lift suspension at any time up to one year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments and interest imposed under this sub-section. Suspensions are limited to one year, after which the permit will be terminated.

O. Reopener Provisions

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

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

V. DEFINITIONS

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

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

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

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Attorney for DEQ

Attorneys for CHS Inc.

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

IN THE MATTER OF:	CASE NOS. BER 2022-07-WQ
RENEWAL OF MPDES PERMIT NO. MT0000264, ISSUED SEPTEMBER 20, 2022, TO CHS, INC. FOR DISCHARGES FROM THE LAUREL REFINERY	MOTION FOR HEARING EXAMINER RECOMMENDATION TO THE BOARD OF ENVIRONMENTAL REVIEW

Appellant CHS Inc. (“CHS”) and the Montana Department of Environmental Quality (“DEQ”), (collectively, the “Parties”) move the Board of Environmental Review (“Board”) Hearing Examiner to recommend that the Board accept the Parties’ Stipulation for Final Agency Action and approve, sign, and issue the Parties’ proposed Order for Final Agency Decision and the proposed Modified 2022 Permit (Exhibit A to the proposed Order for Final Agency Decision). A proposed recommendation is attached to this motion.

DATED this 24th day of May,
2024.

/s/ Kurt R. Moser
Kurt R. Moser
Montana Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901
Attorney for DEQ

DATED this 24th day of May,
2024.

/s/ Victoria A. Marquis
Victoria Marquis
Selena Z. Sauer
CROWLEY FLECK PLLP
500 Transwestern Plaza II
P. O. Box 2529
Billings, MT 59103-2529

Attorneys for CHS Inc.

CERTIFICATE OF SERVICE

I hereby certify that this 24th day of May, 2024, I caused to be served a true and correct copy of the foregoing document and any attachments to all parties or their counsel of record as set forth below:

Victoria A. Marquis/Selena Z. Sauer CROWLEY FLECK PLLP 500 Transwestern Plaza II P. O. Box 2529 Billings, MT 59103-2529 (406) 252-3441 vmarquis@crowleyfleck.com ssauer@crowleyfleck.com dborsum@crowleyfleck.com	[] U.S. Mail, postage prepaid [x] Electronic Mail [] Facsimile Transmission [] Personal Delivery
Board of Environmental Review, Secretary 1520 E. Sixth Avenue/P.O. Box 200901 Helena, MT 59620-0901 (406) 444-6701 deqbersecretary@mt.gov	[] U.S. Mail, postage prepaid [x] Electronic Mail [] Facsimile Transmission [] Personal Delivery
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Tatiana Davila, Bureau Chief Water Protection Bureau 1520 E. Sixth Avenue/P.O. Box 200901 Helena, MT 59620-0901 (406) 444-2071 tatiana.davila@mt.gov	[] U.S. Mail, postage prepaid [x] Electronic Mail [] Facsimile Transmission [] Personal Delivery
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/s/ Catherine Armstrong
 Catherine Armstrong
 MT-Department of Environmental Quality

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Attorneys for CHS Inc.

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

IN THE MATTER OF: RENEWAL OF MPDES PERMIT NO. MT0000264, ISSUED SEPTEMBER 20, 2022, TO CHS, INC. FOR DISCHARGES FROM THE LAUREL REFINERY	CASE NOS. BER 2022-07-WQ (Proposed) RECOMMENDATION TO THE BOARD OF ENVIRONMENTAL REVIEW
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This matter is before the Board of Environmental Review (“Board”) upon CHS Inc.’s (“CHS”) Notice of Appeal and Request for Hearing, dated October 31, 2022. The Board has received a Stipulation for Entry of Final Agency Decision (“Stipulation”) by and between CHS and the Department of Environmental Quality (“DEQ”), dated May 24, 2024.

Having reviewed the Stipulation and the proposed Board Order for Final Agency Decision (“Proposed Order”), I find that the Stipulation and Proposed

Order fully and finally settle all issues subject to this appeal and find good cause for entry of the Proposed Order. Therefore, I recommend that the Board accept the Stipulation and approve, sign, and issue the Proposed Order and the proposed Modified 2022 Permit (Exhibit A to the Proposed Order).

DATED this ____ day of May, 2024.

By: _____
Rob Cameron, Hearing Examiner
Board of Environmental Review

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

IN THE MATTER OF: RENEWAL OF MPDES PERMIT NO. MT0000264, ISSUED SEPTEMBER 20, 2022, TO CHS, INC. FOR DISCHARGES FROM THE LAUREL REFINERY	CASE NOS. BER 2022-07-WQ RECOMMENDATION TO THE BOARD OF ENVIRONMENTAL REVIEW
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This matter is before the Board of Environmental Review (“Board”) upon CHS Inc.’s (“CHS”) Notice of Appeal and Request for Hearing, dated October 31, 2022. The Board has received a Stipulation for Entry of Final Agency Decision (“Stipulation”) by and between CHS and the Department of Environmental Quality (“DEQ”), dated May 24, 2024.

Having reviewed the Stipulation and the proposed Board Order for Final Agency Decision (“Proposed Order”), I find that the Stipulation and Proposed

Order fully and finally settle all issues subject to this appeal and find good cause for entry of the Proposed Order. Therefore, I recommend that the Board accept the Stipulation and approve, sign, and issue the Proposed Order and the proposed Modified 2022 Permit (Exhibit A to the Proposed Order).

DATED this ____ day of May, 2024.

By: _____
Rob Cameron, Hearing Examiner
Board of Environmental Review

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

IN THE MATTER OF: RENEWAL OF MPDES PERMIT NO. MT0000264, ISSUED SEPTEMBER 20, 2022, TO CHS, INC. FOR DISCHARGES FROM THE LAUREL REFINERY	CASE NOS. BER 2022-07-WQ (Proposed) BOARD ORDER FOR FINAL AGENCY DECISION
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This matter is before the Board of Environmental Review (“Board”) upon CHS Inc.’s (“CHS”) Notice of Appeal and Request for Hearing, dated October 31, 2022, and the Board has received a Stipulation for Entry of Final Agency Decision (“Stipulation”) by and between CHS and the Department of Environmental Quality (“DEQ”), dated May 24, 2024. The Board has reviewed and considered the Stipulation and has been advised that CHS’s appeal issues have been fully and finally compromised and settled upon the merits as further

ORDERED herein. The Board finds good cause for entry of the Final Agency Decision as stipulated and requested by the Parties.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. Pursuant to Mont. Code Ann. § 75-5-403, the Board has authority to hear contested case appeals of DEQ's Montana Pollutant Discharge Elimination System ("MPDES") permitting decisions, such that the Board may affirm, modify, or reverse a permitting action of DEQ.
2. DEQ is a department of the executive branch of state government, duly created and existing under the authority of Mont. Code Ann. § 2-15-3501. DEQ has statutory authority to administer Montana's water quality statutes, including the review and issuance of MPDES Permits under Mont. Code Ann. § 75-5-402 and ARM 17.30.1301.
3. CHS is a cooperative association registered to do business in Montana, located in Yellowstone County, Montana, and is the owner and operator of the MPDES permitted facility which has been issued MPDES Permit No. MT0000264.
4. On September 30, 2022, DEQ issued a renewal of MPDES Permit No. MT0000264 for CHS's Laurel Refinery, with an effective date of November 1, 2022 (the "2022 Permit").
5. On October 31, 2022, CHS timely appealed certain provisions of

the 2022 Permit before the Board. *See* Notice of Appeal and Request for Hearing (October 31, 2022).

6. On July 5, 2023, the Hearing Examiner granted in part and denied in part Conservation Groups' Motion to Intervene, indicating that the Groups could be heard with respect to the appeal issue regarding Hydrogen Sulfide limits and the related Hydrogen Sulfide compliance schedule.

7. On February 27, 2024, the Hearing Examiner issued an Order Granting Joint Motion for 60-day Stay and required DEQ and CHS to file a status report on April 22, 2024. The purpose of the 60-day stay was for the Parties to discuss settlement prior to the close of discovery.

8. On April 22, 2024, DEQ and CHS filed a Joint Status Report and Motion, informing the Hearing Examiner that a settlement agreement had been reached in principle, requesting the Hearing Examiner vacate the Scheduling Order, and indicating the Parties would file settlement documents by May 24, 2024.

9. On April 23, 2024, the Hearing Examiner vacated the Scheduling Order and ordered the parties to submit the settlement agreement and related motions by May 24, 2024.

10. On May 24, 2024, the Parties filed a Stipulation for Entry of Final Agency Decision, that fully resolved the issues identified in CHS's Notice of Appeal (Issue Nos. 1, 2, and 3).

11. As pertinent to CHS's Appeal Issue No. 1, CHS agrees to withdraw its appeal of the 2022 Permit's Technology Based Effluent Limitations (or "TBELs").

12. As pertinent to CHS's Appeal Issue No. 2, regarding effluent limits for Hydrogen Sulfide, the Hydrogen Sulfide compliance schedule is removed from the 2022 Permit and CHS agrees to withdraw its appeal of the related Hydrogen Sulfide limitations.

13. As pertinent to CHS's Appeal Issue No. 3, the requirement to sample for and report the levels of beta-emitters as millirems per year (mrems/yr) has been removed from the 2022 Permit, and instead, the modified 2022 Permit will require the data be reported in picocuries per liter (pCi/L). MPDES permits require that monitoring be conducted in accordance with 40 CFR Part 136 test methods. 40 CFR Part 136 requires that beta emitters be analyzed using units of pCi/L. In addition, and pursuant to 40 CFR Part 136, the sampling type listed in the 2022 Permit for alpha emitters, beta emitters, and radium in the receiving water will be corrected to "Grab" rather than "Instantaneous."

14. CHS's appeal has been fully and finally compromised and settled by agreement of the Parties.

15. Modifications to the 2022 Permit, as contemplated by this Order, are represented in the modified 2022 Permit, attached hereto as Exhibit A.

16. All requirements and conditions of the modified 2022 Permit, attached hereto as Exhibit A, will be fully effective and enforceable upon approval of the Board.

17. Pursuant to its authority to hear contested case appeals of MPDES Permits under Mont. Code Ann. § 75-5-403(2) and ARM 17.30.1370(4), the Board HEREBY ADOPTS AS THE FINAL AGENCY DECISION, the modified 2022 Permit attached hereto as Exhibit A.

18. The Parties shall each pay their own attorney fees and costs.

19. The Board's Decision shall represent the FINAL AGENCY DECISION for purposes of the Montana Administrative Procedure Act, Section 2-4-623, MCA.

DATED this ____ day of June, 2024.

By: _____
David Simpson, Chairman
Board of Environmental Review

cc: Rob Cameron
BER Secretary
Victoria Marquis/Selena Sauer
Kurt Moser
Barbara Chillcott/Melissa Hornbein
Tatiana Davila

**MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

AUTHORIZATION TO DISCHARGE UNDER THE
MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM

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

CHS, Inc.

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

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

to receiving waters named **Yellowstone River**

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

This permit shall become effective: **November 1, 2022**

This permit and the authorization to discharge shall expire at midnight, **October 31, 2027**

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.

<u>Outfall</u>	<u>Description</u>
002	<p>Location: Lower port primary diffuser, discharging into the Yellowstone River, located at 45°39'22.32" N latitude, 108°45'10.86" W longitude.</p> <p>Mixing Zone: None. There are no effluent limits that require a mixing zone.</p> <p>Treatment Works: Refinery wastewater treatment plant.</p>
003	<p>Location: Upper port secondary diffuser, discharging into the Yellowstone River, located at 45°39'22.32" N latitude, 108°45'10.86" W longitude.</p> <p>Mixing Zone: Acute mixing for 100 feet to provide 6.9% dilution, and chronic mixing for 1,000 feet to provide 27% dilution, for Total Residual Chlorine.</p> <p>Treatment Works: Refinery wastewater treatment plant.</p>

B. Effluent Limitations

Outfall 002 – Lower Port Primary Diffuser to Yellowstone River

Beginning November 1, 2022, until the end of the permit, CHS Laurel Refinery will be required to meet the following effluent limits at Outfall 002:

Table 1. Outfall 002 - Final Effluent Limits

Parameter <i>TR = Total Recoverable</i>	Units	Effluent Limits	
		Maximum Daily	Average Monthly
BOD ₅	lb/day	620	331
COD	lb/day	4,425	2,288
Net TSS	lb/day	532	339
Oil and Grease	mg/L	10	--
	lb/day	242	128
Phenol	lb/day	4.5	2.2
Ammonia, Total as N	lb/day	418	191
Chromium, TR	lb/day	9.1	5.2
Chromium, Hexavalent	lb/day	0.99	0.36
Sulfide	lb/day	3.9	1.8
Hydrogen Sulfide (H ₂ S) ⁽¹⁾	µg/L	3.5	1.5
Arsenic, TR ⁽²⁾	µg/L	19	13
pH	s.u.	Between 6.0 and 9.0, all times	
Whole Effluent Toxicity, Acute, LC ₅₀	% effluent	No acute toxicity	
Footnote: (1) Any calculated results that show “non-detect” for H ₂ S at the RRV of 20 µg/L is considered compliance with the effluent limit. (2) The arsenic limits become effective November 1, 2025 .			

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

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

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

At any time there is discharge from both Outfall 002 and 003, the effluent limits for Outfall 003 will apply. CHS will inform DEQ of the beginning and end of the dual discharge.

Outfalls 003 – Upper port secondary diffuser to Yellowstone River

Beginning November 1, 2022, until the end of the permit, CHS Laurel Refinery will be required to meet the following effluent limits at Outfall 003:

Table 2. Outfall 003 - Final Effluent Limits

Parameter <i>TR = Total Recoverable</i>	Units	Effluent Limits	
		Maximum Daily	Average Monthly
BOD ₅	lb/day	620	331
COD	lb/day	4,425	2,288
Net TSS	lb/day	532	339
Oil and Grease	mg/L	10	--
	lb/day	242	128
Phenol	lb/day	4.5	2.2
Ammonia, Total as N	lb/day	418	191
Sulfide	lb/day	3.9	1.8
Hydrogen Sulfide (H ₂ S) ⁽¹⁾	µg/L	3.3	1.6
Chromium, TR	lb/day	9.1	5.2
Hexavalent Chromium	lb/day	0.99	0.36
Total Residual Chlorine (net) ⁽²⁾	µg/L	400	170
Arsenic, TR ⁽³⁾	µg/L	19	13
pH	s.u.	Between 6.0 and 9.0, all times	
Whole Effluent Toxicity, Acute, LC ₅₀	% effluent	No acute toxicity	
Footnote:			
(1) Any calculated results that show “non-detect” for H ₂ S at the RRV of 20 µg/L is considered compliance with the effluent limit.			
(2) CHS may demonstrate compliance with the TRC limit by discounting the manganese oxide interference and reporting the net TRC concentration. Any results less than the RL of 50 µg/L are considered compliance with the effluent limit.			
(3) The arsenic limits become effective November 1, 2025 .			

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

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

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

C. Monitoring Requirements

Samples shall be collected, preserved, and analyzed in accordance with approved procedures listed in 40 CFR 136. Data supplied by CHS must meet either provide a detect or non-detect at the required Reporting Level (RL) which is either the Required Reporting Value (RRV) listed in Circular DEQ-7 or another detection level that is DEQ’s best determination of a level that can be achieved using EPA-approved methods or methods approved by DEQ.

Results shall be submitted electronically on NetDMRs by the 28th of the of the month following the end of the monitoring period.

1. *Outfalls 002 and 003*

Samples will reflect the nature of the discharge. As a minimum, the constituents shall be monitored at the frequencies and with the types of measurements indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge.

Self-monitoring of effluent shall be conducted following final treatment, at the outlet of the discharge pumps prior to the forced main unless another location is requested and approved by DEQ in writing. If there is no discharge from an outfall for the month, “No Discharge” shall be indicated for that outfall.

Table 3. Summary of Effluent Monitoring Requirements ⁽¹⁾ – Outfalls 002 and 003

Parameter	Units	Monitoring Frequency	Type	Reporting Requirement	RL
Flow	MGD	Continuous	Instantaneous ⁽²⁾	Daily Max & Mo Avg	--
pH	s.u.	1/Day	Instantaneous ⁽²⁾	Daily Min & Daily Max	0.1
BOD ₅	mg/L	1/Week	Composite	Daily Max & Mo Avg	--
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
COD	mg/L	1/Week	Composite	Daily Max & Mo Avg	--
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
TSS – Intake Water	mg/L	1/Week	Composite	None	--
TSS – Effluent Gross	mg/L	1/Week	Composite	None	--
TSS – Net ⁽³⁾	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Oil and Grease	mg/L	1/Week	Grab	Daily Max & Mo Avg	1
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Phenol	µg/L	1/Month	Grab	Daily Max & Mo Avg	10
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Ammonia (as N)	mg/L	1/Week	Composite	Daily Max & Mo Avg	0.07
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Sulfide, Total	µg/L	1/Week	Composite	Daily Max & Mo Avg	--
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Sulfide, Dissolved	µg/L	1/Week	Composite	Daily Max & Mo Avg	--
Hydrogen Sulfide (H ₂ S) ⁽⁴⁾	µg/L	1/Week	Calculated	Daily Max & Mo Avg	20
Chromium, TR	µg/L	1/Month	Composite	Daily Max & Mo Avg	10
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Chromium, Hexavalent	µg/L	1/Month	Composite	Daily Max & Mo Avg	2
	lb/day	1/Month	Calculated	Daily Max & Mo Avg	--
Arsenic, TR	µg/L	1/Week	Composite	Daily Max & Mo Avg	1
Total Residual Chlorine, Net	µg/L	1/Week	Grab	Daily Max & Mo Avg	50

Parameter	Units	Monitoring Frequency	Type	Reporting Requirement	RL
Fluoride	mg/L	1/Quarter	Composite	Report	200
Aluminum, Dissolved	µg/L	1/Quarter	Composite	Report	9
Cyanide	µg/L	1/Quarter	Grab	Report	3
Iron, TR	µg/L	1/Quarter	Composite	Report	20
Lead, TR	µg/L	1/Quarter	Composite	Report	0.3
Mercury, TR	µg/L	1/Quarter	Composite	Report	0.005
Selenium, TR	µg/L	1/Quarter	Composite	Report	1
Alpha Emitters	pCi/L	2/Year	Composite	Report	--
Beta Emitters	pCi/L	2/Year	Composite	Report	--
Radium 228 + total	pCi/L	2/Year	Composite	Report	--
Nitrate + Nitrite (Nov 1 – July 31)	mg/L	1/Quarter	Composite	Daily Max & Mo Avg	0.02
Nitrate + Nitrite (Aug 1 – Oct 31)	mg/L	1/Week ⁽⁵⁾	Composite	Daily Max & Mo Avg	0.02
Total Kjeldahl Nitrogen (TKN)	mg/L	1/Week ⁽⁵⁾	Composite	Mo Avg	0.225
TN ⁽⁶⁾	mg/L	1/Month ⁽⁵⁾	Calculated	Mo Avg	0.245
	lb/day	1/Month ⁽⁵⁾	Calculated	Mo Avg	--
TP	mg/L	1/Week ⁽⁵⁾	Composite	Mo Avg	0.003
	lb/day	1/Month ⁽⁵⁾	Calculated	Mo Avg	--
Temperature	° C	1/Month	Instantaneous	Daily Max & Mo Avg	0.1
Whole Effluent Toxicity, Acute	% Effluent	1/Quarter ⁽⁷⁾	Grab	Pass/Fail	--

Footnotes: RL = Reporting Level

- (1) The effluent monitoring location must be after all treatment has been completed (*i.e.*, downstream from all treatment units, and prior to entry to the receiving waters).
- (2) Requires recording device or totalizer.
- (3) Mass-based net TSS calculated by first determining mass-based net TSS discharge on a daily basis, then determining daily maximum and monthly average for the month.
- (4) H₂S concentrations are calculated based on the dissolved sulfide concentration and the sample pH and other parameters at time of sampling, in accordance with Standard Methods 4500-S₂- H, unless another method is proposed by CHS and accepted by DEQ. Field data (pH, conductivity (µmhos/cm) and temperature), taken of an unpreserved water sample shall be recorded at the time the dissolved sulfide sample is collected. This field data must be used in the H₂S calculations.
- (5) Monitoring required only during the summer season of August 1 – October 31st.
- (6) TN is the sum of Nitrate+Nitrite and TKN.
- (7) Per the 2021/2022 TIE/TRE, two species conducted at least monthly unless CHS is approved to revert to quarterly. At minimum, failure of any acute Whole Effluent Toxicity (WET) test requires that the permittee comply with the Permit’s Special Conditions.

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

2. Yellowstone River – Ambient Conditions

As a minimum, the following constituents shall be monitored for the Yellowstone River at the frequency and with the type of measurement indicated. Results must be

provided on NetDMRs by the 28th of the month following the end of the monitoring period. CHS must use a sufficiently sensitive method to detect the parameters at or above the RRV as specified in Circular DEQ-7 or other Reporting Level specified by DEQ; if this is not possible for any of the samples an explanation must be provided.

Upstream Monitoring Requirements as specified in this section shall be conducted beginning in **2022** through **2025**. CHS shall submit a topo map or aerial photo indicating the ambient monitoring location. If the sample location is changed, CHS shall submit a revised monitoring location prior to taking the next sample.

Table 4. Upstream Monitoring Requirements for Yellowstone River

Parameter	Units	Monitoring Frequency	Type	RL
Sulfide, Dissolved	µg/L	1/Quarter	Grab	--
Hydrogen Sulfide (H ₂ S)	µg/L	1/Quarter ⁽¹⁾	Calculated	20
pH	s.u.	1/Quarter ⁽¹⁾	Instantaneous	0.1
Conductivity	µmhos/cm	Optional for H ₂ S ⁽¹⁾	Instantaneous/Grab	--
Total Dissolved Solids	mg/L	Optional for H ₂ S ⁽¹⁾	Grab	--
Temperature	°C	1/Quarter ⁽¹⁾	Instantaneous	0.1
Hardness, as CaCO ₃	mg/L	1/Quarter	Grab	--
Total Nitrogen ⁽²⁾	µg/L	1/Month ⁽³⁾	Grab or Calculated	0.245
Total Phosphorus	µg/L	1/Month ⁽³⁾	Grab	0.003
Aluminum, Dissolved	µg/L	1/Quarter	Grab	9
Cyanide	µg/L	1/Quarter	Grab	3
Iron, TR	µg/L	1/Quarter	Grab	20
Lead, TR	µg/L	1/Quarter	Grab	0.3
Mercury	µg/L	1/Quarter	Grab	0.005
Selenium	µg/L	1/Quarter	Grab	1
Alpha emitters	pCi/L	1/Quarter	Grab	--
Beta emitters	pCi/L	1/Quarter	Grab	--
Radium, 228 and total	pCi/L	1/Quarter	Grab	--

Footnotes: RL = Reporting Level

- (1) H₂S concentrations are calculated based on the dissolved sulfide concentration and pH (using look-up table), and potentially TDS and other field parameters (for equation method) in accordance with Standard Methods 4500-S²-H, unless another method is proposed by CHS and accepted by DEQ. Field data taken of an unpreserved water sample shall be recorded *at the time the dissolved sulfide sample is collected*. This field data must be used to calculate the H₂S concentration from the laboratory-provided dissolved sulfide data.
- (2) TN can be determined by either the persulfate method or the sum of Nitrate + Nitrite and TKN, as long as the method is capable of having a detect or meeting the RRV.
- (3) Monitoring required only during the Yellowstone summer season of August 1 – October 31st.

3. *Whole Effluent Toxicity (WET) Monitoring – Acute Toxicity*

CHS is required to continue monthly two-species WET testing and the Toxicity Identification Evaluation/Toxicity Reduction Evaluation (TIE/TRE) investigations until they have identified and reduced the source of toxicity and can demonstrate treatment improvements that are sufficient to pass two-species WET tests for at least six months. At this point CHS can request to revert to two-species on a quarterly basis and DEQ will review and approve or disapprove, in writing.

For each WET test, CHS shall conduct an acute static renewal toxicity test on a grab sample of the effluent. Testing will employ two species and will consist of five effluent concentrations (100, 50, 25, 12.5, 6.25 percent effluent) and a control. Dilution water and the control shall consist of the receiving water.

The toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, EPA-821-R-02-012 and the *Region VIII EPA NPDES Acute Test Conditions - Static Renewal Whole Effluent Toxicity Test* testing protocols. The permittee shall conduct an acute 48-hour static renewal toxicity test using *Ceriodaphnia* sp. and an acute 96-hour static renewal toxicity test using fathead minnows (*Pimephales promelas*). The control of pH in the toxicity test utilizing CO₂ 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.

Furthermore, if CHS can demonstrate in the TIE/TRE that chlorine is a contributing factor for the acute test failures, DEQ may consider sample pre-treatment for removal of chlorine. CHS may provide parallel acute tests, but not replace existing tests, until DEQ has approved this revision, in writing.

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 DEQ. 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 (not as part of the accelerated testing for a TIE/TRE), an additional test is required to be conducted within 14 days of the date of the initial sample. Should acute toxicity occur in the second test, testing shall occur once a month until further notified by DEQ. In all cases, the results of all toxicity tests must be submitted to the Department in accordance with Part II of this permit. All WET tests including retests must be two species.

Failure to initiate or conduct an adequate TIE/TRE, or delays in the conduct of such tests, shall not be considered a justification for noncompliance with the whole effluent toxicity limits contained in Part I.B of this permit. A TRE plan

needs to be submitted to DEQ within 45 days after confirmation of the continuance of the effluent toxicity.

The quarterly WET test results from the laboratory shall be reported along with the NetDMR report no later than the 28th day of the month following the completed reporting period. The format for the laboratory report shall be consistent with the latest revision of the EPA form Region VIII Guidance for Acute Whole Effluent Reporting and shall include all chemical and physical data as specified.

CHS is not eligible to further reduce the frequency to semi-annual during this permit cycle. CHS must continue the accelerated testing until they are able to prove the TIE/TRE was successful (by passing six months of two-species tests); at that time DEQ will review and, if appropriate, approve the reduction to quarterly two-species tests.

D. Special Conditions

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

Should the effluent exceed the acute toxicity limitation in a routine test and is confirmed as persistent by the additional test, a TIE/TRE shall be undertaken by the permittee to establish the cause of the toxicity, locate the source(s) of the toxicity, and develop control of, or treatment for the toxicity. Failure to conduct an adequate TIE/TRE, or delays in the conduct of such tests, shall not be considered a justification for noncompliance with the whole effluent toxicity limits. A TRE plan needs to be submitted to DEQ within 45 days after confirmation of the continuance of the effluent toxicity.

2. *Arsenic*

Beginning in January 2023, CHS shall submit an annual report to DEQ no later than January 28th for each year, with the final report due November 14, 2025. The report shall summarize the progress made in achieving compliance with the arsenic effluent limits over the previous year and the actions planned for the upcoming year.

The first year's annual report will include a Standard Operating Procedure for collecting data and computing the Hydrogen Sulfide concentrations for both the effluent and the ambient conditions. The raw data, computations, and results for the monthly NetDMR hydrogen sulfide values will be attached as a report in FACTS or NetDMR.

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

A. Representative Sampling

Samples taken in compliance with the monitoring requirements established under Part I of the permit shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

B. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under Part 136, Title 40 of the Code of Federal Regulations, unless other test procedures have been specified in this permit. All flow-measuring and flow-recording devices used in obtaining data submitted in self-monitoring reports must indicate values within 10 percent of the actual flow being measured.

C. Penalties for Tampering

The Montana Water Quality Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

D. Reporting of Monitoring Results

Monitoring results must be reported 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. Whole effluent toxicity (biomonitoring) results must be reported with copies of the laboratory analysis report on forms from the most recent version of EPA Region VIII's "Guidance for Whole Effluent Reporting." If no discharge occurs during the 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 the permit must be submitted to the Department in either electronic or paper format and be postmarked no later than 14 days following each schedule date unless otherwise specified in the permit.

F. Additional Monitoring by the Permittee

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

G. Records Contents

Records of monitoring information shall include:

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

H. Retention of Records

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

I. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee shall report any serious incidents of noncompliance as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the Water Protection Bureau at (406) 444-5546 or the Office of Disaster and Emergency Services at (406) 324-4777. The following examples are considered serious incidents:
 - a. Any noncompliance which may seriously endanger health or the environment;
 - b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part III.G of this permit, "Bypass of Treatment Facilities"); or
 - c. Any upset which exceeds any effluent limitation in the permit (see Part III.H of this permit, "Upset Conditions").

2. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:
 - a. a description of the noncompliance and its cause;
 - b. the period of noncompliance, including exact dates and times;
 - c. the estimated time noncompliance is expected to continue if it has not been corrected; and
 - d. steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
3. The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Protection Bureau, by phone, (406) 444-5546.
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 Director, or an authorized representative thereof, upon the presentation of credentials and other documents as may be required by law, to:

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

III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply

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

B. Penalties for Violations of Permit Conditions

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

C. Need to Halt or Reduce Activity not a Defense

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

D. Duty to Mitigate

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

E. Proper Operation and Maintenance

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

F. Removed Substances

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

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III.G.2 and III.G.3 of this permit.
2. Notice:
 - a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.
 - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.I of this permit, "Twenty-four Hour Reporting".
3. Prohibition of bypass:
 - a. Bypass is prohibited and the Department may take enforcement action against a permittee for a bypass, unless:
 - 1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - 2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - 3) The permittee submitted notices as required under Part III.G.2 of this permit.
 - b. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in Part III.G.3.a of this permit.

H. Upset Conditions

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

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

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

I. Toxic Pollutants

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

J. Changes in Discharge of Toxic Substances

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

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

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

IV. GENERAL REQUIREMENTS

A. Planned Changes

The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit.

B. Anticipated Noncompliance

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

C. Permit Actions

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

D. Duty to Reapply

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

E. Duty to Provide Information

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

F. Other Information

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

G. Signatory Requirements

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

1. All permit applications shall be signed as follows:

- a. For a corporation: by a responsible corporate officer;
- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;

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

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

H. Penalties for Falsification of Reports

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

I. Availability of Reports

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

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

J. Oil and Hazardous Substance Liability

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

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges.

L. Severability

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

M. Transfers

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

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

N. Fees

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

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

O. Reopener Provisions

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

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

V. DEFINITIONS

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

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

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

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

IN THE MATTER OF: RENEWAL OF MPDES PERMIT NO. MT0000264, ISSUED SEPTEMBER 20, 2022, TO CHS, INC. FOR DISCHARGES FROM THE LAUREL REFINERY	CASE NOS. BER 2022-07-WQ RECOMMENDATION TO THE BOARD OF ENVIRONMENTAL REVIEW
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This matter is before the Board of Environmental Review (“Board”) upon CHS Inc.’s (“CHS”) Notice of Appeal and Request for Hearing, dated October 31, 2022. The Board has received a Stipulation for Entry of Final Agency Decision (“Stipulation”) by and between CHS and the Department of Environmental Quality (“DEQ”), dated May 24, 2024.

Having reviewed the Stipulation and the proposed Board Order for Final Agency Decision (“Proposed Order”), I find that the Stipulation and Proposed Order fully and finally settle all issues subject to this appeal and find good cause for entry of the Proposed Order. Therefore, I recommend that the Board accept the Stipulation and approve, sign, and issue the Proposed Order and the proposed Modified 2022 Permit (Exhibit A to the Proposed Order).

DATED this 28th day of May, 2024.

By: /s/ Rob Cameron
Rob Cameron, Hearing Examiner

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

IN THE MATTER OF: APPEAL AND REQUEST FOR HEARING BY THE DAIRY SUBDIVISION, MISSOULA COUNTY EQ #23-1751	CASE NO. BER 2023-04 SUB Order Setting Show Cause Deadline
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On February 21, 2024 the Hearing Examiner issued a Scheduling Order requiring the Parties to submit Preliminary Prehearing Statements by April 5, 2024. On April 5, 2024, the Hearing Examiner received DEQ's Preliminary Prehearing Statement. To date, the Hearing Examiner has not received a Preliminary Prehearing Statement from Tai Tam, LLC.

IT IS HEREBY ORDERED THAT:

Tia Tam, LLC show cause by May 8, 2024 why its appeal should not be dismissed for lack of compliance with the Scheduling Order. **If nothing is filed by May 8, 2024, Tia Tam LLC's appeal may be dismissed.**

Dated this 1st day of May 2024.

/s/ Terisa Oomens

TERISA OOMENS
Hearing Examiner

c: Aaron Pettis
Alan F. McCormick

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

IN THE MATTER OF: APPEAL AND REQUEST FOR HEARING BY THE DAIRY SUBDIVISION, MISSOULA COUNTY EQ	CASE NO. BER 2023-04 SUB Order of Dismissal Without Prejudice
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On February 21, 2024 the Hearing Examiner issued a Scheduling Order requiring the Parties to submit Preliminary Prehearing Statements by April 5, 2024. On April 5, 2024 the Hearing Examiner received DEQ’s Preliminary Prehearing Statement but did not receive a Preliminary Prehearing Statement from Tai Tam, LLC. On May 2, 2024 the Hearing Examiner issued an Order Setting Show Cause Deadline for May 8, 2024 requiring Tai Tam, LLC show cause why its appeal should not be dismissed for lack of compliance with the Scheduling Order. To date, the Hearing Examiner has not received a Preliminary Prehearing Statement, nor cause from Tai Tam, LLC.

IT IS THEREFORE ORDERED THAT this matter is dismissed without prejudice.

Dated this 13th day of May 2024.

/s/ Terisa Oomens
TERISA OOMENS
Hearing Examiner

c: Aaron Pettis
Alan F. McCormick



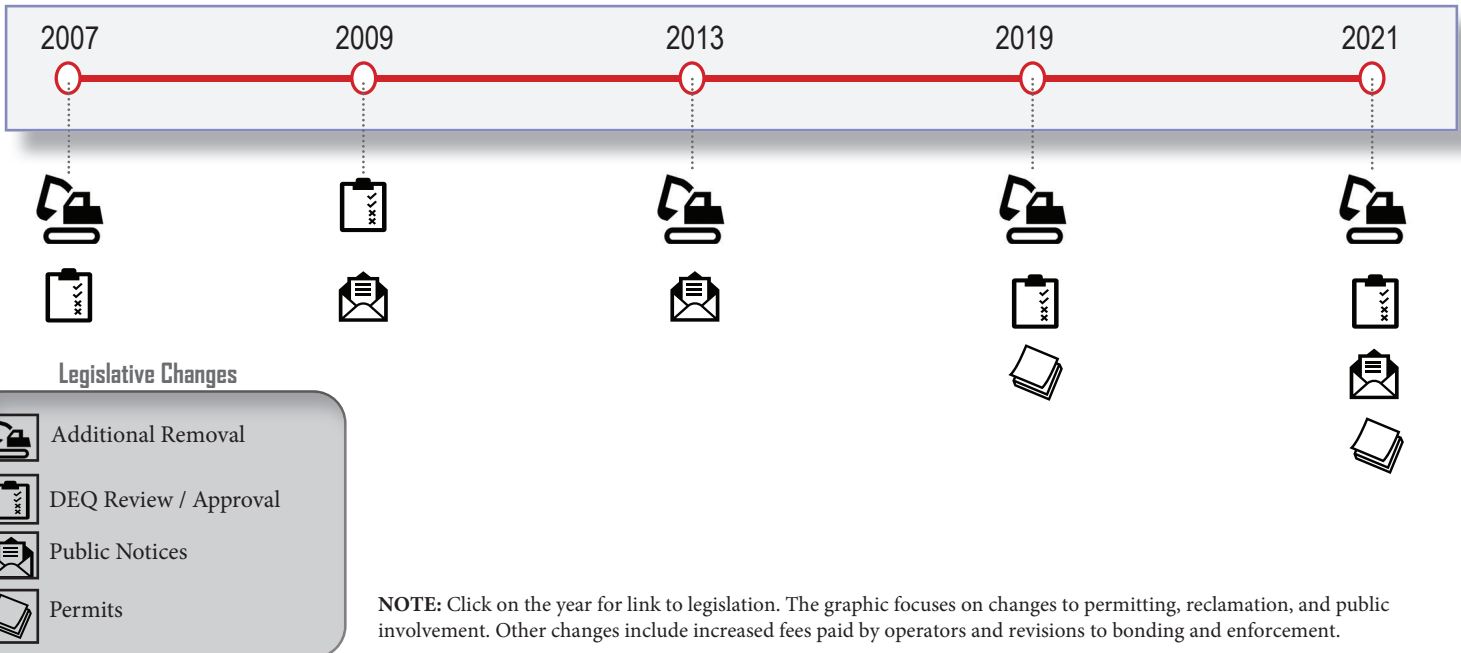
CHANGES TO THE OPENCUT MINING ACT



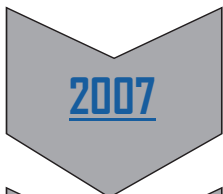
MONTANA LEGISLATIVE ENVIRONMENTAL POLICY OFFICE

MONTANA CODE ANNOTATED TITLE 82, CHAPTER 4, PART 4

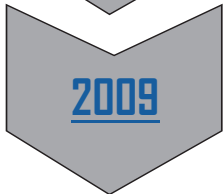
TIMELINE



EVOLUTION OF OPENCUT LAWS



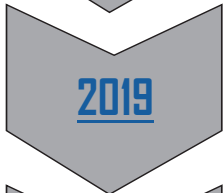
- Increase days for DEQ review from 15 to 30 days. Added inspection requirement.
- Double amount to 5,000 cubic yards and size < 5.0 acres permit holders could remove from another site.
- Add 180 days timeframe for removal & reclamation.



- Reduce time for DEQ completeness review to 5 working days.
- Define operating plan to include hydrologic and soil data; proposals for processing & reclamation.
- Eliminated required inspections.
- Add public notice requirements, require public meeting if requested by applicant or portion of property owners within 1/2 mile. (the greater of 30% or 10).
- Establish extended review if public comments reveal substantial issues not adequately addressed.



- Establish Limited Opencut Operation; doubling removal amount to 10,000cy if site is more than 1 mile from nearest existing limited opencut operation.
- Reclamation period increase from 180 days to 1 year with possible 1 year extension.



- Establish Limited Borrow Operation: no processing, dryland, is within 2.5 miles of project but more than 1 mile from other limited operation and more than 1/2 mile from 10 or more surface owners.
- Landowner who terminates mining operation must allow operator access to reclaim.



- Repeal Limited Borrow Operations.
- Decrease distance in half for Limited Opencut (< 10,000 cy) to 0.5 miles from nearest site.
- No permit required for landowners if removal < 10,000 cy; no impacts to water.
- Establish **dryland permits** that: eliminate operating plan and option for public meeting; mandate soil tests, compliance with sage grouse regulations, replace landowner agreement with consultation; change 1/2 mile distance requirement from fewer than 10 *surface owners* to *occupied dwelling units*.
- Require **standard permits** for operations that affect water or within 1/2 mile of 10 or more occupied dwelling units.
- Add that operator complies with applicable federal, state, county, local regulations; eliminate specific references to “appropriate protection” for water, minimizing noise and visual impacts, and additional procedures to “prevent significant physical harm” to land and life forms.
- Increase mandatory public meeting threshold from 30% of property owners requesting to 51% of occupied dwelling units.
- Change option for extended review from comments at public meeting that “reveal substantial issues not adequately satisfied” to considering extended review if comments reveal violations of Opencut Mining Act.
- Allow operator to extend time frame for reclamation, including revegetation, by 5 years.

CHANGES DUE TO IMPLEMENTATION OF HB599

Features Affected by HB599	Regulated by DEQ- Opencut Pre HB599	Regulated by DEQ- Opencut Post HB599	Changed by HB599	Who Regulates under HB599?	Comments
Bond for Limited Opencut Operation (LOO)	Yes	No	Yes	None	No authority to bond LOO sites after HB599.
Public Notice for Standard Application : All Surface Landowners within 1/2 mile of proposed permit boundary get a vote on whether to have a public meeting	Yes	Yes	Yes	Operator (instead of DEQ-Opencut) determines who is notified and who votes. Operator certifies within application that proper public notice was conducted in accordance with the Opencut Act. DEQ-Opencut reviews operator certification.	Public notice sent to all surface landowners by the Operator, but only those surface landowners with occupied dwelling units (as determined by operator) vote for a public meeting.
Standard Application: Public Meeting	Yes	Yes	Yes	Operator determines who is notified and who gets a vote. Operator certifies within application that proper public notice was conducted in accordance with the Opencut Act. DEQ-Opencut reviews operator certification.	The trigger for a public meeting changed from 30% of all surface landowners to 51% of only those surface landowners with occupied dwelling units within 1/2 mile.
"Rural" Permit Option	No	Yes	Yes	DEQ-Opencut, but the operator must determine that a site is eligible for the permit	Operator must verify site is high and dry and has less than 10 occupied dwelling units within 1/2 mile.
Public Notice for Rural Permit Application (submitted prior to application)	No	Yes	Yes	Operator (instead of DEQ-Opencut) determines who is notified. DEQ-Opencut reviews the certification.	Operator certifies within application that proper public notice was conducted in accordance with the Opencut Act. Public Notice sent to all surface landowners (less than 10 dwelling units to be a Rural application). There is not an opportunity for a public meeting.
Rural Permit Application - DEQ review time 15 days	No	Yes	Yes	DEQ-Opencut	Statutory timeframes reduced from 30-days to 15-days for those sites that fit "Rural" criteria
Standard Permit Application - DEQ review time 30 days or 45 days (if potential for a public meeting)	Yes	Yes	No	DEQ-Opencut	Statutory timeframes kept at 30 days/45 days
Standard Permit Application - Soil Test Pits	Yes	Yes	No	DEQ-Opencut	No Change. One soil test pit per 3 acres with up to 20-test pits max (representative of site)
Rural Permit Application - Soil Test Pits	Yes	Yes	Yes	DEQ-Opencut	HB599 reduced the required number of soil test pits from 1 per 3-acres to 3 total soil test pits, regardless of proposed permit acreage.
Prevent acid mine drainage	Yes	No	Yes	DEQ-Water Quality	Not typically an issue for Opencut. This change does not likely impact implementation of the Opencut Mining Act.
Sedimentation on adjacent lands	Yes	No	Yes	DEQ-Water Protection Bureau	Language removed from Act to rely on other authority
Fire Protection & Fire Prevention and Control	Yes	No	Yes	Local authorities	Language removed from Act to rely on other authority
Class III Survey for sites where the State Historical Preservation Office (SHPO) identifies that potential archaeological and/or historical artifacts could exist on or near the site.	Yes	No	Yes	Operator	Pre HB599, if recommended by SHPO, Opencut required the operator to conduct a Class III archaeological survey to ensure protection of archaeological values (i.e. rings, artifacts, etc.). Operators now work directly with the proper entities on historical preservation matters.
Protection of Water Quality	Yes	No	Yes	DEQ-Water Protection Bureau for surface water	Operator is responsible for working with the proper Agencies to acquire needed protections or permits. Pre HB599, DEQ-Opencut provided information on requirements.
Protection of Water Quantity	Yes	No	Yes	DNRC for water rights	DNRC protects water rights, if affected. Pre HB599, DEQ-Opencut provided information on requirements to the Operator.
Protection of Private Wells	Yes	No	Yes	Operator	Language removed from Act
Fuel Storage Protections	Yes	No	Yes	EPA (SPCC Plan), U.S. Fire Marshall and/or local authorities or Operator under a company fuel storage/spill plan.	Language removed by HB599 (i.e. structures, water quality, fire protection). Pre HB599, DEQ-Opencut provided a fuel spill and prevention plan or other protective measures.
Noise Impacts (berms)	Yes	Yes	Yes	Operator or County if zoning was implemented prior to application being submitted.	DEQ cannot require a noise study, but DEQ-Opencut can require a berm if an occupied dwelling unit is located within 300 feet of the proposed permit boundary. Pre-HB599 DEQ-Opencut required berms for houses within 1,000 feet of proposed permit boundary.
Noise Impacts (noise study)	Yes	No	Yes	Operator or County if zoning was implemented prior to application being submitted.	Language removed from Act
Visual Impacts (berms)	Yes	Yes	Yes	Operator or County if zoning was implemented prior to application being submitted.	DEQ-Opencut can require a berm if an occupied dwelling unit is within 300 feet of the proposed permit boundary. Prior to law change, DEQ-Opencut required berms for houses within 1,000 feet of proposed permit boundary.
Visual Impacts (vegetative screens)	Yes	No	Yes	Operator or County if zoning was implemented prior to application being submitted.	Language removed from Act
Limits to Hours of Operation	Yes	No	Yes	Operator or County if zoning was implemented prior to application being submitted.	Authority removed from Act.
Protection of Lifeforms	Yes	No	Yes	Dependent upon the protection that may be needed	Language removed from Act. Pre HB599, DEQ-Opencut provided requirements to the Operator for necessary protections of various life forms.
Protection of Structures	Yes	No	Yes	Operator	Language removed from Act. The authority for DEQ-Opencut to impose conditions to regulate structures (irrigation ditches, historic buildings, etc.) was removed. "Water conveyance structures" was retained (previously covered under "structures.")
Water Resource Monitoring	Yes	No	Yes	Operator	Authority removed from Act. Prior to HB599, DEQ-Opencut required an operator to conduct a water resource assessment (WRA) for water protection.
Protection of Water Conveyance Structures	Yes	Yes	No	DEQ-Opencut	HB 599 specifically included water conveyance structures as within DEQ-Opencut authority to regulate. The specificity of "water conveyance structures" did not exist preHB599, but they were regulated under "structures." Other water and structure protections were removed from the Opencut Act by HB599.
Reclamation date only amendments	No	Yes	Yes	DEQ-Opencut	Required creation of a new shorter form (no public notice required).
Post-mining land use only amendments	No	Yes	Yes	DEQ-Opencut	Required creation of new shorter form (no public notice required).
Extended time for Opencut review of permit application	Yes	No	Yes	Opencut	HB599 removed "substantive" from the act and changed the language to "violates the provisions of this part" as the trigger for extended review. This change and other changes in the Act appears to mean that there is a higher bar for requiring extended review of an application after a public meeting. With the passage of HB 599, comments by the public that the site will create dust, noise, or impact water resources, for example, are not criteria for DEQ-Opencut to require extended review. Water impacts, for example, would be addressed by other permitting entities as outlined above.

DEQ OPENCUT FREQUENTLY ASKED QUESTIONS

- 1. What is the difference between a complete application and an acceptable application?**
 - ◆ Upon receiving an application, Opencut has 5 working days to review the application and notify the applicant as to whether the application is complete. MCA § 82-4-432(a)(i).
 - ◆ An application is “complete” if it contains all of the items listed in MCA § 82-4-432(1) and (2)¹. This includes information like: adequate maps, a demonstration of legal rights to mine the site, and bond or security, etc.
 - ◆ If the application is not complete, Opencut notifies the applicant in writing by issuing an “Incomplete Letter” – a detailed identification of information necessary to make the application complete. MCA § 82-4-432(4).
 - ◆ Opencut’s determination that an application is complete does not mean that an application is acceptable. Once an application is deemed complete, Opencut begins reviewing the application for acceptability. Opencut may inspect the proposed site during the acceptability review process and if the application does not meet the requirements of the Opencut act, would issue a deficiency letter requesting additional information. MCA § 82-4-432(4)(b)(i).
 - ◆ An application is “acceptable” when it meets the requirements of the Opencut Act and provides a viable reclamation plan.

- 2. If I have concerns about an Opencut application, how can I get involved in the process?**
 - ◆ For public awareness, Opencut posts each complete application on the Department’s website. <https://deq.mt.gov/mining> MCA § 82-4-432(4)(d).
 - ◆ Opencut encourages public comment on applications throughout the review process. Public comments can help inform Opencut of local concerns or special circumstances pertaining to a site. Opencut reviews every public comment submitted. If a comment has legal merit under the Opencut Mining Act, Opencut may incorporate it into a Deficiency Letter for the Operator to address. Deficiency letters may be issued during the acceptability review period to provide the applicant with a detailed identification of deficiencies preventing the application from being deemed acceptable.
 - ◆ If an application is determined to be acceptable, Montana’s Opencut laws require the department to issue the opencut permit. MCA § 82-4-432(10)(a)(c).

- 3. I have concerns that a proposed Opencut site will negatively impact my property values, what can I do?**
 - ◆ Montana’s Opencut laws do not provide the agency with the authority to consider potential impacts to property values in the permit analysis. As part of every permit action, DEQ completes an environmental review that includes an evaluation of potential human impacts in the area such as analysis of population density, housing, recreational activities, locally adopted environmental plans, employment, and cultural uniqueness.

- 4. I have concerns about impacts to water, including groundwater, wells, springs, or other nearby surface water, what can I do?**
 - ◆ Montana’s Opencut laws do not regulate groundwater quality or quantity. However, other programs at DEQ regulate potential impacts to water quality, and the Department of Natural Resources and Conservation (DNRC) generally regulates water quantity. Some opencut sites may need to acquire

¹ Here is the link to the Opencut Act and Administrative Rules of Montana: <http://deq.mt.gov/Mining/opencut>.

additional permits or approvals related to water resources prior to beginning Opencut operations. (See next question for more detail)

- ◆ If you are concerned about impacts to your water that are potentially the result of a current opencut operation,
 - Complaints about water **quality** can be made by telephone to DEQ Enforcement at (406) 444-0379, or on-line, <http://deq.mt.gov/reporting>
 - Complaints about water **quantity** are generally addressed through the DNRC at (406) 444-6999

5. Do Opencut applicants also need to get a permit from the Water Protection Bureau?

- ◆ Each operation is unique and may or may not require an operator to acquire additional permits. If an Opencut operation discharge wash water, transport water, scrubber water, or other process water to state surface waters, they are required to obtain MPDES permit coverage.
- ◆ Refer to the Opencut website for the Water Protection Bureau Permitting Guide. <https://deq.mt.gov/mining>

6. Do Opencut applicants also need to get an air quality permit and mitigate dust, for example, at an opencut site?

- ◆ While each operation is unique, some may use equipment such as crushers or asphalt plants onsite. DEQ's Air Quality Bureau regulates such equipment, which can potentially emit air pollutants. Refer to the Opencut website for the DEQ Air Quality FAQ. <https://deq.mt.gov/mining>

7. I have concerns about safety issues resulting from gravel trucks on public roads, where do I voice those concerns?

- ◆ Public roads are maintained by the Montana Department of Transportation and/or the local county/city/town.
- ◆ Law enforcement issues citations for violations of traffic and vehicle safety issues.

8. I have concerns about noise and visual impacts from equipment and operations at an Opencut site, what can I do?

- ◆ Montana's Opencut laws do not give DEQ oversight over zoning, noise and visual impacts, or hours of operation. However, counties, cities, or towns may have local ordinances or restrictions in place. This information can often be found on a local government website or by directly contacting the local government where the site is located.

9. Who can I contact with questions about land use/zoning and/or the regulation of hours of operation?

- ◆ Counties, cities, or towns may have local ordinances or restrictions in place concerning land use and/or zoning or noise ordinances that could restrict the hours of operation at a proposed site. This information can often be found on a local government website or by directly contacting the local government where the site is located.

◆

10. After a permit is deemed "acceptable" and issued, can I still be involved in the outcome?

- ◆ Within 30 days of Opencut's final decision, a person whose interests are, or may be, adversely affected, can file an appeal before the Board of Environmental Review (<http://deq.mt.gov/DEQA1dmin/ber>). MCA § 82-4-427(1)(a).
- ◆ If formal public notice was required in law, to appeal, a person must have submitted a public comment to Opencut during the review of the application or at a public meeting. MCA § 82-4-427(1)(b).

OPENCUT MINING PUBLIC PARTICIPATION

In Montana, a permit is required to conduct opencut mining for extracting minerals such as sand, gravel, clay, scoria, soil and bentonite. The Montana Department of Environmental Quality's (DEQ) opencut mining program has new requirements for public participation when permitting an opencut site, based on laws passed in the 2021 legislature.

How can I participate in the opencut permitting process?

You can participate in the process by submitting written public comment anytime throughout the application review process. Written public comment is the most effective public participation. DEQ reviews and considers all public comments. To submit comment, visit DEQ's website below.

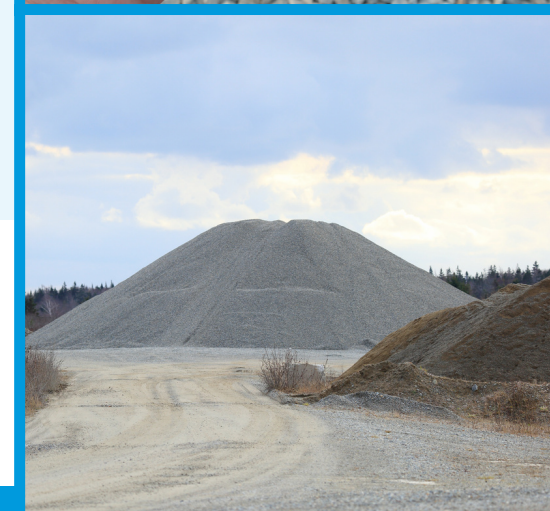
Public meetings are not held for every application. Public meetings are held depending on a number of factors as outlined in the 2021 legislation and shown below:

- **Standard Permit Applications:** A public meeting will be held by request of the applicant, or if 51 percent or 10—whichever is greater—of the real property owners with occupied dwelling units* within a half-mile of the permit boundary request a public meeting.
- **Dryland Permit Applications:** Applications for sites that have fewer than 10 real property owners with occupied dwelling units* within a half-mile of the permit boundary, do not have the opportunity for a public meeting, unless the applicant requests one. Written public comments are accepted.
- **Amendment Applications:** if an amendment application proposes an increase in the permitted acreage by 50 percent or more, the same public meeting requirements apply as described above for a standard permit.

*What is an occupied dwelling unit?

An occupied dwelling unit is a structure with permanent water and sewer facilities that is used as a home, residence, or sleeping place by at least one person who maintains a household that is lived in as a primary residence as defined in MCA 82-4-403 (7).

For a list of frequently asked questions, visit the DEQ website at the link below.



HOW IS THE PUBLIC NOTIFIED OF AN OPENCUT APPLICATION?

The applicant is required to notify the public through the following ways:



A public notice will be published twice in a newspaper of general circulation in the location of the proposed operation



A notice will be mailed to property owners within a half-mile of the proposed permit boundary



Signage will be posted in two prominent locations at the proposed site

A complete application will be available to view on the DEQ website.

Written public comment is the most effective form of public participation. Comment can be submitted on the DEQ website.

Montana Code Annotated 2023

TITLE 82. MINERALS, OIL, AND GAS

CHAPTER 4. RECLAMATION

Part 4. Opencut Mining Reclamation

Application For Permit -- Contents -- Issuance -- Amendment

82-4-432. Application for permit -- contents -- issuance -- amendment. (1) (a) An operator who requires a permit pursuant to **82-4-431** shall apply for a permit on forms furnished by the department prior to commencing operations.

(b) Operations subject to subsections (2) through (13) are those:

(i) that affect ground water or surface water, including intermittent or perennial streams, or water conveyance facilities; or

(ii) where 10 or more occupied dwelling units are within one-half mile of the permit boundary of the operation.

(c) All other operations are subject to subsection (14).

(2) (a) An application for a permit pursuant to subsections (2) through (13) must be made using forms furnished by the department and must contain the following:

(i) the name of the applicant and, if other than the owner of the land, the name and address of the owner;

(ii) the type of operation to be conducted;

(iii) the estimated volume of overburden and materials to be removed;

(iv) the location of the proposed opencut operation by legal description and county accompanied by a map showing the location of the proposed operation sufficient to allow the public to locate the proposed site; and

(v) a statement that the applicant has the legal right to mine the designated materials in the lands described.

(b) The application must be accompanied by:

(i) a bond or security meeting the requirements as set out in this part;

(ii) a statement from the local governing body having jurisdiction over the area to be mined certifying that the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under Title 76, chapter 2, and in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to this section;

(iii) a plan of operation that contains information sufficient to initiate acceptability review by addressing the requirements of **82-4-434** and rules adopted pursuant to this part related to **82-4-434**;

(iv) written documentation that the landowner has been consulted about the proposed plan of operation;

(v) a written agreement between the landowner and the operator authorizing the operator access to the site to perform reclamation if the landowner revokes or otherwise terminates the operator's right to mine;

(vi) a list that is certified by the operator and generated on a form furnished by the department using cadastral and field information at the time of permit application of owners of real property on which occupied dwelling units exist located within one-half mile of the proposed permit boundary using the owners of record as shown no more than 60 days prior to the submission of an application in the paper or electronic records of the county clerk and recorder for the county where the proposed opencut operation is located; and

(vii) documentation of consultation with the state historic preservation office regarding possible archaeological or historical values on the affected land.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests that the department examine the area to be mined, the department shall examine the area and make recommendations to the person regarding the proposed opencut operation. The person may request a preapplication meeting with the department. The department shall hold a meeting if requested.

(4) (a) (i) Except as provided in **75-1-208(4)(b)**, upon receipt of an application, the department shall, within 5 working days, review the application and notify the person as to whether or not the application is complete. An application is complete if it contains the items listed in subsections (1) and (2). If the department determines that the application is not complete, the department shall notify the applicant in writing and include a detailed identification of information necessary to make the application complete.

(ii) The time limit provided in subsection (4)(a)(i) applies to each submittal of the application until the department determines that the application is complete.

(b) (i) A determination that an application is complete does not ensure that the application is acceptable and does not limit the department's ability to request additional information or inspect the site during the review process.

(ii) Upon determining that an application is complete, the department shall begin reviewing the application for acceptability pursuant to this section.

(iii) The department shall accept public comment throughout the review process.

(c) The department may declare an application abandoned and void if:

(i) the applicant fails to respond to the department's written request for more information within 1 year; and

(ii) the department notifies the applicant of its intent to abandon the application and the applicant fails to provide information within 30 days.

(d) The department shall notify the applicant when an application is complete and post the complete application on the department's website.

(5) Within 15 days after the department sends notice of a complete application to the applicant, the applicant shall provide public notice, which must include:

(a) the name, address, and telephone number of the applicant;

(b) a description of the acreage, the estimated volume of overburden and materials to be removed, the type of materials to be removed, the facilities, the duration of activities, and the access points of the proposed opencut operation;

(c) a legal description of the proposed opencut operation and a map, or directions on how to access a map, showing the location of the proposed opencut operation and immediately surrounding property; and

(d) on a form provided by the department, notification that the application is complete and information on how to request a public meeting pursuant to this section.

(6) To provide public notice, the applicant shall:

(a) publish notice at least twice in a newspaper of general circulation in the locality of the proposed opencut operation. A map is not required in the notice if, in addition to the legal description of the proposed opencut operation, the notice provides an address for the map posted on the department's website and instructions for obtaining a paper copy of the map from an applicant. If the notice does not include a map, the applicant shall promptly provide a paper copy to a requestor.

(b) mail the notice by first-class mail to the board of county commissioners of the county in which the proposed opencut operation is located and to surface owners of land located within one-half mile of the boundary of the proposed opencut permit area using the most current known owners of record as shown in the paper or electronic records of the county clerk and recorder for the county where the proposed opencut operation is located;

(c) post the notice in at least two prominent locations at the site of the proposed opencut operation, including near a public road if possible; and

(d) provide the department with the names and addresses of those notified pursuant to subsection (6)(b).

(7) (a) Except as provided in subsection (7)(b), the department shall accept requests for a public meeting for 45 days after the department sends notice to the applicant of a complete application. Within this period, unless a public meeting is required pursuant to subsection (9), the department shall notify the applicant as to whether or not the application is acceptable pursuant to subsection (10).

(b) If the applicant and the department mutually agree or the applicant submits documentation on a form provided by the department showing that a public meeting will not be required pursuant to subsection (9), the department shall inform the applicant within 30 days of the notice of a complete application as to whether or not the application is acceptable pursuant to subsection (10).

(8) If a public meeting is required pursuant to subsection (9), within 30 days from the closing date of the public meeting request period in subsection (7), the department shall:

(a) hold a meeting; and

(b) notify the applicant as to whether or not the application is acceptable pursuant to subsection (10) or that the application requires an extended review pursuant to **82-4-439**.

(9) (a) The department shall hold a public meeting in the area of the proposed opencut operation at the request of:

(i) the applicant; or

(ii) at least 51% of the real property owners on which occupied dwelling units exist or 10 real property owners on which occupied dwelling units exist, whichever is greater, notified pursuant to this section. For the purposes of this subsection (9)(a)(ii), multiple owners of the same occupied dwelling unit are to be counted as a single real property owner.

(b) To provide notice for a public meeting, the department shall notify by first-class mail or electronically the property owners on the list provided by the applicant pursuant to this section and the board of county commissioners in the county where the proposed opencut operation is located.

(10) (a) An application is acceptable if it complies with the requirements of subsections (1) and (2) and includes a plan of operation that satisfies the requirements of **82-4-434** and rules adopted pursuant to this part related to **82-4-434**. If the department determines that the application is not acceptable, the department shall notify the applicant in writing and include a detailed identification of all deficiencies.

(b) Within 10 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the responses and notify the applicant as to whether or not the application is acceptable. If the application is unacceptable, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

(c) If the application is acceptable, the department shall issue a permit to the operator that entitles the operator to engage in the opencut operation on the land described in the application.

(11) (a) An operator may amend a permit by submitting an amendment application to the department. Upon receipt of the amendment application, the department shall review it in accordance with the requirements and procedures in this section. If the amendment application is acceptable, the department shall issue an amendment to the original permit.

(b) An application for an amendment is not subject to the public notice or public meeting requirements of this section or an extended review pursuant to **82-4-439** unless it proposes an increase in permitted acreage of 50% or more of the amount of permitted acreage in the current permit.

(c) For amendment applications not subject to the public notice and public meeting requirements of this section, the department shall, within 45 days of notifying the applicant that the application is complete, notify the applicant as to whether or not the application is acceptable pursuant to subsection (10).

(12) (a) Except as provided in subsection (12)(b), if weather or other field conditions prevent the department from conducting an adequate site inspection to evaluate a permit or amendment application, the time limits provided in subsections (7) and (11) are suspended until the weather or other field conditions allow for an adequate site inspection.

(b) Before suspending time limits, the department shall allow the operator to provide the information needed from a site inspection by other means, including but not limited to surveys, photos, videos, or other reports.

(13) The department shall post a copy of an acceptable permit or amendment on its website.

(14) (a) Operations not described by subsection (1)(b) that apply for a permit or an amendment shall submit:

(i) a landowner consultation form;

(ii) documentation of consultation with the state historic preservation office regarding possible archaeological or historical values on the affected land;

(iii) a reclamation bond calculated pursuant to the requirements of **82-4-433** unless exempt pursuant to **82-4-405**;

(iv) if applicable, documentation of compliance with Title 87, chapter 5, part 9;

(v) a statement from the local governing body having jurisdiction over the area to be mined certifying that the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under Title 76, chapter 2, and in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to this section;

(vi) results from three soil test pits meeting the soil guideline requirements;

(vii) the appropriate fee as set forth in **82-4-437** and a \$500 fee to be deposited in the opencut fund pursuant to **82-4-438**;

(viii) the proposed permit boundary in a format acceptable to the department and a location map;

(ix) a certification from the operator that there are fewer than 10 occupied dwelling units within one-half mile of the permit boundary of the operation no more than 60 days from the date the application materials are submitted;

(x) certification from the operator that notice of the proposed opencut operation was:

(A) published at least twice in a newspaper of general circulation in the locality of the proposed opencut operation;

(B) mailed to surface owners of land located within one-half mile of the boundary of the proposed opencut permit area using the most current known owners of record as shown in the paper or electronic records of the county clerk and recorder for the county where the proposed opencut operation is located. If the notice does not include a map, the applicant shall promptly provide a copy to a requestor.

(C) posted in at least two prominent locations at the site of the proposed opencut operation, including near a public road if possible;

(xi) the date the site is to be fully reclaimed.

(b) Except as provided in **75-1-208(4)(b)**, upon receipt of an application under this subsection (14), the department shall, within 5 working days, review the application and notify the person as to whether or not the application is complete. An application is complete if it contains the items listed in subsection (14)(a). If the department determines that the application is not complete, the department shall notify the applicant in writing and include a detailed identification of information necessary to make the application complete.

(c) Upon determining that an application is complete, the department shall begin reviewing the application for acceptability pursuant to this section. Public comment may be submitted throughout the review period.

(d) Within 15 days of receiving the information required by subsection (14)(a), the department shall determine if the information meets the requirements of subsection (14)(a) and notify the operator in writing. If the requirements are met, the operator may commence the operation on receipt of the notification.

(e) If the information submitted does not meet the requirements of subsection (14)(a), the department shall notify the applicant in writing and include a detailed identification of all deficiencies.

(f) Within 10 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the responses and notify the applicant as to whether the information submitted meets the requirements of subsection (14)(a). If the information submitted does not meet the requirements, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

(g) If the information submitted to the department meets the requirements of subsection (14)(a), the department shall notify the operator in writing. On receipt of the notification, the operator may commence opencut operations on the land described in the application.

(h) The department may prohibit an operation under this section if, at the time of submission of information required by subsection (14)(a), the operator has a pattern of violations of this part or is in current violation of this part, rules adopted under this part, or provisions of a permit.

(i) Prior to removing materials, the operator shall salvage all of the soil from the area to be disturbed.

(j) Prior to the final reclamation date, the operator shall grade the affected land to 3:1 or flatter slopes for rangeland and to 5:1 or flatter slopes for farmland and cropland, blend the graded land into the surrounding topography, replace an appropriate amount of overburden and all soils, and reclaim to conditions either present prior to operations or as specified by the landowner, including all access roads used for the operation unless the landowner requests in writing that specific roads or portions of roads remain in place. Roads left at the landowner's request must be sized to support the use of the road after operations.

History: En. Sec. 8, Ch. 326, L. 1973; amd. Sec. 21, Ch. 39, L. 1977; R.C.M. 1947, 50-1508; amd. Sec. 4, Ch. 408, L. 1991; amd. Sec. 411, Ch. 418, L. 1995; amd. Sec. 15, Ch. 507, L. 1999; amd. Sec. 13, Ch. 299, L. 2001; amd. Sec. 3, Ch. 325, L. 2001; amd. Sec. 11, Ch. 385, L. 2007; amd. Sec. 7, Ch. 477, L. 2009; amd. Sec. 6, Ch. 198, L. 2013; amd. Sec. 9, Ch. 334, L. 2019; amd. Sec. 4, Ch. 545, L. 2021.

17.24.218 PLAN OF OPERATION (SITE CHARACTERIZATION, SITE PREPARATION, SOIL AND OVERBURDEN HANDLING, MINING, AND PROCESSING PLANS) AND PERFORMANCE STANDARDS

(1) An application for a standard permit or standard permit amendment requires a plan of operation that complies with [82-4-432](#), MCA and includes the following:

(a) unless otherwise approved in writing by the department, a markers section that includes a statement that the operator clearly marked on the ground all required boundaries and permitted access roads to be improved or constructed and will maintain the markings as required by this rule. Boundary and road markers must be placed so that no less than two consecutive markers are readily visible in any direction from any point on a line. The following requirements apply to marking boundaries and permitted access roads to be improved or constructed:

(i) markers must be in place prior to submitting an application for a permit or an amendment;

(ii) markers should be durable stout steel, wood, or similar quality posts and painted or flagged to be readily visible, except that a prominent, permanent feature such as a pole, tree, or large rock, flagged or painted, may serve as a marker;

(iii) road markers may be removed as the road is constructed, but each boundary marker must be maintained in place and readily visible until the adjacent permit area is reclaimed and released;

(iv) the following areas and features must be marked according to this rule:

(A) proposed permit or proposed amended permit boundaries;

(B) non-bonded areas;

(C) proposed permitted access roads to be improved or constructed;

(D) phase 1 release areas previously approved by the department; and

(E) prior to submission of an application for bond release, areas that are the subject of an application for phase I or phase II bond release;

(v) the requirements of (1)(a) do not apply to active hayland, cropland, or existing roads to be permitted;

(b) an access road construction and use section that is consistent with the landowner's acknowledgements contained in the landowner consultation form required by ARM

[17.24.206](#);

(c) a soil and overburden characterization section that includes the average soil and overburden thicknesses in the permit area determined on the basis of no less than three test holes spaced representatively to describe proposed permit areas of less than nine acres and one test hole per each three-acre area for proposed permit areas of nine acres or more, with a maximum of 20 representatively spaced test holes for proposed permit areas that exceed 60 acres, or as otherwise approved by the department in the permit;

(i) for the purposes of this subsection:

(A) test holes must be of sufficient depth to measure the thicknesses of soil and overburden;

(B) representative test holes must be located in both bonded and non-bonded areas;

(C) exposures of the soil and overburden profile, such as a roadcut, may be used in lieu of a test hole; and

(D) clearly labeled photos showing the top three feet of the soil profile with a visible scale must be taken and provided to the department for each test hole;

(d) a soil and overburden handling section that includes a statement that the operator shall:

(i) upon commencing opencut operations, strip and stockpile overlying soil to the depth specified in the permit before excavating overburden and materials;

(ii) before mining, remove and stockpile overburden separately from soil and designate soil and overburden stockpiles with signage that is legible, readily visible, and placed so

that equipment operators and inspectors may readily identify the type of stockpile for the life of the stockpile;

(iii) never stockpile overburden or soil on slopes greater than 3:1 or in drainages or in a manner that will cause pollution to state waters;

(iv) remove all soil and overburden from a minimum ten-foot-wide strip along the crest of a highwall;

(v) haul soil and overburden directly to areas prepared for backfill and grading or resoiling or to separate stockpiles;

(vi) never stockpile overburden or conduct any opencut operations on areas where soil has not been stripped to the depth required by the permit; and

(vii) use best management practices to prevent erosion, commingling, contamination, compaction, and unnecessary disturbance of soil and overburden stockpiles including, but not limited to, at the first seasonal opportunity, shape and seed, with approved perennial species, the soil and overburden stockpiles that are capable of sustaining plant growth, and that remain in place for more than two years and maintain the accessibility of all overburden and soil stockpiles in the permit area prior to reclamation in accordance with the plan of operation;

(viii) where required by [82-4-434](#), MCA, berms constructed of soil and/or overburden, must be a minimum of 6 feet high, protected from erosion, commingling, contamination, compaction, and unnecessary disturbance. At the first seasonal opportunity, the operator must shape and seed, with weed-free seed mix, any berm capable of sustaining plant growth;

(e) a construction, mining, processing, and hauling section that includes:

(i) a description of the materials to be sold or used by the operation;

(ii) a construction project plan that describes the locations and construction schedules for all areas to be disturbed and location of all facilities including offices, parking, vehicle staging areas, roads designated by the landowner as affected land, and processing plants;

(iii) a description of the methods and equipment to be used to mine, haul, and process material;

(iv) a description of the anticipated general mining progression, including the location of the first stripping and excavation, the direction of mining progress, and timing for the mobilization and setup of processing facilities such as a screen, crusher, asphalt plant, wash plant, batch plant, pug mill, and other facilities; and

(v) other information necessary to fully describe the nature and progress of opencut operations;

(f) a water resources section that includes:

(i) identification of the sources of the information reported, such as landowners, field observations, and water well logs;

(ii) the estimated seasonal high and seasonal low water table levels in the permit area and the information sources used, such as landowners, field observations, nearby surface water, and water well logs.

(g) a statement by the operator that:

(i) opencut operations may not occur within prohibited areas described in the permit;

(ii) no opencut operations will occur within an easement unless written permission to do so is obtained from the holder of the dominant estate; and

(iii) before commencing opencut operations, the operator, on a form provided by the department, notified the weed board in the county or counties in which the proposed operation is located. A copy of the form that the applicant submitted to the weed board must be attached to the application;

(h) an additional commitments section that includes a statement that the operator will:

(i) inform key personnel and subcontractors involved in opencut operations of the requirements of the plan of operation;

(ii) promptly notify the state historic preservation office archaeological or historical values are found.

(2) An application for a dryland permit or to amend a dryland permit does not require submission of a plan of operation.

(3) Approval of an application does not relieve the operator from the requirements of any applicable federal, state, county, or local statute, regulation, rule, or ordinance, including requirements to obtain any other permit, license, approval, or permission necessary for the actions described in or required by the application and the permit.

(4) Upon issuance of the permit, the operator shall comply with all commitments required by this rule and with the requirements for the conduct of operations contained in this rule.

History: [82-4-422](#), MCA; IMP, [82-4-402](#), [82-4-422](#), [82-4-423](#), [82-4-431](#), [82-4-432](#), [82-4-434](#), MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16; AMD, 2022 MAR p. 2009, Eff. 10/8/22.

17.24.219 PLAN OF OPERATION, RECLAMATION PLAN, AND PERFORMANCE STANDARDS

(1) An application for a dryland permit or to amend a dryland permit does not require a plan of operation. An application for a standard permit or to amend a standard permit must include a plan of operation that complies with [82-4-434](#), MCA and the following:

(a) a postmining land uses section that includes a description of the type, location, and size of each postmining land use area in the permit area. Postmining land use types include, but are not limited to, internal roads, material stockpile areas, pond, wetland, riparian area, grassland, rangeland, shrubland, woodland, pasture, hayland, cropland, wildlife habitat, recreation site, and residential, commercial, and industrial building sites;

(b) a surface cleanup section that includes a statement that the operator will:

(i) at the conclusion of open-cut operations, except as provided in (1)(b)(ii), use or haul away from the permit area all excavated or processed material for backfill as provided in (1)(c);

(ii) upon the request by the landowner, on the landowner consultation form, segregate specific types, grades, and quantities of material into stockpiles maintained in one location, along with a separate stockpile of the quantity of soil required to reclaim the area where the material is stockpiled, shaped, and seeded and placed within 100 feet of a material stockpile;

(iii) a stockpile of materials for the landowner as provided by (1)(b)(ii) must be free of excess fines or other waste materials that would render the material unsuitable for commercial use;

(iv) provide a description of the types, grades, and quantities of material proposed to remain stockpiled as provided by (1)(b)(ii) and (iii), and justify the quantities stockpiled for landowner use based on current and expected demand for the materials;

(v) at the conclusion of open-cut operations, haul away and properly dispose of all refuse, oiled surfacing, contaminated materials, concrete that is not clean-fill, and unused clean fill from affected lands;

(vi) haul away all asphaltic pavement from the permit area, except on-site-generated asphaltic pavement may be used as mined-area backfill in accordance with (1)(b)(vii) and with the consent of the landowner;

(vii) place on-site-generated asphaltic pavement, coarse clean fill, and other clean fill unsuitable for plant growth under at least three feet of material suitable for sustaining the postmining vegetation;

(viii) place on-site-generated asphaltic pavement in an unsaturated condition at least 25 feet above the seasonal high water table; and

(ix) for the purposes of (1)(b)(ii) and (iii), the operator remains responsible for reclamation of the areas occupied and affected by material and soil stockpiles until the department has approved phase II reclamation for the areas where the stockpiles are located or assignment of the permit to the landowner or another party;

(c) a backfill and grading section that includes a statement that the operator will:

(i) use only overburden and materials from the permit area, or otherwise only clean fill from any source, to reclaim affected land to a stable condition with 5:1 or flatter slopes for hayland and cropland, 4:1 or flatter slopes for sandy surfaces, and 3:1 or flatter slopes for other sites and surfaces appropriate to the designated postmine land use;

(ii) reclaim premine drainage systems to blend into the surrounding topography and drainages;

(iii) drain off-site or concentrate water in low areas identified in the permit;

(iv) backfill and grade to at least three feet above the seasonal high water table level for dryland reclamation and at approved depths below the seasonal low water table level for pond reclamation;

(v) record the average thickness of overburden replaced and never cover soil with overburden;

(vi) if available, up to 24 inches of soil and overburden must be stripped, salvaged, and replaced for reclamation. If overburden is a mine material or will be used as binder, an appropriate quantity must first be stripped and salvaged to satisfy the soil plus overburden replacement thickness requirement (24 inches cumulative);

(vii) for the purposes of (1)(c)(i) and (ii), the department may consider steeper slopes for certain postmining land uses based on a design or a slope stability analysis prepared by a professional engineer licensed in accordance with Title 37, chapter 67, part 3, MCA, or a geologist with five years of post-graduate academic or professional work experience in the field of soil or rock mechanics;

(viii) if required by the department, conduct postmining monitoring of ground water levels to ensure that appropriate reclaimed surface elevations are established;

(d) a description of the locations and designs for any special reclamation features such as ponds, waterways with defined channels, and building sites. Reclaimed waterways with defined channels must be located in their approximate premine locations and have channel and floodplain dimensions and gradients that approximate premine conditions, unless otherwise approved by the department. Reclaimed waterways with defined channels must connect to undisturbed waterways in a manner that avoids disruption or accelerated erosion of the reclaimed waterway or adjoining areas;

(e) an access road reclamation section describing:

(i) reclamation of access, haulage, or other roads included on affected land with the landowner's consent; and

(ii) for private roads to remain open at the request of the landowner, reclamation of the road to a width appropriate to the landowner's anticipated use or as may otherwise be required by applicable land use regulations;

(f) a section that explains how the operator will reclaim water diversion, retention, discharge, and outflow structures constructed for opencut operations;

(g) an overburden and soil conditioning section that includes a statement that the operator will:

(i) till replaced overburden, graded surfaces, and other compacted surfaces:

(A) to a depth of at least 12 inches, or to another depth required by the department prior to replacing soil, except that:

(I) tillage is not required for relatively non-compactible materials such as sands, materials with a rock fragment content of 35 percent or more by volume, or bedrock; and

(II) tilling deeper than the soil thickness is not required when cobbly material or bedrock underlies the soil;

(B) on the contour and when the overburden and soil are dry enough to shatter; and

(C) in a manner that protects tilled areas from recompaction;

(ii) record the thicknesses of soil replaced on the permit areas as required by the permit;

(iii) till through replaced soil and into the surface of the underlying backfill prior to seeding or planting unless otherwise required by the department; and

(iv) the soil surface must be free of rocks that are not characteristic of the soil prior to disturbance;

(h) a revegetation section that:

(i) describes the types and rates of fertilizer and other soil amendment applications, methods of seedbed preparation, and methods, species, and rates of seeding or planting; and

(ii) includes a statement that the operator will:

(A) establish vegetation to protect the soils from erosion and that is capable of sustaining the designated postmining land uses;

(B) seed all affected land for vegetation species that are consistent with the premining species composition, cover, production, density, and diversity, or otherwise as appropriate for the designated postmining land use;

(C) ensure that areas seeded or planted to perennial species are adequately protected and managed from the time of seeding or planting through two consecutive growing seasons or until the vegetation is established, whichever is longer;

(D) use seed that is as weed free as is reasonably possible;

(E) ensure that seedbed preparation and drill seeding is done on the contour;

(F) apply drill seeding at the rate of no less than ten pounds per acre or at another rate approved by the department;

(G) apply broadcast seeding at a rate that is at least 100 percent higher than drill seeding rates and drag or press the surface to cover the seed unless otherwise required by the department;

(H) provide seeding rates as pounds of pure live seed per acre;

(I) seed during the late fall or early spring seeding seasons;

(J) apply cover crop seeding and mulch as needed to help stabilize an area or establish vegetation;

(K) achieve revegetation of a non-cropland area by establishing vegetation capable of sustaining the designated postmining land use;

(L) achieve revegetation of a cropland area when a crop has been harvested from the entire area and the yield is comparable to those of crops grown on similar sites under similar growing conditions; and

(M) agree that reclamation for cropland areas will be considered complete upon inspection by the department or notification by the landowner to the department in writing that the crop yield on the reclaimed land is acceptable;

(i) a reclamation schedule section that includes:

(i) a statement that the operator will complete phase I and phase II reclamation on an area no longer needed for opencut operations, or on areas that the operator no longer has the right to use for opencut operations, within one year after the cessation of such operations or termination of such right. If it is not practical for the operator to reclaim a certain area until other areas are also available for reclamation, the operator may propose an alternate reclamation schedule for that area; and

(ii) a reasonable estimate of the month and year by which phase II reclamation will be completed considering the estimated demand for material, expected rate of production, accessible material reserves, and the time required to complete revegetation as required by (1)(g) and (h). Final reclamation must be completed by the date given.

(2) Upon issuance of the permit, the operator shall comply with all commitments required by this rule and with the requirements for the conduct of operations contained in this rule.

History: [82-4-422](#), MCA; [IMP](#), [82-4-402](#), [82-4-422](#), [82-4-423](#), [82-4-431](#), [82-4-432](#), [82-4-434](#), MCA; [NEW](#), 2004 MAR p. 317, Eff. 2/13/04; [AMD](#), 2016 MAR p. 513, Eff. 3/19/16; [AMD](#), 2022 MAR p. 2009, Eff. 10/8/22.

17.24.221 PLAN OF OPERATION--MAPS

(1) For a standard permit or standard permit amendment, a plan of operation must comply with [82-4-434\(2\)](#), MCA and include: a site map, area map, reclamation map, location map, and other maps necessary to describe the proposed opencut operation. Except as provided in (6), maps submitted to the department in accordance with this subchapter must be legible, on an air-photo base, and in a scale sufficient to clearly describe the subject matter. An application supported by a map submitted in an electronic format that is incompatible with the department's systems, that cannot be reviewed, or that is otherwise illegible is not acceptable. A map submitted in other than electronic format must fill an 8 1/2- by 11- or 11- by 17-inch sheet leaving margins of approximately 1/2 inch.

(2) The following items must be shown and labeled on each map submitted to the department: operator name; site name; legal description of the proposed permit area; bar scale; date of drafting; and north arrow.

(3) Site maps must show and identify the following existing and proposed features as applicable:

(a) permitted access roads, including the location, width, waterway crossings, and surfacing;

(b) permit boundaries;

(c) bonded area boundary;

(d) non-bonded area boundary;

(e) excess overburden and fines disposal sites;

(f) staging areas;

(g) heavy equipment parking areas;

(h) fuel storage areas;

(i) sight and sound barriers and berms;

(j) soil stockpile areas;

(k) overburden and excess overburden stockpile areas;

(l) material stockpile areas;

(m) processing facilities, including approximate locations of:

(i) crusher;

(ii) asphalt plant;

(iii) wash plants; and

(iv) concrete plant;

(n) detention ponds;

(o) concrete and asphalt recycling stockpile area;

(p) soil and overburden test hole and observation point locations;

(q) water system and structures, including:

(i) supply wells;

(ii) water recycling and settling ponds;

(iii) surface water extraction points;

(iv) discharge points for water used in opencut operations; and

(v) all surface waters including, but not limited to, ponds, lakes, wetlands, and defined and/or eroded channels of waterways including, but not limited to, rivers, creeks, intermittent or perennial streams, drainages, ditches, water conveyance facilities, and other waterways;

(r) above and below ground utilities and easements within the permit boundary;

(s) roads crossing areas where opencut activities are prohibited by ARM [17.24.218\(1\)](#)

(g);

(t) erosion controls;

(u) historic disturbances within or adjacent to permit area boundary;

(v) the data point and map identification number for each pair of coordinates the operator provided on the boundary coordinate table that is required by (8); and

(w) any other pertinent features that are necessary to ensure compliance with the Act and rules.

(4) Area maps must show and identify the following features within 1,000 feet outside of the permit boundary:

(a) roads leading to the site;

(b) access roads from the public road turnoff to the permit area (if roads go beyond the area map, show the full extent on the location map) including the location, width, waterway crossings, and surfacing;

(c) water wells based on readily available information, and other water conveyance facilities;

(d) natural and man-made drainage features including, but not limited to, intermittent or perennial streams, wetlands, ponds, springs, ditches, and impoundments in and within 500 feet of access roads and show the defined and/or eroded channel of any such feature and any setback areas, along with a description of the use of any man-made feature;

(e) other opencut operations;

(f) significant geographical features;

(g) residences located within 300 feet of the permit boundary; and

(h) any other pertinent features that are necessary to ensure compliance with the Act and this subchapter.

(5) Reclamation maps must show and identify all the following existing and proposed features in accordance with the plan of operation:

(a) all postmining land uses;

(b) mined area backfill sites;

(c) landowner material stockpile areas to remain;

(d) all roads or portions of roads proposed to remain open, at the request of the landowner, at the conclusion of opencut operations, including road locations, intended use, final width, and surfacing;

(e) long and short axis cross-sections of any pond or depression in which water is expected to collect;

(f) arrows depicting the anticipated direction of water flow across the reclaimed site; and

(g) any other pertinent features that are necessary to ensure compliance with the Act and this subchapter.

(6) The location map may be on an aerial or topo base and must show the site's location in relation to the nearest town or city, and be sufficient to allow the public to locate the proposed site.

(7) For all permits and amendments, complete and accurate maps must be submitted. The department may require that part or all of the area in and within 500 feet of permitted access roads and 1,000 feet of the permit area be surveyed to provide sufficient map detail and accuracy.

(8) Marker, road, and boundary locations that must be marked in the field under ARM [17.24.218](#)(1)(a) and markers, roads, and boundaries located in hayland or cropland must be provided on a boundary coordinate table form or through another method approved by the department.

History: [82-4-422](#), MCA; [IMP](#), [82-4-402](#), [82-4-422](#), [82-4-423](#), [82-4-431](#), [82-4-434](#), MCA; [NEW](#), 2004 MAR p. 317, Eff. 2/13/04; [AMD](#), 2016 MAR p. 513, Eff. 3/19/16; [AMD](#), 2022 MAR p. 2009, Eff. 10/8/22.

17.24.227 SURFACE WATER SETBACK REQUIREMENTS

(1) Dryland opencut mining operations must:

(a) not affect surface water, including but not limited to, perennial or intermittent streams;

(b) have a permit boundary that is a minimum of 50 feet from the edge of the high water mark of surface water, or as otherwise approved by the department, including but not limited to, perennial or intermittent streams.

(2) Standard opencut mining operations with a permit boundary that is located less than 50 feet from the edge of the high water mark of surface water, including but not limited to perennial or intermittent streams, must follow the Stream/Waterway Worksheet and include specific, detailed design criteria in the application demonstrating:

(a) a productive postmining land use can be achieved; and

(b) defined channels can be reconnected to undisturbed drainages/waterways in a stable manner to ensure downstream flow is maintained.

(3) Limited opencut operations (LOOs) may not:

(a) affect surface water, including but not limited to, perennial or intermittent streams;

(b) conduct operations within 50 feet of the edge of the high water mark of surface water, including but not limited to, perennial or intermittent streams.

History: [82-4-422](#), MCA; [IMP](#), [82-4-431](#), [82-4-432](#), MCA; [NEW](#), 2022 MAR p. 2009, Eff. 10/8/22.

17.24.228 REQUIREMENTS FOR DRYLAND PERMIT APPLICATIONS AND RECLAMATION

- (1) Dryland permits must meet all the application requirements of [82-4-432](#)(14), MCA.
- (2) Before submitting a dryland permit application, an operator must provide public notice. The applicant must:
 - (a) post notice of the following in at least two prominent locations at the proposed opencut site, including near a public road if possible:
 - (i) applicant's name, address, and telephone number;
 - (ii) proposed permitted acreage;
 - (iii) type of material to be mined; and
 - (iv) proposed reclamation date;
 - (b) mail the notice to surface landowners of land located within one-half mile of the boundary of the proposed opencut permit area using the most current known owners of record as shown in the records of the county clerk and recorder for the county where the proposed opencut operation is located. The mailed notice must include the following:
 - (i) applicant's name, address, and telephone number;
 - (ii) location map meeting the requirements of ARM [17.24.221](#);
 - (iii) proposed permitted acreage;
 - (iv) type of material to be mined; and
 - (v) proposed reclamation date;
 - (c) publish a notice at least twice, a minimum of a week apart, in a newspaper of general circulation in the locality of the proposed opencut operation. The published notice must include the following:
 - (i) applicant's name, address, and telephone number;
 - (ii) location map meeting the requirements of ARM [17.24.221](#);
 - (iii) proposed permitted acreage;
 - (iv) type of material to be mined; and
 - (v) proposed reclamation date.
- (3) If available, up to 24 inches of soil and overburden must be stripped, salvaged, and replaced for reclamation. If overburden is a mine material or will be used as binder, an appropriate quantity must first be stripped and salvaged to satisfy the soil plus overburden replacement thickness requirement (24 inches cumulative).
- (4) The operator must complete phase I reclamation and begin phase II reclamation on any area that the operator no longer needs for opencut operations or no longer has the right to use, within one year after the cessation of such operations or termination of such right. The operator must request release using forms provided by the department. If it is not practical for the operator to reclaim a certain area until other areas are also available for reclamation, the operator may propose an alternate reclamation schedule.
- (5) Boundary markers and road markers must be placed so that no fewer than two consecutive markers are readily visible in any direction from any point on a line. The following requirements apply to marking boundaries and permitted access roads to be improved or constructed:
 - (a) markers must be in place before submitting an application for a permit or a permit amendment;
 - (b) markers should be durable, stout posts made of steel, wood, or similar high-quality materials. A prominent, permanent feature such as a pole, tree, or large rock may also serve as a marker. Each marker, whether man-made or natural, must be painted or flagged;
 - (c) road markers may be removed as the road is constructed, but each boundary marker must be maintained in place and readily visible until the adjacent permit area is reclaimed and released;
 - (d) the following areas and features must be marked according to this rule:
 - (i) proposed permit or proposed amended permit boundaries;

(ii) non-bonded areas;
(iii) proposed permitted access roads to be improved or constructed;
(iv) phase I release areas previously approved by the department; and
(v) before submission of an application for bond release, areas that are the subject of an application for phase I or phase II bond release; and
(vi) the requirements of (5) do not apply to active hayland, cropland, or existing roads to be permitted.

(6) Where required by [82-4-434](#), MCA, berms constructed of soil and/or overburden must be a minimum of 6 feet high, protected from erosion, commingling, contamination, compaction, and unnecessary disturbance. At the first seasonal opportunity, the operator must shape and seed, with weed-free seed mix, any berm capable of sustaining plant growth.

(7) The only map required for a dryland permit is a location map as described in ARM [17.24.221](#)(2) and (6).

History: [82-4-422](#), MCA; [IMP](#), [82-4-432](#), MCA; [NEW](#), 2022 MAR p. 2009, Eff. 10/8/22.