

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

**GENERAL PERMIT
For
PORTABLE SUCTION DREDGING**

Permit No.: MTG370000

**AUTHORIZATION TO DISCHARGE UNDER THE
MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM (MPDES)**

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.*, applicants issued an authorization letter for this Portable Suction Dredging General Permit, are permitted to discharge wastewater to state waters in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this General Permit and a written authorization letter from the Department must be kept on site at all times. The General Permit is not valid without a current authorization letter from the Department.

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

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

FOR THE MONTANA DEPARTMENT
OF ENVIRONMENTAL QUALITY



Jon Kenning, Chief
Water Protection Bureau
Water Quality Division

Issuance Date: March 27, 2019

TABLE OF CONTENTS

I. COVERAGE UNDER THIS GENERAL PERMIT 3

- A. COVERAGE AREA 3
- B. SOURCES COVERED UNDER THE GENERAL PERMIT 3
- C. SOURCES EXCLUDED FROM COVERAGE UNDER THIS GENERAL PERMIT 3
- D. REQUIREMENTS FOR AUTHORIZATION – NOTICE OF INTENT PACKAGE 3
- E. NEW AUTHORIZATION UNDER THE 2019 GENERAL PERMIT 4
- F. CONTINUING AUTHORIZATION UNDER THE 2019 GENERAL PERMIT 4
- G. TERMINATING AUTHORIZATION 4
- H. TRANSFERRING PERMIT COVERAGE 4
- I. DENIED AUTHORIZATIONS 4

II. EFFLUENT LIMITS, MONITORING REQUIREMENTS & SPECIAL CONDITIONS 5

- A. EFFLUENT LIMITS 5
- B. SELF-MONITORING REQUIREMENTS 6
- C. RECORD KEEPING 6
- D. SPECIAL CONDITIONS 6

III. STANDARD CONDITIONS 7

- A. DUTY TO COMPLY 7
- B. PENALTIES FOR VIOLATIONS OF PERMIT CONDITIONS 7
- C. DUTY TO REAPPLY 7
- D. NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE 7
- E. DUTY TO MITIGATE 7
- F. PROPER OPERATION AND MAINTENANCE 7
- G. PERMIT ACTIONS 7
- H. PROPERTY RIGHTS 7
- I. DUTY TO PROVIDE INFORMATION 7
- J. INSPECTION AND ENTRY 8
- K. AVAILABILITY OF REPORTS 8
- L. MONITORING AND MONITORING REPORTS – REPORTING REQUIREMENTS 8
- M. MONITORING AND RECORDS 8
 - 1. Representative Sampling 8
 - 2. Retention of Records 8
 - 3. Records Content 8
 - 4. Test Procedures – Monitoring and Records 9
 - 5. Penalties for Falsification and Tampering 9
- N. SIGNATORY REQUIREMENT 9
- O. REPORTING REQUIREMENTS 10
 - 1. Planned Changes 10
 - 2. Anticipated Noncompliance 10
 - 3. Transfers 10
 - 4. Compliance Schedules 10
 - 5. Twenty-Four Hour Reporting 10
 - 6. Other Noncompliance 11
 - 7. Other Information 11
- P. BYPASS 11
- Q. UPSET CONDITIONS 11
- R. FEES 11
- S. REMOVED SUBSTANCES 12
- T. OIL AND HAZARDOUS SUBSTANCE LIABILITY 12
- U. SEVERABILITY 12
- V. REOPENER PROVISIONS 12
- W. TOXIC POLLUTANTS 12

IV. DEFINITIONS AND ABBREVIATIONS 13

I. COVERAGE UNDER THIS GENERAL PERMIT

A. Coverage Area

The General Permit applies to all areas of the State of Montana, except Indian Reservations.

B. Sources Covered Under the General Permit

1. The General Permit applies to portable recreational suction dredge operations that discharge into state surface waters.
2. A portable suction dredge operated under the General Permit must have an intake diameter size of four inches or less.
3. Each authorization under the General Permit will be to a specified owner/operator and:
 - a. The owner/operator must be present during the suction dredging activity.
 - b. The operation must not extend beyond the timeframe/seasonal restriction identified the authorization.
 - c. The operation is allowed only in the area specified in the authorization.

C. Sources Excluded from Coverage under this General Permit

1. Other suction dredge operations, such as commercial operations, or suction dredges with intake sizes greater than 4 inches in diameter, are not covered under the General Permit. These applicants must apply for an individual MPDES permit.
2. Applicants unable to comply with effluent limits or other terms and conditions of the permit, water quality standards, or any additional requirements that DEQ determines are necessary.
3. Discharge different in degree or nature from the sources or activities described in the General Permit.
4. If an MPDES permit or authorization for the same operation has been previously denied or revoked.
5. The point source cannot be in an area of unique ecological or recreational significance, as determined by Montana stream classifications, impacts on fishery resources, local conditions at proposed discharge sites, designations of wilderness areas, or designations of wild and scenic rivers.
6. Discharges to receiving waters classified as A-1 or A-Closed (these receiving waters are not allowed increasing turbidity).
7. Excavation, collection, or removal of material from streambanks, unstable slopes, or any slope that has potential to deliver sediment to the active stream channel.
8. Chemicals used to recover metals, minerals, or gemstones.
9. Suction dredging operations that dredge more than 50,000 cubic yards of material per year.
10. Highbanking or other activities different from the description of discharge.
11. Waters Classified as A-Closed or A-1.

D. Requirements for Authorization – Notice of Intent Package

Planned suction dredging operations must submit a Notice of Intent (NOI) package to DEQ. A complete NOI package requires applicants to address the following:

1. *NOI-37 Form*: the updated NOI form for portable suction dredging operations is located on DEQ's website at <http://deq.mt.gov/Water/permits/Discharges>.
2. *Sage Grouse Habitat Executive Order No. 12-2015*: If the operation is in sage grouse core, general, or connectivity habitat, the applicant must include a consultation letter from the Sage Grouse Habitat Conservation Program.
3. *Fisheries*: The applicant must contact the Montana Department of Fish, Wildlife and Parks (FWP) to ensure fisheries will be protected at the proposed operation location. In the NOI, the applicant must include the name of the FWP person contacted as well as any seasonal restriction.
4. *Required Fee*: Fees are determined by type of residency and NOI-37 status:

▪ **Fees for Residents of Montana:**

New Application:	\$50
Renewal Application:	\$25
Major Modification:	\$25

▪ **Fees for Nonresidents:**

New Application:	\$200
Renewal Application:	\$100
Major Modification:	\$100

E. New Authorization Under the 2019 General Permit

The process for obtaining first time coverage under the General Permit is as follows:

1. At least 30 days prior to operation, applicants must submit a complete NOI Package to DEQ.
2. DEQ will review the NOI package for completeness.

F. Continuing Authorization Under the 2019 General Permit

Continued coverage applies to active permittees currently covered under the 2015-issued General Permit. DEQ will reissue authorization to existing permittees through the process outlined below:

1. Applicants with a **current** general permit authorization (2015-issued General Permit) must submit a complete renewal request (NOI package) for continued coverage. The NOI package must be submitted **within 30 days of the effective date of the 2019-issued General Permit.**
2. DEQ will review the NOI package for completeness.

G. Terminating Authorization

The options for terminating permit coverage are listed below:

1. Permit authorizations may be terminated if DEQ receives notice from the permittee that the suction dredging activity will not be continued.
 - This notice must be signed and certified according to the signatory requirements in **Part III. N.**
 - All applicable fees must be paid.
2. Alternatively, permittees may complete and submit a Request For Termination (RFT) form to DEQ.
 - Annual fees accrued until DEQ receives an RFT form.
3. Current operators may request to be excluded from coverage under this General Permit by applying for and obtaining an individual MPDES permit pursuant to ARM 17.30 Subchapter 13.
 - If an individual MPDES permit is issued, coverage under this General Permit will be terminated on the effective date of the final individual MPDES permit.

H. Transferring Permit Coverage

DEQ may transfer authorization to a new owner or operator under the General Permit.

- The current owner and the new owner must submit a completed Permit Transfer Notification form.

I. Denied Authorizations

If a permittee is denied authorization to operate under the General Permit, they may apply for authorization under the individual MPDES permit requirements. If the applicant chooses to do so, they must submit the required forms and fee for the individual MPDES application process.

II. EFFLUENT LIMITS, MONITORING REQUIREMENTS & SPECIAL CONDITIONS

A. Effluent Limits

1. No visible increase in turbidity allowed 10 stream widths downstream from the suction dredge operation.
2. No visible oil film caused by the suction dredge operation.
3. The **Best Management Practices (BMPs)** listed below, when properly implemented, are appropriate treatment methods for suction dredge activities to protect water quality:
 - a. ***Operation of only one suction dredge per permittee is allowed at a time.***
 - 1) The permittee must be present when another person is operating the equipment.
 - b. ***Operation Locations***
 - 1) Operators are not allowed to excavate, collect, or remove material from stream banks, unstable slopes, or any slope that has the potential to deliver sediment to the active stream channel through runoff.
 - 2) Suction dredging is only allowed within the existing wetted perimeter (waterline) of the active stream channel.
 - 3) Keep a distance of 500 feet or greater between operations. Do not overlap turbidity plumes.
 - 4) It is prohibited to discharge sluice tailings from outside to the wetted steam channel to any location inside the active stream channel.
 - c. ***General Operation Practices***
 - 1) Holes must be backfilled and sluice material spread before moving to a new work site.
 - 2) Motorized equipment or winches must not be used to move boulders, logs, or other natural obstructions. Any obstructions removed by hand must be returned to its original position.
 - 3) Exercise reasonable care while moving the equipment to a new location.
 - 4) Exercise reasonable care to reduce the volume of effluent by limiting the operational speed.
 - 5) Maintain equipment to prevent release of oil and grease or fuels; keep equipment surfaces free of oils and grease; check equipment for fuel and oil leaks daily.
 - d. ***Stream banks must not be mined or disturbed***
 - 1) Undercutting of stream banks or any activity that would cause caving or erosion is not allowed.
 - 2) Sluice discharge must not be directed into the stream bank or cause the stream channel to widen.
 - 3) Boulders, rooted vegetation, and embedded woody plants must not be disturbed or removed from the stream banks.
 - e. ***The nature of the stream channel must be preserved***
 - 1) Damming, diversions, or concentrating streamflow is prohibited.
 - 2) Wheeled or tracked equipment must not be used in-stream.
 - 3) Holes must be backfilled, and sluice spread so they conform to the natural contour of their removal site.
 - f. ***Pollutants must not be released into the receiving waters***
 - 1) Mercury collected in the sluice box must be removed and properly disposed of.
 - 2) Turbidity/Suspended Sediment: Avoid removing or dredging concentrated silt and clay materials.
 - 3) Discharge of oil, grease, and fuel is prohibited: Do not refuel over open water. Waste oil or other cleanup materials contaminated with petroleum products must be properly disposed of off-site.
 - 4) Using chemical agents to improve mineral processing and/or metal extraction is prohibited.
 - g. ***Equipment must not carry or contain invasive species***
 - 1) Remove sediment, vegetation, and aquatic organisms from equipment before leaving the stream.
 - 2) Do not transfer water from one waterbody into another. Drain equipment in places that can hold standing water.
 - 3) All equipment must be clean, drained, and dry.
 - h. ***Dredging activities must not interfere with fish spawning or passage***
 - 1) Dredging is prohibited where fish eggs are present.
 - 2) If spawning fish or fish eggs are observed, stop the operation immediately and relocate.
 - 3) Fish must be able to swim past the operation at any stage.

B. Self-Monitoring Requirements

The permittee is responsible for conducting the following monitoring, recordkeeping, and reporting during the life of their permit authorization:

1. The permittee must visually check the stream for an increase in turbidity.
2. Monitoring will occur at the end of the mixing zone, which is 10 stream widths downstream of the suction dredge activity. The suction dredging location determines the stream width.
3. The visual check must be conducted after the first half-hour of continuous operation to determine if a violation is occurring as defined under the effluent limits:
 - a. if there is an obvious change in the turbidity from the suction dredging activity
 - b. if there is a change in the stream width (due to erosion) at the dredge location
 - c. if a suspected spill or leak has occurred.
4. If an increase in turbidity or suspended sediment is observed at the end of the mixing zone, the operator must decrease or cease operation immediately until the turbidity is in compliance with the terms of this General Permit.
5. If a spill or leak occurs, the operator must cease operating immediately until the source of the spill or leak is eliminated.

C. Record Keeping

1. The permittee must maintain a daily record for each day of operation in each permitted stream location. Required information includes:
 - a. Operation location
 - b. The date and time range (start time/stop time) of each individual operation
 - c. Visual observation of the turbidity in the receiving stream 10 stream widths downstream of the suction dredge,
 - d. Visual oil presence or absence noted
 - e. Any noted changes in the operation of the suction dredge or appearance of the receiving stream
 - f. The name of the observer
 - g. The operator must acknowledge that Best Management Practices were implemented during each operation.
2. The permittee must maintain the daily records for a period of at least three years and make these records available to the Department upon request.
3. The daily records are considered a method for the permittee to ensure good operating practices. The permittee is required to submit the Suction Dredge Log to the Department at the end of every operating season and no later than January 28th following the end of each calendar year.

D. Special Conditions

Special conditions supplement effluent limits and require activities designed to reduce the potential for discharge of pollutants.

1. A copy of the authorization letter and the General Permit must be accessible from the operation.
2. The operation is only authorized at the location(s) and time period identified in the authorization letter.
3. Permittees must maintain daily monitoring records (**Part II.B and Part II.C**) of the suction dredging activity and keep the records accessible at all times.

III. STANDARD CONDITIONS

The permittee shall meet the following standard conditions of MPDES permits.

A. Duty to Comply

The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Montana Water Quality Act and is grounds for enforcement action; for permit termination; for revocation and reissuance of a confirmation letter; for a modification requirement; or for denial of coverage under the General Permit (new or renewed). The permittee must give DEQ Department advance notice of any planned changes which may result in permit noncompliance.

B. Penalties for Violations of Permit Conditions

The Montana Water Quality Act provides that any person who violates a permit condition of the Act is subject to civil or criminal penalties not to exceed \$25,000 per day or one year in prison, or both, for the first conviction, and \$50,000 per day of violation or by imprisonment for not more than two years, or both, for subsequent convictions. MCA 75-5-611(a) also provides for administrative penalties not to exceed \$10,000 for each day of violation and up to a maximum not to exceed \$100,000 for any related series of violations.

C. 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 reapplication must be submitted at least 30 days before the expiration date of this permit.

D. Need to Halt or Reduce Activity Not a Defense

It is not 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.

E. Duty to Mitigate

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

F. 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) that 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 that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

G. 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.

H. Property Rights

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

I. Duty to Provide Information

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

J. Inspection and Entry

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

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

K. 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, applications, permits and effluent data shall not be considered confidential.

L. Monitoring and Monitoring Reports – Reporting Requirements

The Department may require a permittee to monitor in addition to any conditions in this permit, on a case-by-case basis. If monitoring is required, the Department will specify monitoring requirements to include, and not limited to, storm water sampling, analytical testing, and an evaluation of monitoring results, recording, and reporting. Monitoring results must be reported on a discharge monitoring report (DMR) or as required by the Department. Monitoring results must be reported at the intervals specified.

If the permittee monitors any pollutant more frequently than required, using approved test procedures, the results of this monitoring must be included in the calculation and reporting of data submitted in the DMR. Calculations for all limitations which require averaging of measurements must utilize an arithmetic mean unless otherwise specified by the Department.

M. Monitoring and Records

1. Representative Sampling

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

2. Retention of Records

The permittee shall retain records of all monitoring information including all calibrations 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.

3. Records Content

Records of monitoring information must include:

- a. the date, exact place, and time of sampling or measurements;
- b. the individual(s) who performed the sampling or measurements;
- c. the date(s) analyses were performed;
- d. the individual(s) who performed the analyses;
- e. the analytical techniques or methods used; and,
- f. the results of such analyses.

4. Test Procedures – Monitoring and Records

Monitoring must be conducted according to test procedures approved under Title 40 of the Code of Federal regulations (40 CFR) Part 136, unless other test procedures have been specified in this permit, confirmation letter, or by the Department.

5. Penalties for Falsification and Tampering

The Montana Water Quality Act at MCA 75-5-633 provides that any person who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method, or 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.

N. Signatory Requirement

Authorized Representatives: All applications, reports or information submitted to the Department shall be signed and certified as required by ARM 17.30.1323.

1. All permit notices of intent shall be signed as follows:
 - a. For a corporation: by a principal executive officer or ranking elected official;
 - 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 described above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the above requirements 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."

O. Reporting Requirements

1. 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, activity, or operation. Notice is required only when:

- a. The alteration or addition to the permitted facility, activity, or operation may meet one of the criteria for determining whether a facility is a new source under ARM 17.30.1340(2); or
- b. 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, nor notification requirements under ARM 17.30.1343(1)(a).

2. Anticipated Noncompliance

The permittee shall give advance notice to the Department of any planned changes in the permitted facility/activity/operation which may result in noncompliance with permit requirements. The permittee shall notify as soon as possible by phone and provide with the following information, in writing, within five (5) days of becoming aware of such condition:

- a. A description of the discharge and cause of noncompliance; and
- b. The period of noncompliance including exact dates and times, or if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the non-complying discharge.

3. Transfers

This permit is not transferable to any person except after notice to the Department and a transfer fee is paid. The Permit Transfer Notification (PTN) form provided by the Department must be completed and must be received by the Department at least 30 days prior to the anticipated date of transfer. The form must be signed by both the existing owner/operator and the new owner/operator following signatory requirements of **Part III.N** of the General Permit.

4. Compliance Schedules

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

5. Twenty-Four Hour Reporting

The permittee shall report any serious incident of noncompliance affecting the environment. Any information must be provided orally within 24 hours from the time the permittee becomes aware of the circumstances:

- a. Any noncompliance which may seriously endanger health or environment;
- b. Any unanticipated bypass which exceeds any effluent limitation in the permit;
- c. Any upset which exceeds any effluent limitation in the permit; or
- d. As applicable, violation of a maximum daily discharge limit of any pollutant listed by the Department in the General Permit or confirmation letter [see 40 CFR 122.44(g)].

A written submission must also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission must 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.

Oral Notification: The report shall be made orally to the Water Protection at (406)444-5546 or the Office of Disaster Emergency Services at (406)324-4777.

Waiver of Written Notification Requirement: 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. Written reports shall be submitted to the following address:

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

6. Other Noncompliance

Instances of noncompliance not required to be reported within 24 hours shall be reported as soon as possible. The reports shall contain the information listed above for written submissions under “Twenty-four Hour Reporting” (**Part III.O.5**).

7. Other Information

Where 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.

P. Bypass

Intentional diversions of untreated waste streams from any portion of a treatment facility are prohibited unless:

1. the bypass does not cause effluent to exceed effluent limitations and is necessary for essential maintenance to ensure efficient operation; or
2. the bypass is unavoidable to prevent loss of life, personal injury, or severe property damage; or
3. there are no feasible alternatives;
4. and the proper notification is submitted.

Bypass is prohibited and the Department may take enforcement action against a permittee for a bypass. If the permittee knows in advance of the need for anticipated bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass. The Department may approve an anticipated bypass, after considering its adverse effects.

The permittee shall submit notice of an unanticipated bypass as required under **III.O.5**.

Q. Upset Conditions

An upset may be used as an affirmative defense in actions brought to the permittee for noncompliance with a technology-based effluent limitation. The permittee (who has the burden of proof) must have operational logs or other evidence showing:

1. when the upset occurred and its causes;
2. that the facility was being operated properly;
3. proper notification was made; and
4. remedial measures were taken as required by the duty to mitigate standard condition.

R. 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 impose an additional assessment computed at the rate established under ARM 17.30.201, and 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 section. Suspensions are limited to one year, after which the permit will be terminated.

S. 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 pollutants from entering any waters of the state or creating a health hazard.

T. 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.

U. 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.

V. 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 permit conditions 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 permit conditions 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.

W. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established for toxic pollutants which are present in the discharge, within any specified timeframe within rule or thereof, and even if the General permit or confirmation letter has not yet been modified to incorporate such standard or prohibition for the toxic pollutant.

IV. DEFINITIONS AND ABBREVIATIONS

The following definitions and abbreviations apply to terms used in this permit:

“**Act**” means the Montana Water Quality Act, Title 75, Chapter 5, MCA.

“**Best Management Practices**” (“**BMPs**”) means schedule of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

“**Bypass**” means the intentional diversion of waste streams from any portion of a treatment facility.

“**Board**” means the Montana Board of Environmental Review established by 2-15-3502, MCA.

“**CFR**” means the Code of Federal Regulations.

“**Clean Water Act**” means the federal legislation at 33 USC 1251, et seq.

“**Department**” means the Montana Department of Environmental Quality (MDEQ). Established by 2-15-3501, MCA.

“**Discharge**” when used without qualification means discharge of a pollutant.

“**Discharge of a pollutant(s)**” means any additional of any pollutant or combination of pollutants to state water from any point source. This definition includes additions of pollutants into waters of the state from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by the state, municipality, or other person which do not lead to a treatment works. This term does not include an addition of pollutants by any indirect discharger, as defined in ARM 17.30.1304.

“**EPA**” or “**USEPA**” means the United States Environmental Protection Agency.

“**Facility or activity**” means any MPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the MPDES program.

“**General permit**” means an MPDES permit issued under ARM 17.30.1341 authorizing a category of discharges under the Act within a geographical area.

“**Mixing zone**” means an area established in a permit issued by the Department where water quality standards may be exceeded, subject to conditions that are imposed by the Department and that are consistent with rules adopted by the board

“**Montana Pollutant Discharge Elimination System (MPDES)**” means the system developed by the Board and Department for issuing permits for the discharge of pollutants from point sources into state surface waters. The MPDES is specifically designed to be compatible with the federal MPDES program established and administered by the EPA.

“**Outfall**” means the place where a point source discharges effluent into the receiving water. For each outfall, there typically is at least one monitoring location. Although the monitoring location might or might not be at the actual point of discharge, samples taken at the monitoring location should be representative of the discharge. For the purposes of this permit, outfalls are locations where sluice water from the suction dredging operation discharges.

“**Owner/operator**” means a person who owns, leases, operates, controls, or supervises a point source.

“**Permit**” means an authorization or license issued by EPA or an "approved state" to implement the requirements of this rule and 40 CFR Parts 123 and 124. "Permit" includes an NPDES general permit (ARM 17.30.1341). Permit does not include any permit that has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit".

“Point Source” means any discernible, confined, or discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

“Pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural wastes discharged into water. The terms "sewage," "industrial waste," and "other wastes" as defined in 75-5-103, MCA, are interpreted as having the same meaning as pollutant.

"Regional Administrator" is the administrator of the EPA Region with jurisdiction over federal water pollution control activities in the State of Montana.

“Severe property damage” means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that 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.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

“State Waters” means a body of water, irrigation system, or drainage system, either surface or underground. The term does not apply to: ponds or lagoons used solely for treating, transporting, or impounding pollutants; or, irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

"Surface waters" means any waters on the earth's surface, including but not limited to streams, lakes, ponds, and reservoirs; and irrigation and drainage systems. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.

“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.

“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.

“Wasteload allocation” means the portion of a receiving water’s loading capacity that is allocated to one of its existing or future point sources.