

**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.*,

**RC Resources, Inc.**

is authorized to discharge from its **Rock Creek Mine – Road Project**

located at **48.062778, -115.698333**

to receiving waters named, **Miller Gulch, Rock Creek, and tributaries to Rock Creek**

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

This permit shall become effective: **TBD**.

This permit and the authorization to discharge shall expire at midnight, **5 years after the effective date**.

FOR THE MONTANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

**DRAFT**

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Jon Kenning, Chief  
Water Protection Bureau  
Water Quality Division

Issuance Date:     **TBD**

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**I. EFFLUENT LIMITATIONS, MONITORING REQUIREMENTS, & OTHER CONDITIONS**

A. Description of Discharge Points and Mixing Zone

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

Outfall  
001 - 031

Description

**Location:** The discharge location is following treatment by the site-specific Best Management Practices (BMPs). The specific location of each outfall is listed in the table below.

**Mixing Zone:** A mixing zone has not been authorized for any outfall.

<b>Outfall Locations</b>			
<b>Outfall</b>	<b>Latitude</b>	<b>Longitude</b>	<b>Receiving Water</b>
Outfall 001	47° 58' 55" N	115° 44' 17" W	Miller Gulch
Outfall 002	47° 58' 55" N	115° 43' 51" W	Miller Gulch
Outfall 003	47° 58' 55" N	115° 43' 44" W	Miller Gulch
Outfall 004	47° 58' 54" N	115° 43' 38" W	Miller Gulch
Outfall 005	47° 58' 55" N	115° 43' 26" W	Miller Gulch
Outfall 006	47° 59' 04" N	115° 42' 34" W	Rock Creek
Outfall 007	47° 59' 22" N	115° 42' 17" W	Tributary to West Fork Rock Creek
Outfall 008	47° 59' 27" N	115° 42' 09" W	Rock Creek
Outfall 009	47° 59' 30" N	115° 42' 01" W	Tributary to Rock Creek
Outfall 010	48° 00' 12" N	115° 41' 52" W	Tributary to Rock Creek
Outfall 011	48° 00' 32" N	115° 42' 06" W	Big Cedar Gulch
Outfall 012	48° 01' 05" N	115° 42' 28" W	Orr Creek
Outfall 013	48° 01' 22" N	115° 42' 28" W	Rock Creek
Outfall 014	48° 01' 37" N	115° 42' 24" W	West Fork Rock Creek
Outfall 015	48° 02' 07" N	115° 42' 25" W	Tributary to West Fork Rock Creek
Outfall 016	48° 02' 10" N	115° 42' 32" W	Tributary to West Fork Rock Creek
Outfall 017	48° 02' 17" N	115° 42' 34" W	Tributary to West Fork Rock Creek
Outfall 018	48° 02' 26" N	115° 42' 27" W	Tributary to West Fork Rock Creek
Outfall 019	48° 02' 47" N	115° 42' 38" W	Tributary to West Fork Rock Creek
Outfall 020	48° 03' 00" N	115° 42' 39" W	Tributary to West Fork Rock Creek
Outfall 021	48° 03' 05" N	115° 42' 49" W	Tributary to West Fork Rock Creek
Outfall 022	48° 03' 12" N	115° 43' 10" W	West Fork Rock Creek
Outfall 023	48° 03' 26" N	115° 43' 22" W	Tributary to West Fork Rock Creek
Outfall 024	48° 03' 32" N	115° 43' 23" W	Tributary to West Fork Rock Creek
Outfall 025	48° 03' 22" N	115° 43' 10" W	Tributary to West Fork Rock Creek
Outfall 026	48° 03' 37" N	115° 42' 40" W	Tributary to West Fork Rock Creek
Outfall 027	48° 03' 48" N	115° 42' 40" W	Tributary to West Fork Rock Creek
Outfall 028	48° 03' 52" N	115° 42' 36" W	Tributary to West Fork Rock Creek
Outfall 029	48° 03' 46" N	115° 41' 46" W	Tributary to West Fork Rock Creek
Outfall 030	48° 03' 45" N	115° 41' 55" W	Tributary to West Fork Rock Creek
Outfall 031	48° 03' 48" N	115° 41' 59" W	Tributary to West Fork Rock Creek

B. Effluent Limitations, Outfalls 001-031

The following effluent limitation will be applied to the discharges (Outfalls 001 – 031) upon the effective date of the permit and remain in effect until the permit is terminated.

1. The maximum net daily turbidity limit is **an increase of 5 Nephelometric Turbidity Units (NTU) above the naturally occurring turbidity in the Rock Creek watershed.** Daily Net Turbidity is calculated by subtracting the turbidity level measured at the prescribed control site location from the predetermined, paired monitoring location within the active construction area and the unstabilized sites along the Rock Creek Road.

The turbidity samples must be collected at both locations in less than 24 hours for each sampling event. When the control site is 5 NTU lower than its paired monitoring site, the permittee will evaluate all BMPs in the construction zone and document any BMP failures and repairs in a report to be kept on-site.

2. The maximum net monthly turbidity limit is a statistically significant increase of **5 NTU as determined by a Before After Control Impact Paired (BACIP) analysis with an alpha of 0.05 using the median turbidity measurements over a rolling 30-day period.** If the results of the BACIP analysis are statistically significant (greater than alpha of 0.05 per the Mann-Whitney test), all construction activities must cease until the proper BMPs can be constructed that can achieve the 5 NTU daily limit. A minimum of 3 turbidity measurements shall be collected at least 1 week apart over the month from the control location and associated monitoring location. If the site locations are dry, the statistical analysis shall utilize results from the six samples collected prior to construction for that statistical analysis.
  - a. There shall be no discharge of pollutants into state waters except, whenever the discharge is the result of precipitation and provided that the discharge is in accordance with the following TBELs:
    - i. Erosion and Sediment Controls – The permittee must design, install, and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants.
      - A. At a minimum, the permittee shall conduct the road project to control storm water volume and velocity within the site to minimize soil erosion;
      - B. At a minimum, the permittee shall conduct the road project to control storm water discharges, including both peak flow rates and total storm water volume, to minimize erosion at the outlets and to minimize downstream channel and streambank erosion;
      - C. At a minimum, the permittee shall conduct the road project to minimize the amount of soil exposed during construction activity;
      - D. At a minimum, the permittee shall conduct the road project to minimize the disturbance of steep slopes;
      - E. At a minimum, the permittee shall conduct the road project to minimize sediment discharges from the site. The design, installation, and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity, and duration of precipitation, the nature of resulting storm water runoff, and soil characteristics, including the range of soil particle sizes expected to be present at the site;
      - F. At a minimum, the permittee shall conduct the road project to provide and maintain natural buffers around state surface waters, direct storm water to vegetated areas to increase sediment removal and maximize storm water infiltration, unless infeasible; and
      - G. At a minimum, the permittee shall minimize soil compaction and, unless infeasible, preserve topsoil.

- ii. Soil Stabilization – Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days.
  - iii. Dewatering – Discharges from dewatering of ground water, including discharges from dewatering of trenches and excavations, are not covered by this permit. The permittee must obtain coverage under a ground water dewatering permit prior to dewatering to state surface waters.
  - iv. Pollution Prevention Measures – The permittee must design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants.
    - A. At a minimum, the permittee shall minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
    - B. At a minimum, the permittee shall minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to storm water; and
    - C. At a minimum, the permittee shall minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
  - v. Prohibited Discharges – The permittee will prevent all non-storm water discharges from entering state waters. The permittee shall not discharge the following items:
    - A. Wastewater from washout of concrete;
    - B. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
    - C. Fuels, oils, or other potential pollutants used in vehicle and equipment operation and maintenance; or
    - D. Soaps or solvents used in vehicle and equipment washing.
  - vi. Surface Outlets – When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface. At a minimum, the permittee shall control erosion to keep turbidity levels below water quality standards.
- C. Monitoring Requirements, Outfalls 001-031  
As a minimum, upon the effective date of this permit, the following parameters shall be monitored at the frequency and with the type of measurement indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge. If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge

Monitoring Report Form that no discharge or overflow occurred. Monitoring frequencies and sample types for each monitoring location are provided in the table below. The following is a description of each parameter:

<b>Monitoring Requirements, Outfalls 001-031</b>			
<b>Parameter and Code</b>	<b>Units</b>	<b>Frequency</b>	<b>Type <sup>(1)</sup></b>
Turbidity	NTU	Daily <sup>(2)</sup>	Measurement <sup>(3)</sup>
Compliance with Best Management Practices <sup>(4)</sup> (51576)	Yes/No	Daily <sup>(5, 6)</sup>	Observation
Discharge Event Observation <sup>(7)</sup> (84165)	Yes/No	Daily <sup>(6)</sup>	Observation
Report Due <sup>(9)</sup> (85539)	--	As Required <sup>(8)</sup>	Report

Footnotes:

NTU = Nephelometric Turbidity Units

<sup>(1)</sup> See Definitions Section at end of this permit for an explanation of terms.

<sup>(2)</sup> Turbidity samples will only be collected from the control and monitoring locations within the active construction zone(s).

<sup>(3)</sup> Only report the difference in turbidity values between the control and monitoring locations within the active construction zone(s) and the sites that have not been stabilized.

<sup>(4)</sup> Any inspection that documents Items vii-ix from the required inspection elements listed in the Special Conditions (see Part I.D.1.c) must answer “No” and submit the report described in the Special Conditions (see Part I.D.1.d). This parameter is only for the purpose of determining if a report is required, it does not necessarily mean a violation occurred.

<sup>(5)</sup> This action only occurs only after construction is initiated on the Rock Creek Road project.

<sup>(6)</sup> Compliance with Best Monitoring Practices means that the permittee will keep the BMP inspection results on-site and available for inspection by the Department. The permittee will not be required to report these activities via a NetDMR form.

<sup>(7)</sup> Any inspection that documents any storm water leaving the site or Item vii from the required inspection elements listed in the Special Conditions (see Part I.D.1.c) must answer “Yes” and submit the report described in the Special Conditions (see Part I.D.1.d). This parameter is only for the purpose of determining if a report is required, it does not necessarily mean a violation occurred.

<sup>(8)</sup> If the answer to “Compliance with Best Management Practices” is “No” or if the answer to “Discharge Event Observation” is “Yes”, then the permittee is required to submit the report as described in the Special Conditions (see Part I.D.1.d).

<sup>(9)</sup> The report that must be submitted as described in the Special Conditions.

D. Special Conditions

1. Storm Water Management

The permittee is required to develop, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP) in order to address the effluent limitations of this permit. In addition, the Department has determined that special conditions are necessary to fully implement the desired benefits of the proposed BMPs. The following special conditions apply:

- a. Any changes or updates to the SWPPP must be sent to the Department at least 48 hours after they are completed.
- b. Inspection Schedule – In order to ensure that the benefits of the proposed BMPs are achieved and all discharges of sediment are minimized to the extent possible, the permittee shall be required to conduct daily inspections of the project.
- c. Inspection Report Requirements – The permittee must document the following information for each inspection:
  - i. The type of inspection (active construction area or entire site);
  - ii. The inspection date and time;
  - iii. The name of the inspector;
  - iv. The rainfall measured over a 24-hour period at the active work site;
  - v. The weather and ground conditions during the inspection, including an indication of whether storm water runoff is occurring and whether the ground is frozen;
  - vi. The location(s) and description of BMPs that need to be maintained (BMPs that are not maintained in accordance with good engineering, hydrologic, and pollution control practices, including the removal of collected sediment outside the acceptable tolerances of the BMPs, are considered to be no longer operating effectively);
  - vii. The location(s) and description of any discharges of sediment or other potential pollutants from the site;
  - viii. The location(s) and description of any BMPs that failed to operate as designed or proved inadequate for a specific location;
  - ix. The location(s) and descriptions where additional BMPs are needed that were not in place at the time of inspection; and
  - x. The description of corrective action(s) taken for items 6-9, the respective dates for the corrective action(s) taken, and the respective measures taken to prevent future recurrences for each.
- d. Reporting Requirements – When the discharge monitoring report (DMR) indicates that a report is necessary, the report shall consist of the inspection report(s) that documented the occasions that necessitated the reporting requirements. The inspection report must include Items i-x as listed in Part I.D.1.c above. The report is due at the same time as the DMR.
- e. BMP Installation – The permittee must install and maintain all BMPs in accordance with the Montana Department of Transportation’s “Erosion and Sediment Control



Best Management Practices: Reference Manual” (2015). The permittee must keep on-site the BMP design, installation, implementation, and maintenance specifications for all BMPs that are used.

- f. The permittee must minimize the exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow, snowmelt, and runoff by either locating these industrial materials and activities inside or protecting them with storm-resistant coverings. In minimizing exposure, the permittee should pay particular attention to the following:
- Use grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from these areas;
  - Locate materials, equipment, and activities so that leaks are contained in existing containment and diversion systems (confine the storage of leaky or leak-prone vehicles and equipment awaiting maintenance to protected areas);
  - Clean up spills and leaks promptly using dry methods (e.g., absorbents) to prevent the discharge of pollutants;
  - Use drip pans and absorbents under or around leaky vehicles and equipment or store indoors where feasible;
  - Use spill/overflow protection equipment;
  - Drain fluids from equipment and vehicles prior to on-site storage or disposal;
  - Perform all cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also that capture any overspray; and
  - Ensure that all wash water drains to a proper collection system (i.e., not the storm water drainage system).

The discharge of vehicle and equipment wash water, including tank cleaning operations, is not authorized by this permit. These wastewaters must be covered under a separate MPDES permit, discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements, or disposed of otherwise in accordance with applicable law.

- g. Good Housekeeping – the permittee must keep clean all exposed areas that are potential sources of pollutants, using such measures as sweeping at regular intervals, keeping materials orderly and labeled, and storing materials in appropriate containers.
- h. Maintenance – The permittee must regularly inspect, test, maintain, and repair all industrial equipment and systems to avoid situations that may result in leaks, spills, and other releases of pollutants in storm water discharged to receiving waters. The permittee must maintain all control measures that are used to achieve the effluent limits required by this permit in effective operating condition. Nonstructural control measures must also be diligently maintained (e.g., spill response supplies available, personnel appropriately trained). If you find that your control measures need to be replaced or repaired, the permittee must make the necessary repairs or modifications as expeditiously as practicable.

- i. Spill Prevention and Response Procedures – The permittee must minimize the potential for leaks, spills, and other releases that may be exposed to storm water and develop plans for effective response to such spills if or when they occur. At a minimum, the permittee must implement:
  - Procedures for plainly labeling containers (e.g., “Used Oil,” “Spent Solvents,” etc.) that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur;
  - Preventative measures such as barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling;
  - Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of a storm water pollution prevention team; and
  - Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.
- j. Erosion and Sediment Controls – The permittee must stabilize exposed areas and contain runoff using structural and/or non-structural control measures to minimize on-site erosion and sedimentation, and the resulting discharge of pollutants. Among other actions the permittee must place flow velocity dissipation devices at discharge locations and within outfall channels where necessary to reduce erosion and/or settle out pollutants. In selecting, designing, installing, and implementing appropriate control measures, the permittee is encouraged to consult with available guidance resources relating to BMPs for erosion and sedimentation, including industrial sector-specific information.
- k. Management of Runoff – The permittee must divert, infiltrate, reuse, contain, or otherwise reduce storm water runoff, to minimize pollutants in your discharges. In selecting, designing, installing, and implementing appropriate control measures, the permittee is encouraged to consult with available guidance resources relating to storm water BMPs for runoff management, including industrial sector-specific information.
- l. Commingled Discharges – If discharges authorized by this permit commingle with discharges not authorized under this permit, any required sampling of the authorized discharges must be performed at a point before they mix with other waste streams, to the extent practicable.
- m. A minimum of six (6) daily turbidity measurements must be taken from all prescribed control and monitoring locations before construction begins. At each sampling site during each sampling event, multiple turbidity measurements shall be collected at a transect across the channel located at the sampling locations. A minimum of five points of measurements, collected from one stream bank to the other Left, Left

Center, Center, Right Center, Right. The five locations can be visually located (they do not need to be measured with a tape measure to the exact cm). In the near-shore areas (Left, Right) the measurements must be taken in water of sufficient depth to completely submerge the turbidimeter probe. If flow levels are too high to wade across, the five samples may be collected from one bank. If flow levels are too low, a lower number of samples may be collected. The five turbidity measurements are to be reduced to an average, and this average will be used as the *single* turbidity value for that sampling event for the given study site. If the project extends over two years and there is a substantial break in time between sampling events (say, an intervening winter and spring), the 2<sup>nd</sup> year's data shall be evaluated separately from the 1<sup>st</sup>.

- n. Turbidity monitoring – The permittee will complete the turbidity monitoring requirements outlined in Part I.B.2 of this permit. Samples will be collected from the following locations:

<b>Sampling Locations for Compliance Determination <sup>(1)</sup></b>			
<b>Site Name</b>	<b>Type</b>	<b>Latitude</b>	<b>Longitude</b>
Control 1 (SC-1) <sup>(2)</sup>	Control	48.0513 N	115.722 W
Monitoring 1 (WRC-1) <sup>(2)</sup>	Monitoring	48.0536 N	115.720 W
Control 2 <sup>(3)</sup>	Control	47.9990 N	115.756 W
Monitoring 2 (WRC-2) <sup>(3)</sup>	Monitoring	48.0270 N	115.707 W
Control 3 (ERC-1) <sup>(4)</sup>	Control	48.0247 N	115.705 W
Monitoring 3a (RC-2A) <sup>(4)</sup>	Monitoring	47.9911 N	115.702 W
Monitoring 3b (RC-1) <sup>(4)</sup>	Monitoring	47.9754 N	115.727 W

Footnotes:  
<sup>(1)</sup> The site locations were derived from a mapping program and may not fall exactly on a water body. The permittee will collect the first set of samples as close as possible to the locations identified in this table and report the actual latitude and longitudes to the Department after the first sampling event from each location.  
<sup>(2)</sup> Paired for turbidity compliance determination.  
<sup>(3)</sup> Paired for turbidity compliance determination.  
<sup>(4)</sup> Paired for turbidity compliance determination.

## 2. Additional Notifications

Within 90 days of the effective date of this permit, the permittee shall provide the planned work schedule for activities related to construction and operation of the permitted outfalls to the Department and the following Montana Fish, Wildlife and Parks (FWP) contact (or other FWP designee):

Fisheries Pollution Control Biologist  
Montana FWP  
1420 East 6<sup>th</sup> Avenue  
Helena, Montana 59620

## II. MONITORING, RECORDING, & 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 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.
- 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 28<sup>th</sup> day of the month following the end of the monitoring period. If no discharge occurs during the entire reporting period, "No Discharge" must be reported within the respective DMR. All other reports must be signed and certified in accordance with Part IV.G 'Signatory Requirements' of this permit and submitted to the Department 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 scheduled date unless otherwise specified in the permit.
- F. Additional Monitoring by the Permittee  
If the permittee monitors any pollutant more frequently than required by this permit, using approved analytical methods as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report. Such increased frequency shall also be indicated.

G. Records Contents

Records of monitoring information shall include:

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

H. Retention of Records

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

I. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee shall report any serious 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) 444-3080 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 the health or the environment;
  - b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part III.G of this permit, "Bypass of Treatment Facilities"); or
  - c. Any upset which exceeds any effluent limitation in the permit (see Part III.H of this permit, "Upset Conditions").
2. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:

- a. A description of the noncompliance and its cause;
  - b. The period of noncompliance, including exact dates and times;
  - c. The estimated time noncompliance is expected to continue if it has not been corrected; and
  - d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
3. The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Protection Bureau, by phone, (406) 444-3080.
  4. Reports shall be submitted to the 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, to assure 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 that 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. 75-5-611(a), MCA 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 include adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup 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 mainline 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 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 a prior notice, if possible at least 10 days before the date of the bypass.
  - b. Unanticipated bypass. The permittee shall submit a 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:
    - i. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
    - ii. 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 backup 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
    - iii. 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 a 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. The 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 that 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; or
  - 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 has 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 permit does not convey any property rights of any sort, or any exclusive privilege.

L. Severability

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

M. Transfers

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

1. The current permittee notifies the Department at least 30 days in advance of the proposed transfer date;
2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them;
3. The Department does not notify the existing permittee and the proposed new permittee of the 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 fee 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 the suspension at any time up to one year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under this sub-section. Suspensions are limited to one year, after which the permit will be terminated.

O. Reopener Provisions

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

1. Water Quality Standards: The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.
2. Water Quality Standards are Exceeded: If it is found that water quality standards or trigger values in the receiving stream are exceeded either for parameters included in the permit or others, the Department may modify the effluent limits or water management plan.
3. TMDL or Wasteload Allocation: TMDL requirements or a wasteload allocation is developed and approved by the Department and/or EPA for incorporation in this permit.
4. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit.
5. Toxic Pollutants: A toxic standard or prohibition is established under Section 307(a) of the Clean Water Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit.

## V. DEFINITIONS

1. **"30-day (and Monthly) Average,"** other than for fecal coliform bacteria, means the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. Geometric means shall be calculated for fecal coliform bacteria. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.
2. **"7-day (and Weekly) Average,"** other than for fecal coliform bacteria, means the arithmetic mean of all samples collected during a consecutive 7-day period or calendar week, whichever is applicable. Geometric means shall be calculated for fecal coliform bacteria. The 7-day averages are applicable only to those effluent characteristics for which there are 7-day average effluent limitations. The calendar week which begins on Sunday and ends on Saturday shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms. Weekly averages shall be calculated for all calendar weeks in the month that has at least four days. For example, if a calendar week overlaps two months, the weekly average is calculated only in the month that contains four or more days of that week.
3. **"Acute Toxicity"** means 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 20 percent or less for the effluent results to be considered valid.
4. **"Annual Average Load"** means the arithmetic mean of all 30-day or monthly average loads reported during the calendar year for a monitored parameter.
5. **"Arithmetic Mean"** or **"Arithmetic Average"** for any set of related values means the summation of the individual values divided by the number of individual values.
6. **"BOD<sub>5</sub>"** means the five-day measure of pollutant parameter biochemical oxygen demand.
7. **"Bypass"** means the intentional diversion of waste streams from any portion of a treatment facility.
8. **"CBOD<sub>5</sub>"** means the five-day measure of pollutant parameter carbonaceous biochemical oxygen demand.
9. **"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.
10. **"Composite Sample"** means a sample composed of two or more discrete aliquots (samples). The aggregate sample will reflect the average quality of the water or wastewater in the compositing or sample period. Composite samples may be composed

of constant volume aliquots collected at regular intervals (simple composite) or flow proportioned.

11. **"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.
12. **"Department"** means the Montana Department of Environmental Quality (DEQ).
13. **"Director"** means the Director of the United States Environmental Protection Agency's Water Management Division.
14. **"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.
15. **"EPA"** means the United States Environmental Protection Agency.
16. **"Grab"** sample, for monitoring requirements, means a single "dip and take" sample collected at a representative point in the discharge stream.
17. **"Instantaneous"** measurement, for monitoring requirements, means a single reading, observation, or measurement.
18. **"Load Limits"** are mass-based discharge limits expressed in units such as lb/day.
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. (ARM 17.30.702(22))
20. **"Mixing Zone"** means a limited area of a surface water body or aquifer where initial dilution of a discharge takes place and where water quality changes may occur. Also recognized as an area where certain water quality standards may be exceeded.
21. **"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.
22. **"Regional Administrator"** means the administrator of the EPA Region with Jurisdiction over federal water pollution control activities in the State of Montana.
23. **"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.

24. **"Sewage Sludge"** means any solid, semi-solid, or liquid residue that contains materials removed from domestic sewage during treatment. Sewage sludge includes, but is not limited to, primary and secondary solids and sewage sludge products.
25. **"TIE"** means a toxicity identification evaluation.
26. **"TRE"** means a toxicity reduction evaluation.
27. **"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.
28. **"TSS"** means the parameter total suspended solids.
29. **"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.