

ENVIRONMENTAL QUALITY

CHAPTER 30

WATER QUALITY

Subchapter 13

Montana Pollutant Discharge Elimination  
System (MPDES) Permits

- Rule 17.30.1301 Purpose and Scope
- 17.30.1302 Conflicting Provisions; Severability
- 17.30.1303 Incorporations by Reference
- 17.30.1304 Definitions
- Rules 17.30.1305 through 17.30.1309 reserved
- 17.30.1310 Exclusions
- 17.30.1311 Prohibitions
- 17.30.1312 Effect of Permit
- 17.30.1313 Continuation of Expiring Permits
- Rules 17.30.1314 through 17.30.1320 reserved
- Rule 17.30.1321 Confidentiality of Information
- 17.30.1322 Application for a Permit
- 17.30.1323 Signatories to Permit Applications and Reports
- Rules 17.30.1324 through 17.30.1329 reserved
- 17.30.1330 Concentrated Animal Feeding Operations
- 17.30.1331 Concentrated Aquatic Animal Production Facilities and  
Aquaculture Projects
- 17.30.1332 Storm Water Discharges (REPEALED)
- 17.30.1333 Silvicultural Activities
- Rules 17.30.1334 through 17.30.1339 reserved
- 17.30.1340 New Sources and New Dischargers

- 17.30.1341 General Permits
- 17.30.1342 Conditions Applicable to All Permits
- 17.30.1343 Additional Conditions Applicable to Specific Categories of MPDES Permits
- 17.30.1344 Establishing Limitations, Standards, and Other Permit Conditions
- 17.30.1345 Calculating MPDES Permit Conditions
- 17.30.1346 Duration of Permits
  - Rules 17.30.1347 through 17.30.1349 reserved
- 17.30.1350 Schedules of Compliance
- 17.30.1351 Requirements for Recording and Reporting of Monitoring Results
  - Rules 17.30.1352 and 17.30.1353 reserved
- Rule 17.30.1354 Disposal of Pollutants Into Wells, Into Publicly Owned Treatment Works, or by Land Application
  - Rules 17.30.1355 through 17.30.1359 reserved
- 17.30.1360 Transfer of Permits
- 17.30.1361 Modification or Revocation and Reissuance of Permits
- 17.30.1362 Minor Modifications of Permits
- 17.30.1363 Termination of Permits
- 17.30.1364 Application Processing Procedures
- 17.30.1365 Modification, Revocation and Reissuance, or Termination of Permits
  - Rules 17.30.1366 through 17.30.1369 reserved
- 17.30.1370 Draft Permits
- 17.30.1371 Fact Sheet
- 17.30.1372 Public Notice of Permit Actions and Public Comment Period
- 17.30.1373 Public Comments and Requests for Public Hearings
- 17.30.1374 Public Hearings

17.30.1375 Obligation to Raise Issues and Provide Information

17.30.1376 Reopening of the Public Comment Period

17.30.1377 Response to Comments

17.30.1378 Issuance and Effective Date of Permit

17.30.1379 Stays of Contested Permit Conditions

Rules 17.30.1380 through 17.30.1382 reserved

Rule 17.30.1383 Conditions Requested by Government Agencies

17.30.1384 Disposal Wells

17.30.1385 Agency Membership Restrictions

17.30.1386 State and EPA Coordination

17.30.1387 Small Confinement Facilities for Animals

## Subchapter 13

Montana Pollutant Discharge Elimination  
System (MPDES) Permits

17.30.1301 PURPOSE AND SCOPE (1) The purpose of this subchapter, taken together with subchapters 11, 12, and 14, is to establish and implement one common system for issuing permits for point sources discharging pollutants into state waters, and is intended to allow the board and department to administer a pollutant discharge permit system which is compatible with the national pollutant discharge elimination system as established by the U.S. Environmental Protection Agency pursuant to section 402 of the federal Clean Water Act, 33 USC 1251, et seq. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 220, Eff. 2/14/03.)

17.30.1302 CONFLICTING PROVISIONS; SEVERABILITY (1) The provisions of the MPDES rules are to be construed as being compatible with and complementary to each other. In the event that any of these rules are found by a court of competent jurisdiction to be contradictory, the more stringent provisions shall apply.

(2) In the event that any provision of these rules is found to be invalid by a court of competent jurisdiction, the remaining MPDES rules shall not be affected or diminished thereby. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1303 INCORPORATIONS BY REFERENCE (1) In accordance with the federal Clean Water Act, this subchapter of Title 17, chapter 30, establishes a permit system (MPDES) which is essentially the equivalent of the federal permit system (NPDES) administered by the EPA.

(2) In view of the federal Clean Water Act's requirement of equivalence with the federal permit system, and in order to simplify the rulemaking process and make the rules less cumbersome, the department has relied heavily upon incorporation and adoption by reference of federal requirements as set forth in Title 40 of the Code of Federal Regulations (CFR) and in the federal Clean Water Act, 33 USC 1251, et seq.

(3) Where the department has adopted a federal regulation or statute by reference, the following shall apply:

(a) references in the federal regulations to "administrator," "regional administrator," "director," or "U.S. environmental protection agency," or the like, should be read to mean "department";

(b) where the department incorporates by reference a subpart of a federal regulation, both the subpart and its constituent sections and subsections are also incorporated by reference.

(4) All of the incorporations by reference of federal agency regulations listed in the table in (7) shall refer to federal agency regulations as they have been codified in the July 1, 1991, edition of Title 33 and 40 of the Code of Federal Regulations (CFR), unless another codification date is specified.

(5) For persons applying for an MPDES permit, the department will furnish a full text of all rules in this subchapter, including all tables and appendices.

(6) All material which is incorporated by reference may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(7) The list of incorporations by reference follows:

<u>ARM 17.30...</u>	<u>33 CFR ...</u>	<u>Description of Regulation</u>
(a) 1310	153.101 et seq.	Control of pollution by oil, and hazardous substances, discharge removal.
<u>ARM 17.30...</u>	<u>40 CFR ...</u>	<u>Description of Regulation</u>
(b) 1310	Part 300	The national oil and hazardous substances pollution contingency plan.
(c) 1322	122.26(c)(1)	Requirements for individual permit applications for storm water discharges.
(d) 1322	125.102	Requirements for best management practices for dischargers who use, manufacture, store, handle, or discharge any hazardous or toxic pollutant.
(e) 1322	Part 136	Guidelines establishing test procedures for the analysis of pollutants.
(f) 1322	Appendix A to Part 122	List of primary industrial categories.

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| (g) 1322 | Tables I, II, and III of Appendix D to Part 122 | List of, respectively, testing requirements for organic toxic pollutants by industry category for existing dischargers; organic toxic pollutants in each of four fractions in analysis by gas chromatography/mass spectroscopy (GC/MS); and other toxic pollutants (metals and cyanide) and total phenols.  |
| (h) 1322 | Tables IV and V of Appendix D to Part 122       | List of, respectively, conventional and nonconventional pollutants; and toxic pollutants and hazardous substances required to be identified by existing dischargers if expected to be present.  |
| (i) 1322 | Part 125  | Criteria and standards for the NPDES, specifically including criteria for extending compliance dates for facilities installing innovative technology (Subpart C), criteria for determining the availability of a variance based on fundamentally different factors (FDF) (Subpart D), and criteria for extending compliance dates for achieving effluent limitations. |
| (j) 1330 | Part 412 (July 1, 2006 edition)                 | Concentrated animal feeding operation (CAFO) point source category effluent limitations and guidelines.   |

(k) 1331	Appendix C of Part 122	Criteria for determining whether a facility or operation merits classification as a concentrated aquatic animal production facility.
(l) 1331	Part 125, Subpart B	Criteria for issuance of permits to aquaculture projects.
(m) 1340	Part 125.3	Technology-based treatment requirements for point source dischargers.
(n) 1341	122.28	Criteria for selecting categories of point sources appropriate for general permitting.
(o) 1341	124.10(d)(1)	Minimum contents of public notices.
(p) 1341	122.26(c)(2)	Criteria for determining when a point source is considered a "significant contributor of pollution."
(q) 1342	Part 136	Guidelines establishing test procedures for the analysis of pollutants.
(r) 1342	122.44(g)	Requirement of 24-hour notice of any violation of maximum daily discharge limits.

(s) 1343	122.44(f)	"Notification levels" for discharges of certain pollutants that may be inserted in a permit upon a petition from the permittee or upon the initiative of the department.
(t) 1344	122.43	Applicable requirements for permit conditions.
(u) 1344	122.44	Additional permit conditions which may be applicable to a point source. Such conditions include technology-based and water-quality-based standards, toxic and pretreatment standards, reopener clause, reporting and monitoring requirements, permit duration and reissuance, test methods, best management practices, conditions concerning sewage sludge, privately owned treatment works, and conditions imposed in EPA grants to POTW's.
(v) 1344	124.56	Requirements for fact sheets.
(w) 1344	124.57	Public notice requirements for draft permits.
(x) 1344	Chapter 1, Subchapter N	Effluent limitations and standards and new source performance standards.
(y) 1344	Part 125	Criteria and standards for the national pollutant discharge elimination system.
(z) 1344	Part 129	Toxic pollutant effluent standards.

17.30.1303

ENVIRONMENTAL QUALITY

(aa) 1344	Part 133	Secondary treatment regulation.
(ab) 1345	122.44(j)(2)	Requirement for the submittal by a publicly owned treatment work (POTW) of a local pretreatment program.
(ac) 1345	122.45(b)(2)(ii) (A)	Availability of alternate permit limitations, standards, or prohibitions based on varying production levels.
(ad) 1345	Part 136	Guidelines for testing procedures for the analysis of pollutants.
(ae) 1345	125.3	Technology-based treatment requirements for point source dischargers.
(af) 1345	Chapter 1, Subchapter N	Effluent guidelines and standards for point source dischargers.
(ag) 1345	122.44(i)	Monitoring requirements for point source dischargers.
(ah) 1354	Part 125, Subpart D	Criteria and standards for determining eligibility for a variance from effluent limitations based on fundamentally different factors (FDF).
(ai) 1361	Part 133	Requirements for the level of effluent quality available through the application of secondary (or equivalent) treatment.
(aj) 1361	125.3(c)	Methods of imposing technology-based treatment requirements in permits.

<u>ARM 17.30....</u>	<u>16 US Code (USC)</u>	<u>Description of Fed. Statute</u>
(ak) 1341	Sec. 1132	Wilderness area designations.
(al) 1341	Sec. 1274	Wild and scenic river designations.
<u>ARM 17.30....</u>	<u>Clean Water Act</u>	<u>Description of Fed. Statute</u>
(am) 1346	Sec. 301(b)(2)(A), (C), (E), and (F)	Deadlines for achieving effluent limitations and treatment of toxic pollutants.
(an) 1350	Sec. 301(b)(2)(A), (C), (E), and (F)	Deadlines for achieving effluent limitations and treatment of toxic pollutants.
(ao) 1361	Sec. 301(c), (g), (i), and (k)	Provisions allowing for modifying or extending dates for achieving effluent limitations.
(ap) 1361	Sec. 316(a)	Provisions allowing a variance from an applicable effluent limitation based on fundamentally different factors (FDF).
(aq) 1361	Sec. 402(b)(3)	Requirement that states administering the NPDES program notify other states whose waters may be affected by a proposed discharge.
(ar) 1361	Sec. 301(c), (i), and (k); and Sec. 316(a)	Provisions for extension of compliance dates with effluent limitations based on, respectively, the economic capability of the permit applicant, delay in completion of POTW's, the use of innovative technology, and specific limits for thermal components of a discharge.

17.30.1303

ENVIRONMENTAL QUALITY

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| (as) 1361 | Sec. 301(g)                                   | Provisions for modifying effluent limitations for ammonia, chlorine, color, iron and total phenols. |
| (at) 1361 | Sec. 402(b)(3)                                | Provision for notifying other states of certain proposed discharges.                                |
| (au) 1322 | 40 CFR 122.21(i)(1)<br>(July 1, 2006 edition) | Application requirements for concentrated animal feeding operations (CAFOs).                        |
| (av) 1330 | 40 CFR 122.23 (July 1,<br>2006 edition)       | Definitions and permit requirements for concentrated animal feeding operations (CAFOs).             |
| (aw) 1343 | 40 CFR 122.42(e) (July<br>1, 2006 edition)    | Additional conditions applicable to concentrated animal feeding operations (CAFOs).                 |

(History: 75-5-304, MCA; IMP, 75-5-304, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, and AMD, 1996 MAR p. 1499, Eff. 6/7/96; AMD, 2003 MAR p. 220, Eff. 2/14/03; AMD, 2006 MAR p. 532, Eff. 2/24/06; AMD, 2007 MAR p. 201, Eff. 2/9/07.)

17.30.1304 DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and shall be used in conjunction with and are supplemental to those definitions contained in 75-5-103, MCA.

(1) "Act" means the Montana Water Quality Act, Title 75, chapter 5, MCA.

(2) "Administrator" means the administrator of the United States Environmental Protection Agency.

(3)(a) "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

(ii) crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) Two or more animal feeding operations under common ownership are considered, for the purposes of these rules, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(4) "Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a "discharge" or a related activity is subject under the federal Clean Water Act, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards.

(5) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants or animals.

(6) "Aquatic animal production facility" means a hatchery, fish farm, or similar operation.

(7) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

(8) "Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(9) "Best management practices" ("BMP's") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state waters. BMP's 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.

(10) "Board" means the Montana Board of Environmental Review established by 2-15-3502, MCA.

(11) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(12) "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(13) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(14) "Department" means the Montana Department of Environmental Quality established by 2-15-3501, MCA.

(15) "Direct discharge" means the discharge of a pollutant.

(16) "Discharge of a pollutant" and "discharge of pollutants" each means any addition of any pollutant or combination of pollutants to state waters from any point source. This definition includes additions of pollutants into water of the state from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a 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."

(17) "Discharge monitoring report" ("DMR") means the department uniform form for the reporting of self-monitoring results by permittees.

(18) "Draft permit" means a document prepared under ARM 17.30.1364 indicating the department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit and a notice of intent to deny a permit, as discussed in ARM 17.30.1365, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in ARM 17.30.1363 is not a draft permit. A proposed permit is not a draft permit.

(19) "Effluent limitations guidelines" means a regulation published by the administrator under 40 CFR chapter 1, subchapter N, pursuant to section 304(b) of the federal Clean Water Act to adopt or revise effluent limitations.

(20) "Effluent standards" means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into state waters.

(21) "EPA" means the United States Environmental Protection Agency.

(22) "Existing source" means any source which is not a new source or a new discharger.

(23) "Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(24) "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.

(25) "Federal Clean Water Act" means the federal legislation at 33 USC 1251, et seq.

(26) "General permit" means an MPDES permit issued under ARM 17.30.1341 authorizing a category of discharges under the Act within a geographical area.

(27) "Hazardous substance" means any substance designated under 40 CFR Part 116 pursuant to section 311 of the federal Clean Water Act.

(28) "Indirect discharger" means a non-domestic discharger introducing pollutants to a publicly owned treatment works.

(29) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or round wood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).

(30) "Major facility" means any MPDES facility or activity classified as such by the department in conjunction with the regional administrator.

(31) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(32) "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 waters. The MPDES is specifically designed to be compatible with the federal NPDES program established and administered by the EPA.

(33) "MPDES form" means any issued MPDES permit and any uniform form developed for use in the MPDES and prescribed in rules adopted by the board, including MPDES forms, MPDES permit applications, and MPDES reporting forms.

(34) "Municipality" means a city, town, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over discharge of pollutants or a designated and approved management agency under section 1288 of the federal Clean Water Act.

(35) "National pollutant discharge elimination system" (NPDES) means national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the federal Clean Water Act. The term includes "approved program."

(36) "New discharger" means any building structure, facility, or installation:

- (a) from which there is or may be a discharge of pollutants;
- (b) that did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
- (c) which is not a new source; and
- (d) which has never received a finally effective MPDES permit for discharges at that site. This definition includes an indirect discharger which commences discharging into state waters after August 13, 1979.

(37) "New source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- (a) after promulgation of standards of performance under section 306 of the federal Clean Water Act which are applicable to such source;
- (b) after proposal of standards of performance in accordance with section 306 of the federal Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal; or
- (c) after the publication of proposed pretreatment standards under section 307(c) of the federal Clean Water Act which will be applicable to such source if such standards are thereafter promulgated with that section, provided that:
  - (i) the building, structure, facility or installation is constructed at a site at which no other source is located;

(ii) the building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) the production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(d) construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of (c)(ii) or (iii) but otherwise alters, replaces, or adds to existing process or production equipment.

(e) construction of a new source as defined under this section has commenced if the owner or operator has:

(i) begun, or caused to begin as part of a continuous on-site construction program;

(A) any placement, assembly, or installation of facilities or equipment; or

(B) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this section.

(38) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a point source.

(39) "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 which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit."

(40) "Person" means any individual, partnership, firm, association, state, interstate body, municipality, public or private corporation, subdivision, or agency of the state, trust, estate, federal agency, or any other legal entity; or an agent or employee thereof.

(41) "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.

(42) "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.

(43) "Pretreatment standards" means the standards promulgated by the EPA and set forth in 40 CFR Part 403 and 40 CFR chapter 1, subchapter N.

(44) "Primary industry category" means any industry category listed in Appendix A of 40 CFR Part 122.

(45) "Privately owned treatment works" means any device or system which is:

(a) used to treat wastes from any facility whose operator is not the operator of the treatment works; and

(b) not a publicly owned treatment works.

(46) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(47) "Proposed permit" means an MPDES permit prepared after the close of the public comment period (and, when applicable, any public hearing) which is sent to the department for review before final issuance by the department. A proposed permit is not a draft permit.

(48) "Publicly owned treatment works" (POTW) means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes:

(a) sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment; and

(b) a city, town, county, district, or other political subdivision created by or under state law, that has jurisdiction over indirect discharges to and the discharges from a treatment works.

(49) "Recommencing discharger" means a source which recommences discharge after terminating operations.

(50) "Regional administrator" means the administrator of Region VIII of EPA, which has jurisdiction over federal water pollution control activities in the state of Montana.

(51) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(52) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act and requirements thereunder.

(53) "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.

(54) "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a publicly owned treatment works. "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

(55) "Sewage system" means any device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(56) "Silvicultural point source" means any discernible, confined and discrete conveyance related to:

(a) rock crushing and gravel washing (defined in (51)), or

(b) log sorting or log storage facilities (defined in (29)) which is operated in connection with silvicultural activities and from which pollutants are discharged into state waters. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a section 404 permit under the federal Clean Water Act.

(57) "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.

(58) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(59) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground. This subchapter does not apply to irrigation waters where the waters are used up within the irrigation system and said waters are not returned to any other state waters.

(60) "Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

(61) "Toxic pollutant" means any pollutant listed as toxic pursuant to section 1317(a)(1) of the federal Clean Water Act and set forth in 40 CFR Part 129.

(62) "Treatment works" means any works installed for treating or holding sewage, industrial wastes, or other wastes.

(63) "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. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 220, Eff. 2/14/03.)

Rules 17.30.1305 through 17.30.1309 reserved

17.30.1310 EXCLUSIONS The following discharges do not require MPDES permits:

(1) Discharges of dredged or fill material into waters of the United States which are regulated under section 404 of the federal Clean Water Act.

(2) The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to state waters are eliminated (see also ARM 17.30.1350(2)). This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.

(3) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 et seq. (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR Parts 153-157 (Pollution by Oil and Hazardous Substances).

(4) Any introduction of pollutants from non point-source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in ARM 17.30.1304(3), discharges from concentrated aquatic animal production facilities as defined in ARM 17.30.1304(6), discharges to aquaculture projects as defined in ARM 17.30.1304(5), and discharges from silvicultural point sources as defined in ARM 17.30.1304(56).

(5) Return flows from irrigated agriculture.

(6) Discharges into a privately owned treatment works, except as the department may otherwise require under ARM 17.30.1344.

(7) The board hereby adopts and incorporates herein by reference 40 CFR Part 300 and 33 CFR 153.101 which are federal agency rules setting forth requirements concerning releases of hazardous wastes or petroleum products. See ARM 17.30.1303 for complete information about all materials incorporated by reference. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, and AMD, 1996 MAR p. 1499, Eff. 6/7/96.)

17.30.1311 PROHIBITIONS No permit may be issued:

- (1) when the conditions of the permit do not provide for compliance with the applicable requirements of the Act, or rules adopted under the Act;
- (2) when the applicant is required to obtain a state or other appropriate certification under section 401 of the federal Clean Water Act and that certification has not been obtained or waived;
- (3) by the department where the regional administrator has objected to issuance of the permit under 40 CFR 123.44;
- (4) when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;
- (5) for the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
- (6) for any discharge inconsistent with a plan or plan amendment approved under section 208(b) of the federal Clean Water Act;
- (7) to a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by ARM 17.30.1201 and 17.30.1203, and for which the state or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, shall demonstrate, before the close of the public comment period, that:
  - (a) there are sufficient remaining pollutant load allocations to allow for the discharge; and
  - (b) the existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1312 EFFECT OF PERMIT (1) Except for any toxic effluent standards and prohibitions applicable under ARM 17.30.1206, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with all applicable effluent standards. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in ARM 17.30.1361 and 17.30.1363.

(2) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. (History: 75-5-201, 75 5 401, MCA; IMP, 75 5 401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

- 17.30.1313 CONTINUATION OF EXPIRING PERMITS (1) The conditions of an expired permit continue in force until the effective date of a new permit if:
- (a) the permittee has submitted a timely application under ARM 17.30.1322, which is a complete application for a new permit;
  - (b) the department, through no fault of the permittee, does not issue a new permit with an effective date under ARM 17.30.1378 on or before the expiration date of the previous permit.
- (2) Permits continued under this rule remain fully effective and enforceable until the effective date of a new permit.
- (3) When the permittee is not in compliance with the conditions of the expiring or expired permit the department may choose to do any or all of the following:
- (a) initiate enforcement action based upon the permit which has been continued;
  - (b) issue a notice of intent to deny the new permit under ARM 17.30.1370(2);
  - (c) issue a new permit under ARM 17.30.1370 with appropriate conditions; or
  - (d) take other actions authorized by the MPDES rules. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

Rules 17.30.1314 through 17.30.1320 reserved

17.30.1321 CONFIDENTIALITY OF INFORMATION (1) In accordance with 75-5-105, MCA, any information concerning sources of pollution that is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use, provided that trade secrets may be maintained or be confidential if so determined by a court of competent jurisdiction.

(2) Claims of confidentiality for the following information must be denied:

(a) the name and address of any permit applicant or permittee; and

(b) permit applications, permits, and effluent data.

(3) Subject to (1), information required by MPDES application forms provided by the department under ARM 17.30.1322 may not be claimed confidential, including information submitted on the forms themselves and any attachments used to supply information required by the forms. (History: 75-5-201, 75-5-105, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1322 APPLICATION FOR A PERMIT (1) Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by general permits under ARM 17.30.1341, excluded under ARM 17.30.1310, or a user of a privately owned treatment works unless the department requires otherwise under ARM 17.30.1344, shall submit a complete application (which must include a BMP program if necessary under 40 CFR 125.102) to the department in accordance with this rule and ARM 17.30.1364 and 17.30.1365, 17.30.1370 through 17.30.1379, and 17.30.1383.

(2) When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

(3) Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the department. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180-day requirement to avoid delay. See also (11) requiring time frames where a variance may be available.

(4)(a) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the department. (The department may not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(b) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires except that:

(i) the department may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date.

(5) The department may not issue a permit before receiving a complete application for a permit except for MPDES general permits. An application for a permit is complete when the department receives an application form and any supplemental information which are completed to the department's satisfaction. The completeness of any application for a permit must be judged independently of the status of any other permit application or permit for the same facility or activity.

(6) All applicants for MPDES permits shall provide the following information to the department, using the application form provided by the department (additional information required of applicants is set forth in (7) through (14)):

(a) the activities conducted by the applicant which require it to obtain an MPDES permit;

(b) name, mailing address, and location of the facility for which the application is submitted;

(c) up to four standard industrial category (SIC) codes which best reflect the principal products or services provided by the facility;

(d) the operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;

(e) whether the facility is located on Indian lands;

(f) a listing of all permits or construction approvals received or applied for under any of the following programs:

(i) hazardous waste management program under the Resource Conservation and Recovery Act of 1976 (42 USC 6901, et seq.) (RCRA);

(ii) underground injection control (UIC) program under the federal Safe Drinking Water Act (SDWA);

(iii) MPDES program under the federal Clean Water Act;

(iv) prevention of significant deterioration (PSD) program under the Montana Clean Air Act;

(v) nonattainment program under the Montana Clean Air Act;

(vi) national emission standards for hazardous pollutants (NESHAPS) preconstruction approval under the Montana Clean Air Act;

(vii) ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(viii) dredge or fill permits under section 404 of the federal Clean Water Act;

and

- (ix) other relevant state or federal environmental permits;
- (g) a topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area;
- (h) a brief description of the nature of the business; and
- (i) the following POTWs shall provide the results of valid whole effluent biological toxicity testing to the department:
  - (i) all POTWs with design influent flows equal to or greater than one million gallons per day;
  - (ii) all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;
  - (j) In addition to the POTWs listed in (6)(i), the department may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:
    - (i) the variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and types of industrial contributors);
    - (ii) the dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);
    - (iii) existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;
    - (iv) receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource; and
    - (v) other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW) which the department determines could cause or contribute to adverse water quality impacts.

(k) for POTWs required under (6)(i) or (j) to conduct toxicity testing, POTWs shall use EPA's methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. This testing must have been conducted since the last MPDES permit reissuance or per modification under ARM 17.30.1361, whichever occurred later;

(l) all POTWs with approved pretreatment programs shall provide to the department a written technical evaluation of the need to revise local limits, as described in 40 CFR 403.5(c)(1).

(7) Existing manufacturing, commercial, mining, and silvicultural dischargers applying for MPDES permits shall provide the following information to the department, using application forms provided by the department:

(a) the latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

(b) a line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under (c). The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures;

(c) a narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, "dye-making reactor," "distillation tower"). For a privately owned treatment works, this information must include the identity of each user of the treatment works;

(d) if any of the discharges described in (c) are intermittent or seasonal, a description of the frequency, duration, and flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks);

(e) if an effluent guideline adopted under ARM 17.30.1207 applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility as required by ARM 17.30.1345;

(f) if the applicant is subject to any present requirements or compliance schedules for construction, upgrading, or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates;

(g) information on the discharge of pollutants specified in this subsection. When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved, the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the department may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in (iii)(A), (B), and (iv) below that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours, and a minimum of one to four grab samples may be taken for storm water discharges depending on the duration of the discharge. One grab sample must be taken in the first hour (or less) of discharge with one additional grab sample taken in each succeeding hour of discharge up to a minimum of four grab samples for discharges lasting four or more hours. In addition, the department may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

(i)(A) Every applicant must report quantitative data for every outfall for the following pollutants:

- biochemical oxygen demand (BOD<sub>5</sub>)
- chemical oxygen demand
- total organic carbon
- total suspended solids
- ammonia (as N)
- temperature (both winter and summer)
- pH

(B) The department may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in the above subsection if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(ii) Each applicant with processes in one or more primary industry category (see Appendix A of 40 CFR Part 122) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(A) the organic toxic pollutants in the fractions designated in Table I of Appendix D of 40 CFR Part 122 for the applicant's industrial category or categories unless the applicant qualifies as a small business under (7)(h). Table II of Appendix D of 40 CFR Part 122 lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes; and

(B) the pollutants listed in Table III of Appendix D of 40 CFR Part 122 (the toxic metals, cyanide, and total phenols).

(iii)(A) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of Appendix D of 40 CFR Part 122 (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(B) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of Appendix D of 40 CFR Part 122 (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under (7)(g)(ii), is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater, the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl 4,6-dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl 4,6-dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under (7)(h) is not required to analyze for pollutants listed in Table II of Appendix D of 40 CFR Part 122 (the organic toxic pollutants).

(iv) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of Appendix D of 40 CFR Part 122 (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

(v) Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(A) uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(B) knows or has reason to believe that TCDD is or may be present in an effluent.

(h) an applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in (7)(g)(ii)(A) or (iii)(A) to submit quantitative data for the pollutants listed in Table II of Appendix D of 40 CFR Part 122 (the organic toxic pollutants):

(i) for coal mines, a probable total annual production of less than 100,000 tons per year;

(ii) for all other applicants, gross total annual sales averaging less than \$100,000 per year (in second quarter 1980 dollars).

(i) a listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The department may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the department has adequate information to issue the permit.

(j) an identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(k) if a contract laboratory or consulting firm performed any of the analyses required by (7)(g), the identity of each laboratory or firm and the analyses performed.

(l) in addition to the information reported on the application form, applicants shall provide to the department, at its request, such other information as the department may reasonably require to assess the discharges of the facility and to determine whether to issue an MPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

(8) Except for storm water discharges, all manufacturing, commercial, mining, and silvicultural dischargers applying for MPDES permits which discharge only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department, using application forms provided by the department:

(a) outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

(b) date of expected commencement of discharge (for new dischargers);

(c) an identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water; an identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;

(d)(i) Quantitative data for the pollutants or parameters listed below, unless testing is waived by the department. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136. Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(A) biochemical oxygen demand (BOD<sub>5</sub>);

(B) total suspended solids (TSS);

(C) fecal coliform (if believed present or if sanitary waste is or will be discharged);

(D) total residual chlorine (if chlorine is used);

(E) oil and grease;

(F) chemical oxygen demand (COD) (if noncontact cooling water is or will be discharged);

(G) total organic carbon (TOC) (if noncontact cooling water is or will be discharged);

(H) ammonia (as N);

(I) discharge flow;

(J) pH; and

(K) temperature (winter and summer).

(ii) The department may waive the testing and reporting requirements for any of the pollutants or flow listed in (i) if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

(iii) If the applicant is a new discharger, he must complete forms provided by the department by providing quantitative data in accordance with (d) no later than two years after commencement of discharge. However, the applicant need not complete those portions of the forms requiring tests which he has already performed and reported under the discharge monitoring requirements of his MPDES permit.

(iv) The requirements of (i) and (iii), that an applicant must provide quantitative data or estimates of certain pollutants, do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of ARM 17.30.1345(9) are met.

(e) a description of the frequency of flow and duration of any seasonal or intermittent discharge (except for storm water runoff, leaks, or spills);

(f) a brief description of any system used or to be used;

(g) any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining "net" credits pursuant to ARM 17.30.1345(9); and

(h) the signature of the certifying official under ARM 17.30.1323.

(9) New and existing CAFOs, defined in ARM 17.30.1330, and concentrated aquatic animal production facilities, defined in ARM 17.30.1304(6), shall provide the following information to the department, using the application form provided by the department:

(a) for CAFOs, the information specified in ARM 17.30.1322(6)(a) through (f) and 40 CFR 122.21(i)(1), including a topographic map; and

(b) for concentrated aquatic animal production facilities:

(i) the maximum daily and average monthly flow from each outfall;

(ii) the number of ponds, raceways, and similar structures;

(iii) the name of the receiving water and the source of intake water;

(iv) for each species of aquatic animals, the total yearly and maximum harvestable weight; and

(v) the calendar month of maximum feeding and the total mass of food fed during that month.

(10) New manufacturing, commercial, mining, and silvicultural dischargers applying for MPDES permits (except for new discharges of storm water runoff or facilities subject to the requirements of (10)) shall provide the following information to the department, using application forms provided by the department:

(a) the latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

(b) the expected date of commencement of discharge;

(c)(i) description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

(ii) a line drawing of the water flow through the facility with a water balance as described in ARM 17.30.1322(9)(b);

(iii) if any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration, and maximum daily flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks);

(d) if a new source performance standard promulgated under section 306 of the federal Clean Water Act or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard as required by ARM 17.30.1345(2)(b) for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

(e) the requirements in (8)(d)(i), (ii), and (iii) that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of ARM 17.30.1345(9) are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass;

(i) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The department may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

- (A) biochemical oxygen demand (BOD);
- (B) chemical oxygen demand (COD);
- (C) total organic carbon (TOC);
- (D) total suspended solids (TSS);
- (E) flow;
- (F) ammonia (as N);
- (G) temperature (winter and summer); and
- (H) pH.

(ii) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of Appendix D of 40 CFR Part 122 (certain conventional and nonconventional pollutants).

(iii) Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

- (A) the pollutants listed in Table III of Appendix D of 40 CFR Part 122 (the toxic metals, in the discharge from any outfall: total cyanide and total phenols); and
- (B) the organic toxic pollutants in Table II of Appendix D of 40 CFR Part 122 (except bis (chloromethyl) ether, dichlorofluoromethane, and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than \$100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

(iv) The applicant is required to report that 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

- (A) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);
- (B) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);
- (C) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);
- (D) O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnell) (CAS #299-84-3);
- (E) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or
- (F) hexachlorophene (HCP) (CAS #70-30-4).

(v) Each applicant must report any pollutants listed in Table V of Appendix D of 40 CFR Part 122 (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

(vi) No later than two years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit forms prescribed by the department. However, the applicant need not complete those portions of the forms requiring tests which he has already performed and reported under the discharge monitoring requirements of his MPDES permit.

(f) each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

(g) any optional information the permittee wishes to have considered; and

(h) the signature of the certifying official under ARM 17.30.1323.

(11) Dischargers of storm water from facilities or activities that are listed in ARM 17.30.1105(1)(a) through (f), must apply for an individual permit, or seek coverage under a storm water general permit as provided for in subchapter 11. Individual permits for small municipal separate storm sewer systems are subject to the provisions stated in ARM 17.30.1111(1) through (18).

(12) Dischargers of storm water associated with industrial, mining, oil and gas, and construction activity, shall apply for an individual permit as stated in 40 CFR 122.26(c)(1) if their discharge is not covered under a general permit provided for in ARM 17.30.1110 or another MPDES permit. Dischargers of storm water associated with construction activity are exempt from the application requirements of (7) and 40 CFR 122.26(c)(1)(i).

(13) A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified below:

(a) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based must explain how the requirements of the applicable regulatory and statutory criteria have been met, and must be filed with the department:

(i) by the close of the public comment period under ARM 17.30.1372, if the request is for a variance from best practicable control technology currently available (BPT); or

(ii) by no later than 180 days after the date on which an effluent limitation is published in the federal register, if the request involves a variance from best available technology economically achievable (BAT), best conventional pollutant control technology (BCT), or both of them.

(b) A request for a variance from the best available technology (BAT) requirements for federal Clean Water Act section 301(b)(2)(F) pollutants (commonly called "nonconventional" pollutants) pursuant to section 301(c) of the federal Clean Water Act because of the economic capability of the owner or operator, or pursuant to section 301(g) of the federal Clean Water Act because of certain environmental considerations, when those requirements were based on effluent limitation guidelines, must be made by:

(i) submitting an initial request to the department, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a federal Clean Water Act section 301(c) or 301(g) modification or both. This request must have been filed not later than:

(A) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

(B) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977; and

(ii) submitting a completed request no later than the close of the public comment period under ARM 17.30.1372 demonstrating that the requirements of ARM 17.30.1375 and the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete application for a request under section 301(g) of the federal Clean Water Act shall be filed before the department must make a decision;

(iii) requests for variance from effluent limitations not based on effluent limitations guidelines need only comply with (ii) and need not be preceded by an initial request under (i).

(c) An extension under federal Clean Water Act section 301(i)(2) of the statutory deadlines in section 301(b)(1)(A) or (b)(1)(C) of the federal Clean Water Act based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978, or 180 days after the relevant POTW requested an extension under (14)(b), whichever is later, but in no event may this date have been later than January 30, 1988. The request must explain how the requirements of 40 CFR Part 125, subpart J, have been met.

(d) An extension under federal Clean Water Act section 301(k) from the statutory deadline of 301(b)(2)(A) for best available technology or 301(b)(2)(E) for best conventional pollutant control technology based on the use of innovative technology, may be requested no later than the close of the public comment period under ARM 17.30.1372 for the discharger's initial permit requiring compliance with section 301(b)(2)(A) or (b)(2)(E), as applicable. The request must demonstrate that the requirements of ARM 17.30.1375 and 40 CFR Part 125, subpart C, have been met.

(e) A modification under the federal Clean Water Act section 302(b)(2) of requirements under section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under ARM 17.30.1372 on the permit from which the modification is sought.

(f) A variance under the federal Clean Water Act section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under this subchapter, except that if thermal effluent limitations are established under federal Clean Water Act section 402(A)(1) or are based on water quality standards the request for a variance may be filed by the close of the public comment period under ARM 17.30.1372.

(14) A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under either of the following statutory provisions as specified below:

(a) an extension under federal Clean Water Act section 301(i)(1) of the statutory deadlines in federal Clean Water Act section 301(b)(1)(B) or (b)(1)(C) based on delay in the construction of the POTW must have been requested on or before August 3, 1987; or

(b) a modification under federal Clean Water Act section 302(b)(2) of the requirements under section 302(a) for achieving water quality based effluent limitations must be requested no later than the close of the public comment period under ARM 17.30.1372 on the permit from which the modification is sought.

(15) Notwithstanding the time requirements in (13) and (14):

(a) the department may notify a permit applicant before a draft permit is issued under ARM 17.30.1370 that the draft permit will likely contain limitations eligibility for variances. In the notice the department may require that the applicant, as a condition of consideration of any variance request, submit an explanation of how the requirements of 40 CFR Part 125 applicable to the variance have been met. The department may require submission of the explanation within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations that may become effective upon final grant of the variance; and specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations that may become effective upon final grant of the variance; and

(b) a discharger who cannot file a timely complete request required under (13)(b)(ii) or (iii) may request an extension. The extension may be granted or denied at the discretion of the department. Extensions may not be more than six months in duration.

(16) Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this subchapter for a period of at least three years from the date the application is signed.

(17) The board hereby adopts and incorporates herein by reference (see ARM 17.30.1303 for complete information about all materials incorporated by reference):

(a) 40 CFR 125.102, which is a federal agency rule setting forth requirements for best management practices for dischargers who use, manufacture, store, handle, or discharge any hazardous or toxic pollutant;

(b) 40 CFR Part 136, which is a series of federal agency rules setting forth guidelines establishing test procedures for the analysis of pollutants;

(c) Appendix A to 40 CFR Part 122, which is an appendix to a series of federal agency rules and sets forth a list of primary industrial categories;

(d) Tables I, II, and III of Appendix D to 40 CFR Part 122, which are part of appendices of federal agency rules and list, respectively, testing requirements for organic toxic pollutants by industry category for existing dischargers, organic toxic pollutants in each of four fractions in analysis by gas chromatography/mass spectroscopy (GC/MS), and other toxic pollutants (metals and cyanide) and total phenols;

(e) Tables IV and V of Appendix D to 40 CFR Part 122, which are lists appended to a federal agency rule setting forth, respectively, conventional and nonconventional pollutants, and toxic pollutants and hazardous substances required to be identified by existing dischargers if expected to be present;

(f) 40 CFR Part 125, which is a series of federal agency rules setting forth criteria and standards for the national pollutant discharge elimination system (NPDES), specifically including criteria for extending compliance dates for facilities installing innovative technology (Subpart C), criteria for determining the availability of a variance based on fundamentally different factors (FDF) (Subpart D), and criteria for extending compliance dates for achieving effluent limitations;

(g) 40 CFR 403.5(c)(i) (July 1, 1991), which requires POTWs to develop and enforce specific limits to prevent certain discharges; and

(h) 40 CFR 122.26(c)(1), which states requirements for individual permit applications for storm water discharges.

(i) Copies of the above listed materials are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 648, Eff. 2/14/03; AMD, 2006 MAR p. 532, Eff. 2/24/06.)

17.30.1323 SIGNATORIES TO PERMIT APPLICATIONS AND REPORTS

(1) All permit applications must be signed as follows:

(a) for a corporation, by a responsible corporate officer. A responsible corporate officer means:

(i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

(ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(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. A principal executive officer of a federal agency includes:

(i) the chief executive officer of the agency; or

(ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(2) All reports required by permits and other information requested by the department must be signed by a person described in (1) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) the authorization is made in writing by a person described in (1);

(b) the authorization specifies 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 any individual occupying a named position);

(c) the written authorization is submitted to the department.

(3) If an authorization under (2) 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 (2) must be submitted to the department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Any person signing a document under (1) or (2) 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. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 220, Eff. 2/14/03.)

Rules 17.30.1324 through 17.30.1329 reserved

17.30.1330 CONCENTRATED ANIMAL FEEDING OPERATIONS

(1) "Concentrated animal feeding operation (CAFO)" means an animal feeding operation which meets the criteria in 40 CFR Part 122.23, or which the department designates under (3). CAFOs that are required to obtain a permit shall either apply for an individual MPDES permit or submit an application for coverage under an MPDES CAFO general permit. A permit application for an individual permit or application for coverage under a general permit must include the information specified in ARM 17.30.1322(6)(a) through (f) and 40 CFR 122.21(i)(l), including a topographic map. If the department has not made a general permit available to the CAFO, the CAFO owner or operator shall submit an application for an individual permit to the department.

(2) Concentrated animal feeding operations are point sources subject to the MPDES permit program.

(3) On a case-by-case basis, the department may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to state waters. In making this designation the department shall consider the following factors:

(a) the size of the animal feeding operation and the amount of wastes reaching state waters;

(b) the location of the animal feeding operation relative to state waters;

(c) the means of conveyance of animal wastes and process waste waters into state waters;

(d) the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into state waters; and

(e) other relevant factors.

(4) No animal feeding operation with less than the numbers of animals set forth in 40 CFR Part 122.23 may be designated as a CAFO unless:

(a) pollutants are discharged into state waters through a manmade ditch, flushing system, or other similar manmade device; or

(b) pollutants are discharged directly into state waters which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(5) A permit application is not required from a concentrated animal feeding operation designated under this rule until the department has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2006 MAR p. 532, Eff. 2/24/06; AMD, 2007 MAR p. 201, Eff. 2/9/07.)

17.30.1331 CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES AND AQUACULTURE PROJECTS (1) "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in Appendix C of 40 CFR Part 122, or which the department designates under (3).

(2) Concentrated aquatic animal production facilities, as defined in this rule, are point sources subject to the MPDES permit program.

(3) On a case-by-case basis, the department may designate any warm or cold water aquatic animal production facility as a concentrated animal production facility upon determining that it is a significant contributor of pollution to state waters. In making this designation the department shall consider the following factors:

- (a) the location and quality of the receiving state waters;
- (b) the holding, feeding, and production capacities of the facility;
- (c) the quantity and nature of the pollutants reaching state waters; and
- (d) other relevant factors.

(4) A permit application is not required from a concentrated aquatic animal production facility designated under this rule until the department has conducted an on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

(5) Discharges into aquaculture projects, as defined in ARM 17.30.1304(5), are subject to the MPDES permit program through 33 USC 1318, and in accordance with 40 CFR Part 125, subpart B (July 1, 1991).

(a) "Designated project area" means the portions of the waters of Montana within which the permittee or permit applicant plans to confine the cultivated species, using a method, plan, or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

(6) The board hereby adopts and incorporates herein by reference Appendix C of 40 CFR Part 122 which is an appendix to a federal agency rule setting forth criteria for determining whether a facility or operation merits classification as a concentrated aquatic animal production facility. See ARM 17.30.1303 for complete information about all materials incorporated by reference. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1332 STORM WATER DISCHARGES (REPEALED) (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499; REP, 2003 MAR p. 220, Eff. 2/14/03.)

17.30.1333 SILVICULTURAL ACTIVITIES (1) Silvicultural point sources, as defined in ARM 17.30.1304(56), are point sources subject to the MPDES permit program. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

Rules 17.30.1334 through 17.30.1339 reserved

17.30.1340 NEW SOURCES AND NEW DISCHARGERS (1) Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in ARM 17.30.1304(37), and

(a) it is constructed at a site at which no other source is located; or  
(b) it totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or  
(c) its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the department shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(2) A source meeting the requirements of (1)(a), (b), or (c) is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger. (See ARM 17.30.1304(36).)

(3) Construction on a site at which an existing source is located results in a modification subject to ARM 17.30.1361 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of (1)(b) or (c) but otherwise alters, replaces, or adds to existing process or production equipment.

(4) Construction of a new source as defined under ARM 17.30.1304(37) has commenced if the owner or operator has:

(a) begun, or caused to begin as part of a continuous on-site construction program:

(i) any placement, assembly, or installation of facilities or equipment; or  
(ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(b) entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this rule.

(5) Except as provided in (6), any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under ARM 17.30.1207 for the soonest ending of the following periods:

- (a) ten years from the date that construction is completed;
- (b) ten years from the date the source begins to discharge process or other non-construction related wastewater; or
- (c) the period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954.

(6) The protection from more stringent standards of performance afforded by (5) does not apply to:

- (a) additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under ARM 17.30.1206; or
- (b) additional permit conditions in accordance with 40 CFR 125.3 controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

(7) When an MPDES permit issued to a source with a "protection period" under (5) of this rule expires on or after the expiration of the protection period, that permit must require the owner or operator of the source to comply with the requirements of section 301 of the federal Clean Water Act and any other then-applicable requirements of the Act immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than three years before the expiration of the protection period.

(8) The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger, shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator shall meet all permit conditions. The requirements of this rule do not apply if the owner or operator is issued a permit containing a compliance schedule under ARM 17.30.1350(1)(b).

(9) After the effective date of new source performance standards, it is unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

(10) The board hereby adopts and incorporates herein by reference 40 CFR 125.3, which is a federal agency rule setting forth technology-based treatment requirements for point source dischargers. See ARM 17.30.1303 for complete information about all materials incorporated by reference. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1341 GENERAL PERMITS (1) The department may issue general permits for the following categories of point sources which the board has determined are appropriate for general permitting under the criteria listed in 40 CFR 122.28 as stated in ARM 17.30.1105:

- (a) cofferdams or other construction dewatering discharges;
- (b) ground water pump test discharges;
- (c) fish farms;
- (d) placer mining operations;
- (e) suction dredge operations using suction intakes no larger than four inches in diameter;
- (f) oil well produced water discharges for beneficial use;
- (g) animal feedlots;
- (h) domestic sewage treatment lagoons;
- (i) sand and gravel mining and processing operations;
- (j) point source discharges of storm water;
- (k) treated water discharged from petroleum cleanup operations;
- (l) discharges from public water supply systems, as determined under Title 75, chapter 6, MCA;
- (m) discharges to wetlands that do not contain perennial free surface water;
- (n) discharges from road salting operations;
- (o) asphalt plant discharges;
- (p) discharges of hydrostatic testing water;
- (q) discharges of noncontact cooling water;
- (r) swimming pool discharge;
- (s) septic tank pumper disposal sites; and
- (t) pesticide application.

(2) Although MPDES general permits may be issued for a category of point sources located throughout the state, they may also be restricted to more limited geographical areas.

(3) Prior to issuing a MPDES general permit, the department shall prepare a public notice which includes the equivalent of information listed in ARM 17.30.1372(6) and shall publish the same as follows:

- (a) prior to publication, notice to the U.S. Environmental Protection Agency;
- (b) direct mailing of notice to the Water Pollution Control Advisory Council and to any persons who may be affected by the proposed general permit;
- (c) publication of notice in a daily newspaper in Helena and in other daily newspapers of general circulation in the state or affected area;
- (d) after publication, a hearing must be held and a 30-day comment period allowed as provided in ARM 17.30.1372 through 17.30.1377 and 17.30.1383.

(4) A person owning or proposing to operate a point source who wishes to operate under a MPDES general permit shall complete a standard MPDES application or notice of intent form available from the department for the particular general permit. Except for notices of intent, the department shall, within 30 days of receiving a completed application, either issue to the applicant an authorization to operate under the MPDES general permit, or shall notify the applicant that the source does not qualify for authorization under a MPDES general permit, citing one or more of the following reasons as the basis for denial:

(a) the specific source applying for authorization appears unable to comply with the following requirements:

(i) effluent standards, effluent limitations, standards of performance for new sources of pollutants, toxic effluent standards and prohibitions, and pretreatment standards;

(ii) water quality standards established pursuant to 75-5-301, MCA;

(iii) prohibition of discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(iv) prohibition of any discharge which the secretary of the army acting through the chief of engineers finds would substantially impair anchorage and navigation;

(v) prohibition of any discharges to which the regional administrator has objected in writing;

(vi) prohibition of any discharge which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Act; and

(vii) any additional requirements that the department determines are necessary to carry out the provisions of 75-5-101, et seq., MCA.

(b) the discharge is different in degree or nature from discharges reasonably expected from sources or activities within the category described in the MPDES general permit;

(c) an MPDES permit or authorization for the same operation has previously been denied or revoked;

(d) the discharge sought to be authorized under a MPDES general permit is also included within an application or is subject to review under the Major Facility Siting Act, 75-20-101, et seq., MCA;

(e) the point source will be located in an area of unique ecological or recreational significance. Such determination must be based upon considerations of Montana stream classifications adopted under 75-5-301, MCA, impacts on fishery resources, local conditions at proposed discharge sites, and designations of wilderness areas under 16 USC 1132 or of wild and scenic rivers under 16 USC 1274.

(5) Where authorization to operate under a MPDES general permit is denied, or a notice of intent under ARM 17.30.1115 is not applicable, the department shall proceed, unless the application or notice of intent is withdrawn, to process the application or notice of intent through the individual MPDES permit requirements under this subchapter.

(6) Every MPDES general permit must have a fixed term not to exceed five years. Except as provided in (10), every authorization to operate under a MPDES general permit expires at the same time the MPDES general permit expires.

(7) Where authorization to operate under a MPDES general permit is issued to, or a notice of intent received from, a point source covered by an individual MPDES permit, the department shall, upon issuance of the authorization to operate or receipt of the notice of intent under the MPDES general permit, terminate the individual MPDES permit for that point source.

(8) Any person authorized or eligible to operate under a MPDES general permit may at any time apply for an individual MPDES permit according to the procedures in this subchapter. Upon issuance of the individual MPDES permit, the department shall terminate any MPDES general permit authorization or notice of intent held by such person.

(9) The department, on its own initiative or upon the petition of any interested person, may modify, suspend, or revoke in whole or in part a MPDES general permit or an authorization or notice of intent to operate under a MPDES general permit during its term in accordance with the provisions of ARM 17.30.1361 for any cause listed in ARM 17.30.1361 or for any of the following causes:

(a) the approval of a water quality management plan containing requirements applicable to point sources covered in the MPDES general permit;

(b) determination by the department that the discharge from any authorized source is a significant contributor to pollution as determined by the factors set forth in 40 CFR 122.26(c)(2); or

(c) a change in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to a source or to a category of sources;

(d) occurrence of one or more of the following circumstances:

(i) violation of any conditions of the permit; or

(ii) obtaining an MPDES permit by misrepresentation or failure to disclose fully all relevant facts;

(iii) a change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge; or

(iv) a failure or refusal by the permittee to comply with the requirements of 75-5-602, MCA.

(10) The department may reissue an authorization to operate under a MPDES general permit provided that the requirements for reissuance of MPDES permits specified in ARM 17.30.1322 are met.

(11) The department shall maintain and make available to the public a register of all sources and activities authorized to operate, or with notices of intent to discharge, under each MPDES general permit including the location of such sources and activities, and shall provide copies of such registers upon request.

(12) For purposes of this rule, the board hereby adopts and incorporates by reference (see ARM 17.30.1303 for complete information about all materials incorporated by reference):

(a) 40 CFR 122.28 (July 1, 1991) which sets forth criteria for selecting categories of point sources appropriate for general permitting;

(b) 40 CFR 124.10(d)(1) (July 1, 1991) which sets forth minimum contents of public notices;

(c) 40 CFR 122.26(c)(2) (July 1, 1991) which sets forth criteria for determining when a point source is considered a "significant contributor of pollution";

(d) 16 USC 1132 (wilderness area designations); and

(e) 16 USC 1274 (wild and scenic river designations). (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 1999 MAR p. 1661, Eff. 7/23/99; AMD, 2003 MAR p. 220, Eff. 2/14/03; AMD, 2011 MAR p. 909, Eff. 5/27/11.)

17.30.1342 CONDITIONS APPLICABLE TO ALL PERMITS The following conditions apply to all MPDES permits. Additional conditions applicable to MPDES permits are set forth in ARM 17.30.1344. All conditions applicable to MPDES permits must be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these rules must be given in the permit.

(1) The permittee shall 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 denial of a permit renewal application.

(a) The permittee shall comply with effluent standards or prohibitions established under ARM 17.30.1206 for toxic pollutants within the time provided in the rules that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(b) The Act provides that any person who violates a permit condition is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates a permit condition is subject to a fine not to exceed \$25,000 per day of violation or imprisonment for not more than one year, or both.

(2) If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall first apply for and obtain a new permit.

(3) It may 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.

(4) 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.

(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of 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.

(6) 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.

(7) This permit does not convey any property rights of any sort, or any exclusive privilege.

(8) 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.

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

(a) 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;

(b) have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(d) sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

(10)(a) Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

(b) 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.

(c) Records of monitoring information must include:

(i) the date, exact place, and time of sampling or measurements;

- (ii) the individual(s) who performed the sampling or measurements;
- (iii) the date(s) analyses were performed;
- (iv) the individual(s) who performed the analyses;
- (v) the analytical techniques or methods used; and
- (vi) the results of such analyses.

(d) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

(11) All applications, reports, or information submitted to the department must be signed and certified. (See ARM 17.30.1323.)

(12)(a) 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:

(i) the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in ARM 17.30.1340(2); or

(ii) the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under ARM 17.30.1343(1)(a).

(b) 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) This permit is not transferable to any person except after notice to the department. The department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act. (See ARM 17.30.1360; in some cases, modification or revocation and reissuance is mandatory.)

(d) Monitoring results must be reported at the intervals specified elsewhere in this permit.

(i) Monitoring results must be reported on a discharge monitoring report (DMR).

(ii) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or as specified in the permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the DMR.

(iii) Calculations for all limitations which require averaging of measurements must utilize an arithmetic mean unless otherwise specified by the department in the permit.

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

(f)(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission must also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following must be included as information which must be reported within 24 hours under this rule:

(A) any unanticipated bypass which exceeds any effluent limitation in the permit (see ARM 17.30.1342(7));

(B) any upset which exceeds any effluent limitation in the permit; and

(C) violation of a maximum daily discharge limitation for any of the pollutants listed by the department in the permit to be reported within 24 hours (see ARM 17.30.1344 and 40 CFR 122.44(g)).

(iii) The department may waive the written report on a case-by-case basis for reports under (ii) above if the oral report has been received within 24 hours.

(g) The permittee shall report all instances of noncompliance not reported under (a), (d), (e), and (f), at the time monitoring reports are submitted. The reports must contain the information listed in (f).

(h) 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 in any report to the department, it shall promptly submit such facts or information.

(13)(a) 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 (b) and (c).

(b) If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the department, if possible at least 10 days before the date of the bypass. The permittee shall submit notice of an unanticipated bypass as required in (12)(f) (24-hour notice).

(c) Bypass is prohibited, and the department may take enforcement action against a permittee for bypass, unless:

(i) 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 (c).

(d) 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 (c)(i).

(14)(a) An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of (b) 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.

(b) A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) an upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) the permitted facility was at the time being properly operated;

(iii) the permittee submitted notice of the upset as required in (12)(f)(ii)(B) (24-hour notice); and

(iv) the permittee complied with any remedial measures required under (4).

(c) In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) The board hereby adopts and incorporates herein by reference (see ARM 17.30.1303 for complete information about all materials incorporated by reference):

(a) 40 CFR Part 136, which is a series of federal agency rules setting forth guidelines establishing test procedures for the analysis of pollutants; and

(b) 40 CFR 122.44(g), which is a federal agency rule requiring 24-hour notice of any violation of maximum daily discharge limits. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1343 ADDITIONAL CONDITIONS APPLICABLE TO SPECIFIC CATEGORIES OF MPDES PERMITS (1) The following conditions, in addition to those set forth in ARM 17.30.1342, apply to all MPDES permits within the categories specified below:

(a) All existing manufacturing, commercial, mining, and silvicultural dischargers, in addition to the reporting requirements under ARM 17.30.1342(12), shall notify the department as soon as they know or have reason to believe:

(i) 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) 100 micrograms per liter;

(B) 200 micrograms per liter for acrolein and acrylonitrile; 500 micrograms per liter for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter for antimony;

(C) five times the maximum concentration value reported for that pollutant in the permit application in accordance with ARM 17.30.1322(7)(g); or

(D) the level established by the department in accordance with ARM 17.30.1344(6).

(ii) 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) 500 micrograms per liter;

(B) one milligram per liter for antimony;

(C) 10 times the maximum concentration value reported for that pollutant in the permit application in accordance with ARM 17.30.1322(7)(g); or

(D) the level established by the department in ARM 17.30.1344, in accordance with 40 CFR 122.44(f).

(b) All POTW's shall provide adequate notice to the department of the following:

(i) any new introduction of pollutants into the POTW from an indirect discharger which would be subject to the effluent limits or standards of performance adopted and set forth in ARM 17.30.302 if it were directly discharging those pollutants; and

(ii) any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

(iii) For purposes of this rule, adequate notice must include information on:

(A) the quality and quantity of effluent introduced into the POTW; and

(B) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(c) All permits issued to concentrated animal feeding operations (CAFOs), in addition to meeting those requirements set forth in ARM 17.30.1322, 17.30.1330, 17.30.1341, and 17.30.1342 must include the requirements set out in 40 CFR 122.42(e). The design, monitoring, recordkeeping, reporting, and specifications for CAFOs must be prepared in accordance with and comply with the criteria set forth in the technical standards for nutrient management and effluent limit guidelines established in 40 CFR Part 412 and department Circular DEQ-9, "Montana Technical Standards for Concentrated Animal Feeding Operations."

(3) The board adopts and incorporates by reference:

(a) 40 CFR 122.44(f), which is a federal agency rule setting forth "notification levels" for dischargers of pollutants that may be inserted in a permit upon a petition from the permittee or upon the initiative of the department;

(b) 40 CFR Part 412, which establishes the effluent limitation guidelines and best management practices for CAFOs; and

(c) department Circular DEQ-9, "Montana Technical Standards for Concentrated Animal Feeding Operations," 2005 edition.

(4) See ARM 17.30.1303 for additional information about all materials incorporated by reference. All material that is incorporated by reference may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2006 MAR p. 532, Eff. 2/24/06.)

17.30.1344 ESTABLISHING LIMITATIONS, STANDARDS, AND OTHER PERMIT CONDITIONS (1) In addition to the conditions established under ARM 17.30.1342, 17.30.1343, 17.30.1346, 17.30.1350, and 17.30.1351, each MPDES permit must include conditions meeting the requirements stated in 40 CFR 122.43, 122.44, 124.56, and 124.57 (July 1, 1991).

(2) The board hereby adopts and incorporates herein by reference (see ARM 17.30.1303 for complete information about all materials incorporated by reference):

(a) 40 CFR 122.43 (July 1, 1991), which is a federal rule that establishes applicable permit conditions in general;

(b) 40 CFR 122.44 (July 1, 1991), which is a federal agency rule setting forth additional permit conditions which may be applicable to a point source. Such conditions include technology-based and water-quality-based standards, toxic and pretreatment standards, reopener clause, reporting and monitoring requirements, permit duration and reissuance, test methods, best management practices, conditions concerning sewage sludge, privately owned treatment works, and conditions imposed in EPA grants to POTW's;

(c) 40 CFR 124.56 (July 1, 1991), which describes requirements for fact sheets;

(d) 40 CFR 124.57 (July 1, 1991), which describes the public notice that must be provided for draft permits;

- (e) 40 CFR chapter 1, subchapter N, (July 1, 1991), which sets forth federal effluent limitations and standards and new source performance standards;
- (f) 40 CFR Part 125 (July 1, 1991), which states standards and criteria for the national point discharge elimination system;
- (g) 40 CFR Part 129 (July 1, 1991), which describes toxic effluent pollutant standards; and
- (h) 40 CFR Part 133, (July 1, 1991), which sets forth requirements for secondary treatment regulation.
- (i) Copies of the above listed materials are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1345 CALCULATING MPDES PERMIT CONDITIONS (1) All permit effluent limitations, standards, and prohibitions must be established for each outfall or discharge point of the permitted facility, except as otherwise provided under ARM 17.30.1344 (40 CFR 122.44(k)) (BMP's where limitations are infeasible) and (10) (limitations on internal waste streams).

(2)(a) In the case of POTW's, permit limitations, standards, or prohibitions must be calculated based on design flow.

(b)(i) Except in the case of POTW's, or as provided in (3), calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) must be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production must be estimated using projected production. The time period of the measure of production must correspond to the time period of the calculated permit limitations; for example, monthly production must be used to calculate average monthly discharge limitations.

(3) The department may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(4) If the department establishes permit conditions under (3):

(a) The permit must require the permittee to notify the department at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice must specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice must specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

(b) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the department under (a), in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

(c) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(5) All permit effluent limitations, standards, or prohibitions for a metal must be expressed in terms of "total recoverable metal" as defined in 40 CFR Part 136 unless:

(a) an applicable effluent standard or limitation has been promulgated under the Act and specifies the limitation for the metal in the dissolved or valent or total form; or

(b) in establishing permit limitations on a case-by-case basis under 40 CFR 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the Act; or

(c) all approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

(6) For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, must unless impracticable be stated as:

(a) maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) average weekly and average monthly discharge limitations for POTW's.

(7) Discharges which are not continuous, as defined in ARM 17.30.1304(12), must be particularly described and limited, considering the following factors, as appropriate:

(a) frequency (for example, a batch discharge must not occur more than once every three weeks);

(b) total mass (for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

(c) maximum rate of discharge of pollutants during the discharge (for example, not to exceed two kilograms of zinc per minute); and

(d) prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, must not contain at any time more than 0.1 mg/l zinc or more than 250 grams (1/4 kilogram) of zinc in any discharge).

(8)(a) All pollutants limited in permits must have limitations, standards, or prohibitions expressed in terms of mass except:

(i) for pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

(ii) when applicable standards and limitations are expressed in terms of other units of measurement; or

(iii) if in establishing permit limitations on a case-by-case basis under 40 CFR 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of total suspended solids (TSS) from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit must require the permittee to comply with both limitations.

(9)(a) Upon request of the discharger, technology-based effluent limitations or standards must be adjusted to reflect credit for pollutants in the discharger's intake water if:

(i) the applicable effluent limitations and standards contained in 40 CFR chapter 1, subchapter N, specifically provide that they must be applied on a net basis; or

(ii) the discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit may be granted only to the extent necessary to meet the applicable limitation or standards, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit may be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The department may waive this requirement if it finds that no environmental degradation will result.

(e) This rule does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(10)(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by ARM 17.30.1344, in accordance with 40 CFR 122.44(i), must also be applied to the internal waste streams.

(b) Limits on internal waste streams may be imposed only when the fact sheet under ARM 17.30.1371 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(11) Permit limitations and standards concerning disposal of pollutants into wells, POTW's, or by land application must be calculated as provided in ARM 17.30.1354.

(12) The board hereby adopts and incorporates herein by reference (see ARM 17.30.1303 for complete information about all materials incorporated by reference):

(a) 40 CFR 122.44(j)(2), which is a federal agency rule setting forth a requirement for the submittal by a publicly owned treatment work (POTW) of a local pretreatment program;

(b) 40 CFR 122.45(b)(2)(ii)(A) which is a federal agency rule setting forth the availability of alternate permit limitations, standards, or prohibitions based on varying production levels;

(c) 40 CFR 136, which is a series of federal agency rules setting forth guidelines for testing procedures for the analysis of pollutants;

(d) 40 CFR 125.3, which is a federal agency rule setting forth technology-based treatment requirements for point source dischargers;

(e) 40 CFR chapter 1, subchapter N, which is a series of federal agency rules setting forth effluent guidelines and standards for point source dischargers; and

(f) 40 CFR 122.44(i), which is a federal agency rule setting forth monitoring requirements for point source dischargers. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1346 DURATION OF PERMITS (1) MPDES permits are effective for a fixed term not to exceed five years.

(2) Except as provided in ARM 17.30.1313, the term of a permit may not be extended by modification beyond the maximum duration specified in this rule.

(3) The department may issue any permit for a duration that is less than the full allowable term under this rule.

(4) A permit may be issued to expire on or after the statutory deadline set forth in section 301(b)(2)(A), (C), and (E) of the federal Clean Water Act (July 1, 1984), if the permit includes effluent limitations to meet the requirements of sections 301(b)(2)(A), (C), (D), (E), and (F) of the federal Clean Water Act, whether or not applicable effluent limitations guidelines have been promulgated or approved.

(5) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under (4) is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

(6) The board hereby adopts and incorporates herein by reference sections 301(b)(2)(A), (C), (E), and (F) of the federal Clean Water Act, 33 USC 1251, et seq., which set forth deadlines for achieving effluent limitations and treatment of toxic pollutants. See ARM 17.30.1303 for complete information about all materials incorporated by reference. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

Rules 17.30.1347 through 17.30.1349 reserved

17.30.1350 SCHEDULES OF COMPLIANCE (1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Act and rules adopted thereunder, specifically including any applicable requirements under ARM Title 17, chapter 30, subchapter 12.

(a) Any schedules of compliance under this rule must require compliance as soon as possible, but not later than the applicable statutory deadline under the Act or under the federal Clean Water Act, as codified at 33 USC 1311(b)(2)(A), (C), (D), (E), and (F).

(b) The first MPDES permit issued to a new source or a new discharger must contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance must be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(c) Except as provided in (2)(a)(ii), if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule must set forth interim requirements and the dates for their achievement.

(i) The time between interim dates may not exceed one year.

(ii) If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one year and is not readily divisible into stages for completion, the permit must specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(d) The permit must be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if (c)(ii) is applicable.

(2) An MPDES permit applicant or permittee may cease conducting regulated activities (by terminating of direct discharge for MPDES sources) rather than continuing to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) the permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) the permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term includes the termination date, the permit must contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(c) If the permittee is undecided whether to cease conducting regulated activities, the department may issue or modify a permit to contain two schedules as follows:

(i) both schedules must contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) one schedule must lead to timely compliance with applicable requirements, no later than the statutory deadline;

(iii) the second schedule must lead to cessation of regulated activities by a date which ensures timely compliance with applicable requirements no later than the statutory deadline;

(iv) each permit containing two schedules must include a requirement that after the permittee has made a final decision under (i) it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities must be evidenced by a firm public commitment satisfactory to the department, such as a resolution of the board of directors of a corporation.

(3) The board hereby adopts and incorporates herein by reference the federal Clean Water Act, 33 USC 1311(b)(2)(A), (C), (E), and (F) which set forth deadlines for achieving effluent limitations and treatment of toxic pollutants. See ARM 17.30.1303 for complete information about all materials incorporated by reference. Copies of these materials are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1351 REQUIREMENTS FOR RECORDING AND REPORTING OF MONITORING RESULTS (1) All permits must specify:

(a) requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) applicable reporting requirements based upon the impact of the regulated activity and as specified in ARM 17.30.1344. Reporting may be no less frequent than specified in that rule.

(2) The department may require monitoring of storm water discharges at a facility or activity covered under an MPDES general permit. Such requirements may include storm water sampling, analytical testing, evaluation of monitoring results, recording, and reporting. Monitoring requirements identified by the department must be stated in the MPDES general permit, except that the department may require a discharger to comply with monitoring requirements in addition to those in the general permit.

(3) For storm water discharges that are associated with industrial, mining, oil and gas, and construction activity and that are subject to an effluent limitation guideline, the department shall establish case-by-case requirements to report monitoring results. Such reporting must have a frequency dependent on the nature and effect of the discharge, but the frequency may in no case be less than once a year.

(4) For storm water discharges that are associated with industrial, mining, oil and gas, and construction activity with construction-related disturbance of five acres or more of total land area and that are not subject to an effluent limitation guideline, the department shall establish case-by-case requirements to report monitoring results.

(a) Such reporting must have a frequency dependent on the nature and effect of the discharge, and the permit for the discharge must, at a minimum, require that the discharger:

(i) conduct an annual inspection of the facility site to identify areas contributing to the regulated storm water discharge and to evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit;

(ii) maintain for a period of three years a record summarizing the results of inspections; and

(iii) certify that the facility is in compliance with the plan and the permit, or identify any incidents of non-compliance.

(b) Reports and certifications required under this rule must be signed in accordance with ARM 17.30.1323.

(c) Permits for storm water discharges from inactive mining operations may, if annual inspections are impracticable, require certification once every three years by a registered professional engineer that the facility is in compliance with the permit, or alternative requirements.

(5) Permits that do not require the submittal of monitoring result reports at least annually must require that the permittee report at least annually all instances of noncompliance not reported under ARM 17.30.1342(12). (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 220, Eff. 2/14/03.)

Rules 17.30.1352 and 17.30.1353 reserved

17.30.1354 DISPOSAL OF POLLUTANTS INTO WELLS, INTO PUBLICLY OWNED TREATMENT WORKS, OR BY LAND APPLICATION (1) When part of a discharger's process wastewater is not being discharged into state waters or contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into state waters, applicable effluent standards and limitations for the discharge in an MPDES permit must be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit must be calculated by one of the following methods:

(a) If none of the waste from a particular process is discharged into state waters, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process must be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in (a), effluent limitations must be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into state waters, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 40 CFR Part 125, subpart D, to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$$P = \frac{E \times N}{T}$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste-stream, N is the wastewater flow to be treated and discharged to state waters, and T is the total wastewater flow.

(2) Section (1) does not apply to the extent that promulgated effluent limitations guidelines:

(a) control concentrations of pollutants discharged but not mass; or

(b) specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTW's.

(3) Section (1) does not alter a discharger's obligation to meet any more stringent requirements established under ARM 17.30.1342, 17.30.1343, and 17.30.1344.

(4) The board hereby adopts and incorporates herein by reference 40 CFR Part 125, subpart D, which is a series of federal agency rules setting forth criteria and standards for determining eligibility for a variance from effluent limitations based on fundamentally different factors (FDF). See ARM 17.30.1303 for complete information about all materials incorporated by reference. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

Rules 17.30.1355 through 17.30.1359 reserved

17.30.1360 TRANSFER OF PERMITS (1) Except as provided in (2), a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under ARM 17.30.1361(2)(b)), or a minor modification made (under ARM 17.30.1362(4)), to identify the new permittee and incorporate such other requirements as may be necessary under the Act.

(2) As an alternative to transfers under (1), any MPDES permit may be automatically transferred to a new permittee if:

(a) the current permittee notifies the department at least 30 days in advance of the proposed transfer date in (b);

(b) 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; and

(c) the department does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this rule may also be a minor modification under ARM 17.30.1362. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in (b). (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1361 MODIFICATION OR REVOCATION AND REISSUANCE OF PERMITS (1) When the department receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see ARM 17.30.1342), receives a request for modification or revocation and reissuance under ARM 17.30.1365, or conducts a review of the permit file) it may determine whether or not one or more of the causes listed in (2) and (3) for modification or revocation and reissuance or both exist. If cause exists, the department may modify or revoke and reissue the permit accordingly, subject to the limitations of ARM 17.30.1365(4)(c), and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See ARM 17.30.1365(4)(b). If cause does not exist under this rule or ARM 17.30.1362, the department may not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in ARM 17.30.1362 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in ARM 17.30.1364, 17.30.1365, 17.30.1370 through 17.30.1379, 17.30.1383, and 17.30.1384 followed.

(2) The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees:

(a) There are material and substantial alteration or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit (certain reconstruction activities may cause the new source provisions of ARM 17.30.1340 to be applicable).

(b) The department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For MPDES general permits (ARM 17.30.1341) this subsection includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger MPDES permits (ARM 17.30.1340), this subsection includes any significant information derived from effluent testing after issuance of the permit.

(c) The standards or requirements on which the permit was based have been changed by amendment or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(i) For promulgation of amended standards or requirements, when:

(A) the permit condition requested to be modified was based on a duly adopted effluent limitation guideline, water quality standards, or the secondary treatment regulations under 40 CFR Part 133; and

(B) the board has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or changed a water quality standard on which the permit condition was based; and

(C) a permittee requests modification in accordance with ARM 17.30.1365 within 90 days of the final action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed board rules or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with ARM 17.30.1365 within 90 days of judicial remand.

(d) The department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an MPDES compliance schedule be modified to extend beyond an applicable reasonably available remedy. However, in no case may an MPDES compliance schedule be modified to extend beyond an applicable statutory deadline. (See also ARM 17.30.1362(1)(c) minor modifications);

- (e) When the permittee has filed a request for a variance under the federal Clean Water Act, sections 301(c), (g), (h), (i), (k), or 316(a), or for "fundamentally different factors" within the time specified in ARM 17.30.1322 or 40 CFR 125.27(a);
- (f) When required to incorporate an applicable federal Clean Water Act section 307(a) toxic effluent standard or prohibition (see ARM 17.30.1344(2));
- (g) When required by the "reopener" conditions in a permit, which are established in the permit under ARM 17.30.1344(2) (toxic effluent limitations) or under any pretreatment requirements in the permit;
- (h)(i) Upon request of a permittee who qualifies for effluent limitations on a net basis under ARM 17.30.1345(10);
- (ii) when a discharger is no longer eligible for net limitations, as provided in ARM 17.30.1345(12);
- (i) As necessary under ARM 17.30.1412 (compliance schedule for development of pretreatment program);
- (j) Upon failure of the department to notify, as required by section 402(b)(3) of the federal Clean Water Act, another state whose waters may be affected by a discharge from Montana;
- (k) When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c);
- (l) To establish a "notification level" as provided in ARM 17.30.1344;
- (m) To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under section 202(a)(3) of the federal Clean Water Act for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2) of the federal Clean Water Act. In no case may the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance;
- (n) For small municipal separate storm sewer systems, to include effluent limitations requiring implementation of minimum control measures as specified in ARM 17.30.1111(6) if:
  - (i) the permit does not include such measures based upon the determination that another entity was responsible for implementation of the requirements; and
  - (ii) the other entity fails to implement measures that satisfy the requirements;
  - (o) To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions;

(p) When the discharger has installed the treatment technology considered by the department in setting effluent limitations and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but may not be less stringent than required by a subsequently promulgated effluent limitations guideline).

(3) The following are causes to modify or, alternatively, revoke and reissue a permit:

(a) cause exists for termination under ARM 17.30.1363, and the department determines that modification or revocation and reissuance is appropriate;

(b) the department has received notification (as required in the permit, see ARM 17.30.1362(12)(c)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (ARM 17.30.1360(2)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(4) The board hereby adopts and incorporates herein by reference (see ARM 17.30.1303 for complete information about all materials incorporated by reference):

(a) 40 CFR Part 133, which is a series of federal agency rules setting forth requirements for the level of effluent quality available through the application of secondary (or equivalent) treatment;

(b) sections 301(c), (g), (i), and (k) of the federal Clean Water Act, codified at 33 USC section 1311(c), (g), (i), and (k), which are federal statutory provisions allowing for modifying or extending dates for achieving effluent limitations;

(c) section 316(a) of the federal Clean Water Act, codified at 33 USC section 1326, which is a federal statutory provision allowing a variance from an applicable effluent limitation based on fundamentally different factors (FDF);

(d) section 402(b)(3) of the federal Clean Water Act, codified at 33 USC section 1342(b)(3), which is a federal statutory provision requiring that states administering the NPDES program notify other states whose waters may be affected by a proposed discharge; and

(e) 40 CFR 125.3(c), which is a federal agency rule setting forth methods of imposing technology-based treatment requirements in permits.

(f) Copies of the above listed materials are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 220, Eff. 2/14/03.)

17.30.1362 MINOR MODIFICATIONS OF PERMITS (1) Upon the consent of the permittee, the department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this rule, without following the procedures of ARM 17.30.1364, 17.30.1365, 17.30.1370 through 17.30.1379, 17.30.1383, and 17.30.1384. Any permit modification not processed as a minor modification under this rule must be made for cause and with a draft permit (ARM 17.30.1370) and public notice as required in ARM 17.30.1364, 17.30.1365, 17.30.1370 through 17.30.1379, 17.30.1383, and 17.30.1384. Minor modifications may only:

- (a) correct typographical errors;
- (b) require more frequent monitoring or reporting by the permittee;
- (c) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or
- (d) allow for a change in ownership or operational control of a facility where the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the department;
- (e)(i) change the construction schedule for a discharger which is a new source. No such change may affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under ARM 17.30.1340;
- (ii) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits;
- (f) conform to ARM 17.30.1342 and 17.30.1343(1);
- (g) incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in ARM 17.30.1413 (or a modification thereto that has been approved in accordance with the procedures in ARM 17.30.1426) as enforceable conditions of the POTW's permits. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1363 TERMINATION OF PERMITS (1) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

- (a) noncompliance by the permittee with any condition of the permit;
- (b) the permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
- (c) a determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- (d) a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

(2) The department shall follow the applicable procedures in ARM 17.30.1364, 17.30.1365, 17.30.1370 through 17.30.1379, 17.30.1383, and 17.30.1384 in terminating any MPDES permit under this rule. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1364 APPLICATION PROCESSING PROCEDURES (1)(a) Any person who requires a permit under the MPDES program shall complete, sign, and submit to the department an application for each permit required under ARM 17.30.1301. Application procedures for authorizations under MPDES general permits are set forth at ARM 17.30.1341.

(b) The department may not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. See ARM 17.30.1322.

(c) Permit applications must comply with the signature and certification requirements of ARM 17.30.1323.

(2) The department shall review for completeness every application for a permit. Each application for a permit submitted by a new source or new discharger should be reviewed for completeness by the department within 30 days of its receipt. Each application for a permit submitted by an existing source should be reviewed for completeness within 60 days of receipt. If the application is incomplete, the department shall advise the applicant of the information necessary to make the application complete. When the application is for an existing source, the department shall specify in the notice of deficiency a date for submitting the necessary information. After the application is complete, the department may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information do not render an application incomplete.

(3) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken by the department.

(4) If the department decides that a site visit is necessary for any reason in conjunction with the processing of an application, it shall notify the applicant and schedule a date.

(5) The effective date of an application is the date on which the department determines that the application is complete as provided in (3).

(6) For each application from a major MPDES new source or major MPDES new discharger, the department shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule must specify target dates by which the department intends to:

(a) prepare a draft permit;

(b) give public notice;

(c) complete the public comment period, including any public hearing; and

(d) issue a final permit. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1365 MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF PERMITS (1) During their term, permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee). However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in ARM 17.30.1361 or 17.30.1363. All requests must be in writing and must contain facts or reasons supporting the request.

(2) If the department decides the request is not justified, it shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the department may be appealed to the board by a petition or letter setting forth the relevant facts. The board, after hearing, may affirm the department's action or may direct the department to begin modification, revocation and reissuance, or termination proceedings under (3).

(3) During their term, permits may be modified, revoked and reissued, or terminated upon the initiative of the department. However, such action may only be taken for one or more of the reasons specified in ARM 17.30.1361 or 17.30.1363. If the department modifies, revokes and reissues, or terminates a permit, the department shall give written notice of its action to the holder who may file a written request within 30 days for a hearing before the board in the manner stated in 75-5-611, MCA. Such hearing must be held within 30 days after the board receives written request. If the holder does not request a hearing, a modification of a permit is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a board hearing, no order modifying his permit may be effective until 20 days after the holder has received notice of the board's action. The effective date of a termination or suspension of a permit by the department or board must be in accordance with 75-5-404, MCA.

(4)(a) If the department tentatively decides to modify or revoke and reissue a permit under ARM 17.30.1361, it shall prepare a draft permit under ARM 17.30.1370 incorporating the proposed changes. The department may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the department shall require the submission of a new application.

(b) In a permit modification under this rule, only those conditions to be modified may be reopened when a new draft permit is prepared. All other aspects of the existing permit remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this rule, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(c) Minor modifications as defined in ARM 17.30.1362 are not subject to the requirements of this rule.

(5) If the department tentatively decides to terminate a permit under ARM 17.30.1363, it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under ARM 17.30.1370. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

Rules 17.30.1366 through 17.30.1369 reserved

17.30.1370 DRAFT PERMITS (1) Once an application is complete, the department shall tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the department tentatively decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this rule. See (5). If the department's final decision (ARM 17.30.1378) is that the tentative decision to deny the permit application was incorrect, it shall withdraw the notice of intent to deny and proceed to prepare a draft permit under (3).

(3) If the department decides to prepare a draft permit, it shall prepare a draft permit that contains the following information:

- (a) all conditions under ARM 17.30.1342;
- (b) all compliance schedules under ARM 17.30.1350;
- (c) all monitoring requirements under ARM 17.30.1351; and
- (d) effluent limitations, standards, prohibitions and conditions under ARM 17.30.1342, 17.30.1343, and 17.30.1344.

(4) All draft permits prepared by the department under this rule must be accompanied by a fact sheet, if required by ARM 17.30.1371, and must be publicly noticed (ARM 17.30.1372) and made available for public comment (ARM 17.30.1373). The department shall give notice of opportunity for a public hearing (ARM 17.30.1374), issue a final decision (ARM 17.30.1378), and respond to comments (ARM 17.30.1377). An appeal may be taken in accordance with 75-5-403, MCA. The applicant must submit a written request for hearing within 30 days of receiving the department's final decision.

(5) A statement of basis must be prepared for every draft permit for which a fact sheet is not prepared. The statement of basis must briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis must be sent to the applicant and, on request, to any other person. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1371 FACT SHEET (1) A fact sheet must be prepared for every draft permit for a major facility or activity, and for every draft permit which the department finds is the subject of widespread public interest or raises major issues. The fact sheet must briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The department shall send this fact sheet to the applicant and, on request, to any other person.

(2) The fact sheet must include, when applicable:

(a) a brief description of the type of facility or activity which is the subject of the draft permit;

(b) the type and quantity of wastes, fluids, or pollutants which are proposed to be discharged.

(c) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) a description of the procedures for reaching a final decision on the draft permit including:

(i) the beginning and ending dates of the comment period under ARM 17.30.1372 and the address where comments will be received;

(ii) procedures for requesting a hearing and the nature of that hearing; and

(iii) any other procedures by which the public may participate in the final decision; and

(f) name and telephone number of a person to contact for additional information. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1372 PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD (1) The department shall give public notice that the following actions have occurred:

(a) a permit application has been tentatively denied under ARM 17.30.1370(2);

(b) a draft permit has been prepared under ARM 17.30.1370(4);

(c) a hearing has been scheduled under ARM 17.30.1374;

(d) an MPDES new source determination has been made under ARM 17.30.1340.

(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under ARM 17.30.1365(2). Written notice of that denial must be given to the requester and to the permittee.

(3) Public notices may describe more than one permit or permit actions.

(4) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under (1) must allow at least 30 days for public comment. If the department determines that an environmental impact statement (EIS) must be prepared for a new source, public notice of the draft permit may not be given until after a draft EIS is issued. Public notice of a public hearing must be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(5) Public notice of activities described in (1)(a) must be given by the following methods:

(a) by mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this rule may waive his or her rights to receive notice for any classes and categories of permits):

(i) the applicant;

(ii) federal and state agencies with jurisdiction over fish and wildlife resources and other appropriate government authorities, including any affected states;

(iii) any state agency responsible for plan development under federal Clean Water Act section 208(b)(2), 208(b)(4), or 303(e), and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

(iv) any user identified in the permit application of a privately owned treatment works;

(v) persons on a mailing list developed by:

(A) including those who request in writing to be on the list;

(B) soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(C) notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals (the department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The department may delete from the list the name of any person who fails to respond to such a request);

(vi)(A) to any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(B) to each state agency having any authority under state law with respect to the construction or operation of such facility.

(b) for major permits and MPDES general permits, a notice published in a daily or weekly newspaper within the area affected by the facility or activity;

(c) in any other manner constituting legal notice to the public under state law; and

(d) any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(6) All public notices issued under this rule must contain the following minimum information:

(a) name and address of the office processing the permit action for which notice is being given;

(b) name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(c) a brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(d) name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit as the case may be, statement of basis or fact sheet, and the application;

(e) a brief description of the comment procedures required by ARM 17.30.1373 and 17.30.1374 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

(f) a general description of the location of each existing or proposed discharge point and the name of the receiving water.

(7) In addition to the general public notice described in (6)(a), the public notice of a hearing under ARM 17.30.1374 must contain the following information:

(a) reference to the date of previous public notices relating to the permit;

(b) date, time, and place of the hearing; and

(c) a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(8) In addition to the general public notice described in (4)(a), all persons identified in (5)(a)(i) through (iv) must be afforded an opportunity to request a copy of the fact sheet, the permit application (if any), and the draft permit (if any). (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1373 PUBLIC COMMENTS AND REQUESTS FOR PUBLIC HEARINGS (1) During the public comment period provided under ARM 17.30.1372, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised in the hearing. All comments must be considered in making the final decision and must be answered as provided in ARM 17.30.1377. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1374 PUBLIC HEARINGS (1)(a) The department shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit(s);

(b) the department may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision;

(c) public notice of the hearing must be given as specified in ARM 17.30.1372.

(2) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under ARM 17.30.1372 must automatically be extended to the close of any public hearing under this rule. The hearing officer may also extend the comment period by so stating at the hearing.

(3) A tape recording or written transcript of the hearing must be made available to the public. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1375 OBLIGATION TO RAISE ISSUES AND PROVIDE INFORMATION (1) All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the department's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under ARM 17.30.1372. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1376 REOPENING OF THE PUBLIC COMMENT PERIOD If any data, information or arguments submitted during the public comment period, including information or arguments required under ARM 17.30.1375, appear to raise substantial new questions concerning a permit, the department may take one or more of the following actions:

(1) prepare a new draft permit, appropriately modified, under ARM 17.30.1370;

(2) prepare a revised fact sheet under ARM 17.30.1371, and reopen the comment period under ARM 17.30.1376; or

(3) reopen or extend the comment period under ARM 17.30.1370 to give interested persons an opportunity to comment on the information or arguments submitted. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1377 RESPONSE TO COMMENTS (1) At the time that any final permit decision is issued under ARM 17.30.1378, the department shall issue a response to comments. This response must:

(a) specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(b) briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1378 ISSUANCE AND EFFECTIVE DATE OF PERMIT (1) After the close of the public comment period under ARM 17.30.1372, the department will issue a final permit decision. The department will notify the applicant and each person who has submitted written comments or requested notice of that decision for contesting the decision. The notice must include reference to the procedures for appealing the decision. For the purpose of this rule, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(2) A final permit decision is effective 30 days after the service of notice of the decision under (1) unless:

(a) a later effective date is specified in the decision, or an appeal is filed pursuant to these rules;

(b) a stay is granted pursuant to ARM 17.30.1379; or

(c) no comments requested a change in the draft permit, in which case the permit is effective immediately upon issuance. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1379 STAYS OF CONTESTED PERMIT CONDITIONS (1) If a request to the department for review of an MPDES permit is granted, the effect of the contested permit conditions must be stayed and may not be subject to judicial review pending final action by the department. If the permit involves a new source, new discharger, or a recommencing discharger, the applicant shall be without a permit for the proposed new facility, source, or discharger pending final action by the department.

(2) Uncontested conditions which are not severable from those contested must be stayed together with the contested conditions. Stayed provisions of permits for existing facilities and sources must be identified by the department. All other provisions of the permit for the existing facility or source must remain fully effective and enforceable. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

Rules 17.30.1380 through 17.30.1382 reserved

17.30.1383 CONDITIONS REQUESTED BY GOVERNMENT AGENCIES

(1) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, or wildlife resources, the department may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of ARM 17.30.1350 and of the Act.

(2) In appropriate cases the department may consult with one or more of the agencies referred to in this rule before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1384 DISPOSAL WELLS Disposal of pollutants into wells that affect state waters is prohibited, except:

(1) as provided in the terms and conditions of an MPDES permit; or

(2) water, gas, or other material which is injected into a well to facilitate production of oil or gas or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved under ARM 36.22.1226 through ARM 36.22.1234 and it has been determined that such injection or disposal will not result in the degradation of ground or surface water resources. (History: 75-5-304, MCA; IMP, 75-5-304, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1385 AGENCY MEMBERSHIP RESTRICTIONS (1) Any body which approves MPDES permit applications or portions thereof may not include as a member any person who receives, or has during the previous two years received a significant portion of his income directly or indirectly from permit holders or applicants for a permit.

(2) For the purposes of this rule, the term "body" includes any individual who has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal.

(3) For the purposes of this rule, the term "significant portion of his income" means 10% of gross personal income for a calendar year, except that it means 50% of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement.

(4) For the purposes of this rule, the term "permit holders or applicants for a permit" does not include any department or agency of a state government, such as a department of parks or a department of fish and game.

(5) For the purposes of this rule, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(6) For the purposes of this rule, income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual fund payments, or from other diversified investments over which the recipient does not know the identity of the primary sources of income. (History: 75-5-304, MCA; IMP, 75-5-304, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1386 STATE AND EPA COORDINATION (1) The department shall enter into formal agreements with the regional administrator concerning procedures for the following actions:

(a) transmittal to the regional administrator copies of completed MPDES permit applications, tentative determinations and related documents concerning issuance or denial of MPDES permits;

(b) consideration by the department of all comments of the regional administrator concerning tentative determinations to issue or deny an MPDES permit;

(c) transmittal to the regional administrator copies of issued MPDES permits and related documents;

(d) transmittal to the department of all Refuse Act of 1899 (33 USC 401-413) applications and issued permits, NPDES applications, and issued permits, and all other relevant data collected by the regional administrator;

(e) consideration of confidentiality of information submitted by applicants in connection with MPDES, NPDES, or Refuse Act of 1899 (33 USC 401-413) permit applications or which may be furnished by the permittee in connection with required periodic reports; and

(f) specifications of additional monitoring, recording, and reporting procedures, if necessary to insure compliance with the federal regulations contained in or subsequent revisions to 40 CFR 124, subpart G.

(2) On the last day of the months of February, May, August, and November, the department shall transmit to the regional administrator a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the department of compliance or noncompliance with each interim or final requirement of a schedule of compliance. Such list must be available to the public for inspection and copying and must contain at least the following information with respect to each instance of noncompliance:

- (a) name and address of each noncomplying permittee;
- (b) a short description of each instance of noncompliance;
- (c) a short description of any actions or proposed actions by the permittee or the department to comply or enforce compliance with the interim or final requirement; and
- (d) any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement. (History: 75-5-304, MCA; IMP, 75-5-304, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1387 SMALL CONFINEMENT FACILITIES FOR ANIMALS

- (1) Unless considered necessary by the department, the procedural requirements of ARM 17.30.1370 through 17.30.1377 and the requirements for state-EPA coordinators in ARM 17.30.1386 do not apply to small confinement facilities for animals. (History: 75-5-304, MCA; IMP, 75-5-304, 75-5-401, MCA; NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

