



## ADMINISTRATIVE RULES OF MONTANA



### 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) when there are material and substantial alterations or additions to the permitted facility or activity that 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) when the department receives new information that was not available at the time of permit issuance. 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) when 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 department 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 department 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) when 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) upon request of a permittee who qualifies for effluent limitations on a net basis under ARM 17.30.1345(10) or 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; and
  - (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).
  - (q) To incorporate the terms of a concentrated animal feeding operation's (CAFO) nutrient management plan into the terms and conditions of a general permit, when a CAFO obtains coverage under a general permit in accordance with 40 CFR 122.23(h) and 122.28, is not a cause for modification pursuant to the requirements of this rule.
- (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; and
  - (b) the department has received notification 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 department adopts and incorporates by reference the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620-0901:
- (a) 40 CFR Part 133 (July 1, 2012), which sets 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 allow 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 allows 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 requires that states administering the NPDES program notify other states whose waters may be affected by a proposed discharge;
- (e) 40 CFR 125.3(c) (July 1, 2012), sets forth methods of imposing technology-based treatment requirements in permits;
- (f) 40 CFR 122.23(h) (July 1, 2012), which sets forth procedures for CAFOs seeking coverage under a general permit; and
- (g) 40 CFR 122.28 (July 1, 2012), which sets forth conditions applicable to the issuance of general permits.

**Authorizing statute(s):** 75-5-201, 75-5-401, MCA

**Implementing statute(s):** 75-5-401, MCA

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**History:** 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; AMD, 2013 MAR p. 529, Eff. 4/12/13; AMD, 2020 MAR p. 1879, Eff. 10/24/20; AMD, 2024 MAR p. 257, Eff. 2/10/24.