



ADMINISTRATIVE RULES OF MONTANA

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) Monitoring and records:
 - (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) Reporting requirements:

- (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) Twenty-four hour reporting:
 - (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) Other noncompliance:
- (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) Upset Conditions:
- (a) Effect of an upset: 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) Conditions necessary for demonstration of an upset: A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (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) Burden of proof: In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.
- (15) The department adopts and incorporates 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.

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

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

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, 2020 MAR p. 1879, Eff. 10/24/20; AMD, 2024 MAR p. 257, Eff. 2/10/24.