

CO2: Regulation and Permitting Framework Considerations

Presented to Energy and Telecommunications Interim Committee
October 5, 2007 - Bonnie Lovelace, Chief Water Protection Bureau, DEQ

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Exhibit #11

**MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY
PERMITTING & COMPLIANCE DIVISION
WATER PROTECTION BUREAU**

**MONTANA GROUND WATER
POLLUTION CONTROL SYSTEM**

Administrative Rules of Montana 17.30.1001-1045

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ENVIRONMENTAL QUALITY

CHAPTER 30

WATER QUALITY

Subchapter 10

Montana Ground Water Pollution Control System

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Subchapter 10

Montana Ground Water Pollution Control System

17.30.1001 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter:

(1) "Beneficial use" means a use of ground water designated under the appropriate classification in ARM 17.30.1006.

(2) "DEQ-7" means department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (February 2006 edition), which establishes water quality standards for toxic, carcinogenic, radioactive, bioconcentrating, nutrient, and harmful parameters.

(a) The board adopts and incorporates by reference department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (February 2006 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

(3) "Discharge" means the addition of any pollutant to waters of the state.

(4) "Discharge limitations" means limitations imposed on the design or operation of a source to control the entry of pollutants into ground water.

(5) "Existing source" means a source which is or has been in operation or on which construction has commenced on October 29, 1982.

(6) "Ground water" means water occupying the voids within a geologic stratum and within the zone of saturation.

(7) "Mixing zone" means a portion of ground water to which pollutants are discharged and in which otherwise applicable ground water standards may be exceeded.

(8) "Montana ground water quality standards" means the standards for ground water quality set forth in ARM 17.30.1006.

(9) "Montana pollutant discharge elimination system (MPDES)" means the system developed by the state of Montana for issuing permits for the discharge of pollutants from point sources into state surface waters pursuant to ARM Title 17, chapter 30, subchapter 12.

(10) "MGWPCS" means the Montana ground water pollution control system established in this subchapter.

(11) "MPDES permit" means any permit issued by the department pursuant to ARM Title 17, chapter 30, subchapter 13 to regulate the discharge of pollutants from point sources into state surface waters.

(12) "Nonpoint source" means a diffuse source of pollutants resulting from the activities of man over a relatively large area, the effects of which normally must be addressed or controlled by a management practice rather than by an engineered containment or structure.

(13) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a source discharging pollutants to ground waters.

(14) "Source" means any sewage system, treatment works, point source, disposal system, concentration of pollutants, or pond containing process wastes or pollutants used, employed, or operated so that the same results or under normal operating conditions may reasonably be expected to result in the discharge of pollutants to ground waters of the state.

(15) "UIC program" means the underground injection control program established in compliance with the federal Safe Drinking Water Act, 42 USCA 300f, et seq. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-301, 75-5-401, MCA; NEW, 1982 MAR p. 1937, Eff. 10/29/82; TRANS, from DHES, 1996 MAR p. 1499; AMD, 1997 MAR p. 402, Eff. 2/25/97; AMD, 1999 MAR p. 94, Eff. 1/15/99; AMD, 1999 MAR p. 2257, Eff. 10/8/99; AMD, 1999 MAR p. 2275, Eff. 10/8/99; AMD, 2002 MAR p. 387, Eff. 2/15/02; AMD, 2003 MAR p. 217, Eff. 2/14/03; AMD, 2004 MAR p. 725, Eff. 4/9/04; AMD, 2006 MAR p. 528, Eff. 2/24/06.)

17.30.1002 CLASSIFICATION OF GROUND WATER (REPEALED)

(History: 75-5-201, MCA; IMP, 75-5-301, MCA; NEW, 1982 MAR p. 1937, Eff. 10/29/82; TRANS, from DHES, 1996 MAR p. 1499; REP, 1999 MAR p. 94, Eff. 1/15/99.)

17.30.1003 GROUND WATER QUALITY STANDARDS (REPEALED)

(History: 75-5-301, MCA; IMP, 75-5-301, MCA; NEW, 1982 MAR p. 1937, Eff. 10/29/82; AMD, 1994 MAR p. 2136, Eff. 8/12/94; AMD, 1995 MAR p. 1798, Eff. 9/15/95; AMD, 1996 MAR p. 555, Eff. 2/23/96; TRANS, from DHES, 1996 MAR p. 1499; REP, 1999 MAR p. 94, Eff. 1/15/99.)

Rule 17.30.1004 reserved

17.30.1005 APPLICABILITY OF GROUND WATER STANDARDS AND BASIS FOR CLASSIFICATIONS

(1) The standards in ARM 17.30.1006 establish the maximum allowable changes in ground water quality and are the basis for limiting discharges to ground water.

(2) The ground water standards may be exceeded within a mixing zone established pursuant to ARM 17.30.501 through 17.30.518.

(3) It is not necessary to treat discharges to a purer condition than the natural condition of the receiving water, within the meaning of 75-5-306, MCA.

(4) The classifications of ground water are based on natural specific conductance as specified in ARM 17.30.1006. (History: 75-5-301, 80-15-105, 80-15-201, MCA; IMP, 75-5-301, 80-15-201, MCA; NEW, 1999 MAR p. 94, Eff. 1/15/99.)

17.30.1006 CLASSIFICATIONS, BENEFICIAL USES, AND SPECIFIC STANDARDS FOR GROUND WATERS

(1) Class I ground waters are those ground waters with a natural specific conductance less than or equal to 1,000 microSiemens/cm at 25°C.

(a) The quality of Class I ground water must be maintained so that these waters are suitable for the following beneficial uses with little or no treatment:

- (i) public and private water supplies;
- (ii) culinary and food processing purposes;
- (iii) irrigation;
- (iv) drinking water for livestock and wildlife; and
- (v) commercial and industrial purposes.

(b) Except as provided in ARM 17.30.1005(2), a person may not cause a violation of the following specific water quality standards in Class I ground water:

- (i) the human health standards for ground water listed in DEQ-7;
- (ii) for concentrations of parameters for which human health standards are not listed in DEQ-7, no increase of a parameter to a level that renders the waters harmful, detrimental, or injurious to the beneficial uses listed for Class I water. The department may use any pertinent credible information to determine these levels; and

(iii) no increase of a parameter that causes a violation of the nondegradation provisions of 75-5-303, MCA.

(2) Class II ground waters are those ground waters with a natural specific conductance that is greater than 1,000 and less than or equal to 2,500 microSiemens/cm at 25°C.

(a) The quality of Class II ground water must be maintained so that these waters are at least marginally suitable for the following beneficial uses:

- (i) public and private water supplies;
- (ii) culinary and food processing purposes;
- (iii) irrigation of some agricultural crops;
- (iv) drinking water for livestock and wildlife; and
- (v) most commercial and industrial purposes.

(b) Except as provided in ARM 17.30.1005(2), a person may not cause a violation of the following specific water quality standards for Class II ground water:

(i) the human health standards for ground water listed in DEQ-7;

(ii) for concentrations of parameters for which human health standards are not listed in DEQ-7, no increase of a parameter to a level that renders the waters harmful, detrimental, or injurious to the beneficial uses listed for Class II water. The department may use any pertinent credible information to determine these levels; and

(iii) no increase of a parameter that causes a violation of the nondegradation provisions of 75-5-303, MCA.

(3) Class III ground waters are those ground waters with a natural specific conductance that is greater than 2,500 and less than or equal to 15,000 microSiemens/cm at 25°C.

(a) The quality of Class III ground water must be maintained so that these waters are at least marginally suitable for the following beneficial uses:

(i) irrigation of some salt tolerant crops;

(ii) some commercial and industrial purposes;

(iii) drinking water for some livestock and wildlife; and

(iv) drinking, culinary, and food processing purposes where the specific conductance is less than 7,000 microSiemens/cm at 25°C.

(b) Except as provided in ARM 17.30.1005(2), a person may not cause a violation of the following specific water quality standards for Class III ground water:

(i) the human health standards listed in DEQ-7, except that the nitrate nitrogen and nitrate plus nitrite nitrogen standards listed in DEQ-7 do not apply to ground waters with a specific conductance equal to or greater than 7,000 microSiemens/cm at 25°C. The nitrate nitrogen and nitrate plus nitrite nitrogen standards for these waters are each 50 mg/l; and

(ii) for concentrations of parameters for which human health standards for ground water are not listed in DEQ-7, no increase of a parameter to a level that renders the waters harmful, detrimental, or injurious to the beneficial uses listed for Class III water. The department may use any pertinent credible information to determine these levels.

(c) The nondegradation provisions of 75-5-303, MCA, do not apply to Class III ground water.

(4) Class IV ground waters are those ground waters with a natural specific conductance greater than 15,000 microSiemens/cm at 25°C.

(a) The quality of Class IV ground waters must be maintained so that they are suitable for some industrial and commercial uses.

(b) Except as provided in (5) and ARM 17.30.1005(2), a person may not cause a violation of the following specific water quality standards for Class IV ground water:

(i) the human health standards for parameters categorized as carcinogens in DEQ-7;

(ii) for concentrations of parameters in DEQ-7 which are not listed as carcinogens, no increase of a parameter to a level that would adversely affect existing beneficial uses. The nitrate nitrogen and nitrate plus nitrite nitrogen standards are each 50 mg/l;

(iii) for concentrations of parameters for which human health standards are not listed in DEQ-7, no increase of a parameter to a level that would adversely affect existing beneficial uses. The department may use any pertinent credible information to determine these levels.

(c) The nondegradation provisions of 75-5-303, MCA, do not apply to Class IV ground water.

(5) For Class III or IV waters, where it can be demonstrated to the satisfaction of the department that the field hydraulic conductivity is less than 0.1 feet per day in an affected or potentially affected ground water zone, the nitrate nitrogen and nitrate plus nitrite nitrogen standards in (3)(b)(i) and (4)(b)(ii) do not apply, provided that all existing and anticipated uses of the ground waters are protected.

(6) The ground water quality standards for metal parameters are based on the dissolved portion (after filtration through a 0.45 micron filter) of the contaminant in the ground water. The ground water quality standards for other parameters in department Circular DEQ-7 are based upon unfiltered samples. For inorganic parameters, compliance with standards based on filtered samples must be assumed if analyses using the total recoverable method demonstrates compliance with the numerical standards. (History: 75-5-301, 80-15-105, 80-15-201, MCA; IMP, 75-5-301, 80-15-201, MCA; NEW, 1999 MAR p. 94, Eff. 1/15/99; AMD, 2002 MAR p. 387, Eff. 2/15/02; AMD, 2003 MAR p. 217, Eff. 2/14/03; AMD, 2004 MAR p. 1617, Eff. 4/9/04; AMD, 2006 MAR p. 528, Eff. 2/24/06.)

17.30.1007 SAMPLE COLLECTION, PRESERVATION, AND ANALYSIS METHODS (1) Methods of sample collection, preservation, and sample analysis used to determine compliance with the standards in this subchapter must be in accordance with 40 CFR 136 "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (July 1997), or the following:

(a) EPA-SW-846, Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996), and IIIA (May 1999) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods";

(b) EPA-600/R-95/131 (August 1995), "Methods for the Determination of Organic Compounds in Drinking Water", Supplement III;

(c) EPA-600/R-93/100 (August 1993), "Methods for the Determination of Inorganic Substances in Environmental Samples";

(d) EPA-600/R-94/111 (May 1994), "Methods for the Determination of Metals in Environmental Samples," Supplement I; or;

(e) methods specifically approved by the department in a permit, license, authorization, or approval provided for by statute or rule.

(2) Analyses of parameters to determine compliance with ground water standards must comply with the required reporting values given in DEQ-7.

(3) The board adopts and incorporates by reference the following publications:

(a) EPA-SW-846, [Third Edition (November 1986), as amended by Updates I (July, 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996)], "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods";

(b) EPA-600/R-95/131 (August 1995), "Methods for the Determination of Organic Compounds in Drinking Water", Supplement III;

(c) EPA-600/R-93/100 (August 1993), "Methods for the Determination of Inorganic Substances in Environmental Samples"; and

(d) EPA-600/R-94/111 (May 1994), "Methods for the Determination of Metals in Environmental Samples", Supplement I.

(4) Copies of the publications in (3)(a) through (d) are available at the Department of Environmental Quality, 1520 East Sixth Avenue, P.O. Box 200901, Helena, MT 59620-0901. (History: 75-5-301, MCA; IMP, 75-5-301, MCA; NEW, 1999 MAR p. 94, Eff. 1/15/99; AMD, 2002 MAR p. 387, Eff. 2/15/02; AMD, 2003 MAR p. 217, Eff. 2/14/03; AMD, 2004 MAR p. 725, Eff. 4/9/04; AMD, 2006 MAR p. 528, Eff. 2/24/06.)

Rules 17.30.1008 and 17.30.1009 reserved

17.30.1010 MIXING ZONE (1) Discharges of pollutants to ground waters may be granted a mixing zone by the department, provided the mixing zone is specifically identified and conforms with the requirements and procedures of ARM Title 17, chapter 30, subchapter 5.

(2) The board hereby adopts and incorporates by reference ARM Title 17, chapter 30, subchapter 5, which establishes requirements and procedures for the granting or denying of mixing zones by the department. (History: 75-5-301, MCA; IMP, 75-5-301, MCA; NEW, 1982 MAR p. 1937, Eff. 10/29/82; AMD, 1994 MAR p. 2136, Eff. 8/12/94; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1011 NONDEGRADATION (1) Any ground water whose existing quality is higher than the established groundwater quality standards for its classification must be maintained at that high quality in accordance with 75-5-303, MCA, and ARM Title 17, chapter 30, subchapter 7. (History: 75-5-301, 75-5-303, MCA; IMP, 75-5-303, MCA; NEW, 1982 MAR p. 1937, Eff. 10/29/82; AMD, 1994 MAR p. 2136, Eff. 8/12/94; TRANS, from DHES, 1996 MAR p. 1499.)

Rules 17.30.1012 through 17.30.1021 reserved

17.30.1022 EXCLUSIONS FROM PERMIT REQUIREMENTS (1) In addition to the permit exclusions identified in 75-5-401, MCA, the following activities or operations are not subject to the permit requirements of ARM 17.30.1023, 17.30.1024, 17.30.1030 through 17.30.1033, 17.30.1040, and 17.30.1041:

(a) motor vehicle wrecking facilities and county motor vehicle graveyards licensed pursuant to Title 75, chapter 10, MCA;

(b) sources that obtain an MPDES permit pursuant to ARM Title 17, chapter 30, subchapter 13;

(c) public sewage systems that were reviewed and approved by the department prior to May 1, 1998, under Title 75, chapter 6, and ARM 17.38.101. However, this exclusion does not apply to systems with a design capacity greater than 5000 gallons per day, if the operator of the system requests a modification after May 1, 1998, or if the department determines that operation of the system has caused a violation of a statute or rule administered by the department after May 1, 1998;

(d) public sewage systems with a design capacity less than 5000 gallons per day, that are reviewed and approved by the department after May 1, 1998, under Title 75, chapter 6, MCA, and ARM 17.38.101;

(e) multi-family sewage disposal systems reviewed and approved by the department under Title 76, chapter 4, MCA, and multi-family sewage disposal systems reviewed and approved by a local government under Title 76, chapter 3, MCA, after May 1, 1998. However, this exclusion does not apply to aerobic package plant systems, mechanical treatment plants, and nutrient removal systems, which require a high degree of operation and maintenance, or systems which require monitoring pursuant to ARM 17.30.517(1)(d)(ix);

(f) multi-family sewage disposal systems reviewed and approved by the Department of Public Health and Human Services under Title 50, chapters 50, 51, and 52, MCA, and multi-family sewage disposal systems reviewed and approved by local boards of health under Title 50, chapter 2, MCA, after May 1, 1998. However, this exclusion does not apply to aerobic package plant systems, mechanical treatment plants, and nutrient removal systems, which require a high degree of operation and maintenance, or systems which require monitoring pursuant to ARM 17.30.517(1)(d)(ix); and

(g) public sewage systems that use land application as a method of disposal and that have been reviewed and approved by the department under Title 75, chapter 6, MCA, and ARM 17.38.101.

(2) Notwithstanding the exclusions set forth in (1), all sources are subject to the provisions of ARM 17.30.1001 through 17.30.1003, 17.30.1010, 17.30.1011, and 17.30.1045. Furthermore, any excluded source which the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602, MCA. (History: 75-5-401, MCA; IMP, 75-5-401, 75-5-602, MCA; NEW, 1982 MAR p. 1937, Eff. 10/29/82; TRANS, from DHES, and AMD, 1996 MAR p. 1499, Eff. 6/7/96; AMD, 1997 MAR p. 402, Eff. 2/25/97; AMD, 1998 MAR p. 1164, Eff. 5/1/98.)

17.30.1023 PERMIT APPLICATIONS (1) The owner or operator of any existing source not excluded under ARM 17.30.1022 discharging pollutants into state ground waters shall file an MGWPCS permit application within one year of October 29, 1982.

(2) The owner or operator of any source with an MGWPCS permit who proposes any modification, subsequent to October 29, 1982, which the department determines may result in violation of existing permit conditions shall file a new completed MGWPCS permit application no less than 180 days prior to the day on which it is desired to commence operation of the modified discharge.

(3) The owner or operator of any proposed source not excluded under ARM 17.30.1022 which may discharge pollutants into state ground waters shall file a completed MGWPCS permit application no less than 180 days prior to the day on which it is desired to commence operation of the source.

(4) All applications for an MGWPCS permit must be submitted on forms obtained from the department and must contain the following information as deemed necessary by the department:

- (a) a specific site plan, indicating topography;
- (b) location of treatment works and disposal systems;
- (c) location of adjacent state surface waters;
- (d) list of surface owners and lessees of land within one mile of the proposed source;
- (e) location of water supply wells and springs within one mile;
- (f) description of waste or process solutions to be contained on site; and
- (g) information describing existing ground water quality and uses within one mile of the site.

(5) The department may require the submission of additional data and information with any MGWPCS permit application where warranted by the potential impacts of a source including, but not limited to, the following:

(a) specific design conditions and process descriptions, proposed alternatives, soil conditions, descriptions in areas proposed for location of treatment ponds and land disposal, geological conditions, ground water characteristics, local hydrogeology, discussion of potential for and measures to be taken for emergency and accidental spills, chemical and physical characteristics of process water and wastewater, nature of proposed pond sealants and linings.

(b) for industrial wastes, waste flow diagrams showing water and material balances, chemical additions, and waste volumes and concentrations before and after treatment including, but not limited to, oil and other floating material, biochemical oxygen demand, settleable and suspended solids, acids, alkalis, dissolved salts, organic materials, toxic materials, compounds producing taste and odor in water, and colored materials and dyes.

(c) proposed measures to be taken to provide alternative water supplies or treatment in the event any domestic, municipal, agricultural, or commercial/industrial well is adversely affected by the operation of the source; and

(d) a written evaluation of alternative disposal practices for maximization of environmental protection.

(6) Operators who have submitted permit applications for ground water discharge sources to the department under the MPDES permit program will be deemed to have complied with the requirements of this rule. (History: 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1982 MAR p. 1937, Eff. 10/29/82; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1024 REVIEW PROCEDURES (1) No application will be processed by the department until all of the requested information is supplied and the application is complete. The department shall make a determination of the completeness of the information within 30 calendar days of receipt of an application.

(2) After receipt of a MGWPCS permit application and requested supplemental information, the department shall make a tentative determination with respect to issuance or denial of an MGWPCS permit. The tentative determination must be based on compliance or noncompliance with the requirements of this subchapter and Title 75, chapter 5, MCA.

(3) After making the tentative determination, the department shall take the following action:

(a) If the determination is to deny an MGWPCS permit, the department shall give written notice of the denial to the applicant, including a statement of reasons for the denial.

(b) If the determination is to issue an MGWPCS permit, the department shall prepare a draft MGWPCS permit, which must include the following:

- (i) proposed discharge limitations and conditions;
- (ii) monitoring and reporting requirements if any;
- (iii) necessary schedules of compliance, including interim dates and requirements for meeting proposed discharge limitations or other special conditions.

(4) A public notice of every completed MGWPCS permit application must be circulated by the department in accordance with the procedures described in ARM 17.30.1040 to inform the public of the proposed discharge and of the tentative determination.

(5) The department shall provide a period of not less than 30 days following the date of the public notice during which time any person may submit written views or request a public hearing on the tentative determination. Any request for a public hearing must indicate the interest of the party filing the request and the reasons why a hearing is warranted.

(6) The department may hold a hearing on its own initiative or when it determines good cause exists to hold such a hearing upon request of any person. Public notice of a public hearing on a tentative determination must be given in accordance with ARM 17.30.1040.

(7) If a public hearing is not held pursuant to (6), the department shall, within 30 days after termination of the comment period provided for in (5), make a final determination on issuance or denial of an MGWPCS permit. All written comments submitted during the 30-day comment period must be retained by the department and considered in the formation of the final determination.

(8) If a public hearing is held on the tentative determination, the department shall make its final determination on the MGWPCS permit application within 60 days following the hearing. All comments recorded during the public hearing and written comments submitted during the 30-day comment period required in (5) must be retained by the department and considered in the formation of the final determination.

(9) After making the final determination on an MGWPCS permit application the department shall issue an MGWPCS permit or give written notice to the applicant of the department's decision to deny, including notice to the applicant of its right to appeal the denial to the board. (History: 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1982 MAR p. 1937, Eff. 10/29/82; TRANS, from DHES, 1996 MAR p. 1499.)

Rules 17.30.1025 through 17.30.1029 reserved

17.30.1030 GENERAL PERMIT CONDITIONS All issued MGWPCS permits must contain general conditions including but not limited to, the following:

(1) All discharges of pollutants into state ground waters authorized by an MGWPCS permit must be consistent with the conditions of the permit; any sewerage system, treatment works or disposal system expansions, production increases or process modifications which may result in new or increased discharges of pollutants into state ground waters in violation of permit conditions must be reported to the department. After review of this information, the department will determine whether submission of a new or modified MGWPCS permit application is necessary.

(2) The discharge of pollutants to state ground waters more frequently than or at a level in excess of that identified and authorized by an MGWPCS permit is a violation of the conditions of the permit.

(3) An MGWPCS permit may be modified, suspended, or revoked in whole or in part during its term under provisions of 75-5-403 and 75-5-404, MCA, for cause including, but not limited to, any of the following:

(a) violation of any conditions of the permit;

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

(c) a change in any condition or a violation of ground water standards or degradation of high quality ground waters caused by the discharge that requires either a temporary or permanent reduction or elimination of the authorized discharge; or

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

(4) The department shall notify the permittee of any tentative determination that a permit should be modified pursuant to this section. The department shall provide a period of not less than 30 days following such notification during which time the permittee may submit its views regarding the tentative determination, which shall be considered in the formation of a final determination. The permittee may appeal any permit modification to the board of environmental review pursuant to 75-5-403, MCA. (History: 75-5-401, MCA; IMP, 75-5-401, 75-5-403, 75-5-404, MCA; NEW, 1982 MAR p. 1937, Eff. 10/29/82; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1031 SPECIAL PERMIT CONDITIONS All issued MGWPCS permits must contain special conditions which will assure compliance with the ground water quality standards, giving consideration to the economics of waste treatment and prevention. These conditions may include, but are not limited to, the following:

- (1) Authorization of discharges of pollutants into state ground waters.
- (2) Discharge limitations and, if necessary, compliance schedules on each authorized discharge of pollutants into state ground waters.
- (3) The basis of calculation of discharge limitations.
- (4) The prohibition of certain discharges without prior approval from the department.
- (5) Self-monitoring requirements for each authorized discharge including, but not limited to, the following:
 - (a) monitoring well configuration;
 - (b) pollutants to be monitored;
 - (c) frequency of monitoring, recording, and reporting;
 - (d) analytical and sampling methods to be utilized by the permittee;
 - (e) recording and reporting procedures to be utilized by the permittee; and
 - (f) procedures for reporting other considerations having an effect on authorized discharges or that may affect any of the conditions of the permit;
 - (g) the permittee will be required to maintain self-monitoring records for a minimum of three years.
- (6) Procedures to be used to alleviate ground water pollution if pollution in violation of permit conditions or ground water standards is detected. (History: 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1982 MAR p. 1937, Eff. 10/29/82; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1032 DURATION OF PERMIT (1) Every permit issued under this subchapter must have a fixed term not to exceed ten years. (History: 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1982 MAR p. 1937, Eff. 10/29/82; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1033 REISSUANCE OF PERMITS (1) Any permittee who wishes to continue to discharge after the expiration date of his MGWPCS permit must request reissuance of his permit at least 90 days prior to its date of expiration.

(2) The request for reissuance of an MGWPCS permit must be in letter form and contain as a minimum the following information:

(a) the number of the issued MGWPCS permit and date of its issuance; and
(b) any past, present, or future changes in the quantity or quality of the authorized discharge not reflected in the conditions and terms of the issued MGWPCS permit.

(3) The department shall review each request for reissuance of an MGWPCS permit in light of the existing MGWPCS permit, information provided by the permittee with the request for reissuance, and other information available to the department to insure that the following conditions exist:

(a) That the permittee is in compliance with or has substantially complied with all the conditions and terms of the expiring MGWPCS permit.

(b) That the discharge is consistent with applicable discharge limitations and compliance schedules and ground water quality standards.

(c) That the department has up-to-date information on the permittee's production levels and waste treatment practices and the quantity, quality, and frequency of the permittee's discharge.

(4) Following the review of the request for reissuance of an MGWPCS permit and any other supplemental information requested by the department, the department shall make a tentative determination to reissue or refuse to reissue an MGWPCS permit.

(5) The processing procedures for MGWPCS permit applications described in ARM 17.30.1024(4) through (9) will apply to the reissuance of an MGWPCS permit. (History: 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1982 MAR p. 1937, Eff. 10/29/82; TRANS, from DHES, 1996 MAR p. 1499.)

Rules 17.30.1034 through 17.30.1039 reserved

17.30.1040 PUBLIC NOTICE (1) Public notice of every completed MGWPCS application must be mailed to any person upon request and must be circulated within the geographic area of the proposed discharge. Circulation may include any of the following:

(a) posting in the post office and public places of the municipality nearest the premises of the applicant in which the discharge is located;

(b) posting near the entrance to the applicant's premises and in nearby places; or

(c) publishing in local newspapers and periodicals, or if appropriate, in a daily newspaper of general circulation.

(2) Public notice of any public hearing held pursuant to this subchapter must be circulated at least 30 days in advance of the hearing and at least as widely as was the notice for the MGWPCS application. Circulation must include at least the following:

(a) publication of notice in at least one newspaper of general circulation;

(b) distribution of notice to all persons and agencies receiving a copy of the notice for the MGWPCS application; and

(c) distribution to any person or group upon request. (History: 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1982 MAR p. 1937, Eff. 10/29/82; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1041 DISTRIBUTION OF INFORMATION (1) The following governmental agencies must be included on a mailing list for public notice of MGWPCS applications and are exempted from a copying fee where copies of a draft permit, fact sheet, or any related documents are requested:

(a) United States Environmental Protection Agency;

(b) United States Bureau of Land Management;

(c) United States Bureau of Reclamation;

(d) United States Soil Conservation Service;

(e) United States Forest Service;

(f) United States Geological Survey;

(g) Montana Department of Natural Resources and Conservation;

(h) Montana Bureau of Mines and Geology;

(i) Montana Department of Fish, Wildlife and Parks;

(j) Montana Department of Agriculture;

(k) Montana Environmental Quality Council;

(l) any state or federal agency requesting an opportunity to participate in the MGWPCS permit review process;

(m) local health authorities in the county in which the source is located.

(2) Any state whose waters may be affected by the issuance of an MGWPCS permit shall be provided a copy, upon request, of the MGWPCS application, draft permit, or any related documents.

(3) Upon request, the department shall add the name of any person or group to a mailing list to receive copies of notices for all MGWPCS applications.

(4) Interested parties may request or inspect a copy of the draft MGWPCS permit, or any related documents. A reasonable copying fee will be charged for any of the aforementioned documents. The copying fee for the documents relating to any particular MGWPCS application will be included as part of the notice of application. A request for MGWPCS application documents will not be processed unless payment of the stated copying fee is included with the request.

(5) The department shall provide facilities for the inspection of all information relating to MGWPCS applications and forms, except reports, papers, or information determined to be confidential in accordance with 75-5-105, MCA. A copying machine will be available to provide copies of this information at a reasonable fee. (History: 75-5-401, MCA; IMP, 75-5-105, 75-5-401, MCA; NEW, 1982 MAR p. 1937, Eff. 10/29/82; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1042 GENERAL PERMITS (1) The department may issue general MGWPCS permits pursuant to the provisions of ARM 17.30.1030. (History: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA; NEW, 1984 MAR p. 1804, Eff. 12/14/84; TRANS, from DHES, and AMD, 1996 MAR p. 1499.)

Rules 17.30.1043 and 17.30.1044 reserved

17.30.1045 EMERGENCY POWERS OF THE DEPARTMENT (1) This rule is applicable to spills or unanticipated discharges of pesticides, herbicides, other toxic substances or any other materials that would lower the quality of any ground waters of the state below Montana ground water quality standards.

(2) The owner, operator, or person responsible for a spill or unanticipated discharge must notify the department as soon as possible by contacting the Montana Disaster and Emergency Services 24-hour duty officer [(406)841-3911], and provide all relevant information about the spill.

(3) Pursuant to 75-5-621 and 75-5-622, MCA, and depending on the severity of the spill or accidental discharge, the department may require the owner or operator to:

(a) take immediate remedial measures;

(b) monitor the direction, depth and rate of movement of any contaminated ground waters and of the spilled or discharged material;

(c) determine the probable impact, including the duration of impact, on existing water supply wells, springs, and anticipated future beneficial uses of the ground water supply impacted;

(d) determine the probable impact, including the duration of impact, on surface waters that may be affected by contaminated ground waters; or

(e) provide alternate water supplies to existing water uses disrupted by the spill or unanticipated discharge. (History: 75-5-201, MCA; IMP, 75-5-621, 75-5-622, MCA; NEW, 1982 MAR p. 1937, Eff. 10/29/82; TRANS, from DHES, 1996 MAR p. 1499.)

**MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY
PERMITTING & COMPLIANCE DIVISION
WATER PROTECTION BUREAU**

**NONDEGRADATION OF WATER
QUALITY**

Administrative Rules of Montana 17.30.701 - 718

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ENVIRONMENTAL QUALITY

CHAPTER 30

WATER QUALITY

Subchapter 7

Nondegradation of Water Quality

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Subchapter 7

Nondegradation of Water Quality

17.30.701 PURPOSE (1) The purpose of this subchapter is to prohibit degradation of high quality state waters, except in certain limited circumstances, by implementing the nondegradation policy set forth in 75-5-303, MCA, and providing criteria and procedures for:

(a) determining which activities will degrade high quality waters;
(b) department review and decision making;
(c) determining the required water quality protection practices if degradation is authorized; and

(d) public review and appeal of department decisions. (History: 75-5-301, 75-5-303, MCA; IMP, 75-5-301, MCA; NEW, 1994 MAR p. 2136, Eff. 8/12/94; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.702 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for "degradation," "existing uses," "high quality waters," "mixing zone" and "parameter."):

(1) "Bioconcentrating parameters" means the parameters listed in department Circular DEQ-7 which have a bioconcentration factor greater than 300.

(2) "Carcinogenic parameters" means the parameters listed as carcinogens in department Circular DEQ-7.

(3) "Degradation" is defined in 75-5-103, MCA, and also means any increase of a discharge that exceeds the limits established under or determined from a permit or approval issued by the department prior to April 29, 1993.

(4) "Existing water quality" means the quality of the receiving water, including chemical, physical, and biological conditions immediately prior to commencement of the proposed activity or that which can be adequately documented to have existed on or after July 1, 1971, whichever is the highest quality.

(5) "Ground water" means water occupying the voids within a geologic stratum and within the zone of saturation.

(6) "Harmful parameters" means the parameters listed as harmful in department Circular DEQ-7.

(7) "Highest statutory and regulatory requirements" means all applicable effluent limitations, water quality standards, permit conditions, water quality protection practices, or reasonable land, soil, and water conservation practices. It also means compliance schedules or corrective action plans for the protection of water issued under order of a court, department, or board of competent jurisdiction.

(8) "High quality waters" is defined in 75-5-103(10), MCA, and does not include Class I surface waters (ARM 17.30.628) or Class III or Class IV ground waters (ARM 17.30.1006(3) through (4)).

(9) "Level 1a treatment" means a subsurface wastewater treatment system (SWTS) that:

(a) removes at least 50%, but less than 60%, of total nitrogen as measured from the raw sewage load to the system; or

(b) discharges a total nitrogen effluent concentration of greater than 24 mg/L, but not greater than 30 mg/L. The term does not include treatment systems for industrial waste. A level 1a designation allows the use of 30 mg/L nitrate (as N) as the nitrate effluent concentration for mixing zone calculations.

(10) "Level 1b treatment" means a SWTS that:

(a) removes at least 34%, but less than 50%, of total nitrogen as measured from the raw sewage load to the system; or

(b) discharges a total nitrogen effluent concentration of greater than 30 mg/L, but not greater than 40 mg/L. The term does not include treatment systems for industrial waste. A level 1b designation allows the use of 40 mg/L nitrate (as N) as the nitrate effluent concentration for mixing zone calculations.

(11) "Level 2 treatment" means a SWTS that:

(a) removes at least 60% of total nitrogen as measured from the raw sewage load to the system; or

(b) discharges a total nitrogen effluent concentration of 24 mg/L or less. The term does not include treatment systems for industrial waste.

(12) "Load" means the mass of a parameter per unit of time.

(13) "Management or conservation practice" means a measure to control or minimize pollution of ground and surface waters from a nonpoint source. Examples of such measures include, but are not limited to, revegetation of disturbed soil, grazing management to prevent overgrazing, contour farming, strip farming, protection of riparian areas, drainage control, and impoundments which detain surface runoff or irrigation return water for sediment control.

(14) "Mixing zone" is defined in 75-5-103, MCA, and also means a limited area of a surface water body or a portion of an aquifer, where initial dilution of a discharge takes place and where water quality changes may occur and where certain water quality standards may be exceeded.

(15) "Montana pollutant discharge elimination system" or "MPDES" means the permit system developed by the state of Montana for controlling the discharge of pollutants from point sources into state waters, pursuant to ARM Title 17, chapter 30, subchapter 13.

(16) "Montana ground water pollution control system" or "MGWPCS" means the permit system developed by the state of Montana for controlling the discharge of pollutants into state ground water, pursuant to ARM Title 17, chapter 30, subchapter 10.

(17) "Nutrients" means total inorganic phosphorus and total inorganic nitrogen.

(18) "New or increased source" means an activity resulting in a change of existing water quality occurring on or after April 29, 1993. The term does not include the following:

(a) sources from which discharges to state waters have commenced or increased on or after April 29, 1993, provided the discharge is in compliance with the conditions of, and does not exceed the limits established under or determined from, a permit or approval issued by the department prior to April 29, 1993;

(b) nonpoint sources discharging prior to April 29, 1993;

(c) withdrawals of water pursuant to a valid water right existing prior to April 29, 1993; and

(d) activities or categories of activities causing nonsignificant changes in existing water quality pursuant to ARM 17.30.670, 17.30.715, 17.30.716, or 75-5-301(5)(c), MCA.

(19) "Nonpoint source" means a diffuse source of pollutants resulting from the activities of man over a relatively large area, the effects of which normally must be addressed or controlled by a management or conservation practice.

(20) "Outstanding resource waters" or "ORW" has the meaning set out in 75-5-103, MCA.

(21) "Permit" means either an MPDES permit or an MGWPCS permit.

(22) "Reporting values (RRV)" means the detection level that must be achieved in reporting surface water or ground water monitoring or compliance data to the department unless otherwise specified in a permit, approval, or authorization issued by the department. The RRV is the department's best determination of a level of analysis that can be achieved by the majority of commercial, university, or governmental laboratories using EPA approved methods or methods approved by the department. The RRV is listed in Circular DEQ-7.

(23) "Surface waters" means any water on the earth's surface including, but not limited to, streams, lakes, ponds, and reservoirs and irrigation drainage systems discharging directly into a stream, lake, pond, reservoir, or other water on the earth's surface. Water bodies used solely for treating, transporting, or impounding pollutants are not considered surface water for the purposes of this subchapter.

(24) "Toxic parameters" means the parameters listed as toxic in department Circular DEQ-7.

(25) "Trigger values" means the values listed as trigger values in department Circular DEQ-7 for parameters categorized as toxic, and are used to determine if proposed activities will cause degradation.

(26) The board adopts and incorporates by reference:

(a) department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (February 2006 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters;

(b) department Circular DEQ-4, entitled "Montana Standards for Subsurface Wastewater Treatment Systems" (2004 edition), which establishes technical standards for construction of subsurface wastewater treatment systems; and

(c) 40 CFR Part 136, as they existed on July, 1992, which contain guidelines establishing test procedures for the analysis of pollutants.

(d) Copies of this material may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. (History: 75-5-301, 75-5-303, MCA; IMP, 75-5-303, MCA; NEW, 1994 MAR p. 2136, Eff. 8/12/94; AMD, 1995 MAR p. 1798, Eff. 9/15/95; AMD, 1996 MAR p. 555, Eff. 2/23/96; TRANS, from DHES, 1996 MAR p. 1499; AMD, 1999 MAR p. 94, Eff. 1/15/99; AMD, 1999 MAR p. 2257, Eff. 10/8/99; AMD, 1999 MAR p. 2275, Eff. 10/8/99; AMD, 2002 MAR p. 387, Eff. 2/15/02; AMD, 2003 MAR p. 217, Eff. 2/14/03; AMD, 2004 MAR p. 725, Eff. 4/9/04; AMD, 2004 MAR p. 1384, Eff. 6/18/04; AMD, 2006 MAR p. 528, Eff. 2/24/06.)

Rules 17.30.703 and 17.30.704 reserved

17.30.705 NONDEGRADATION POLICY--APPLICABILITY AND LEVEL OF PROTECTION (1) The provisions of this subchapter apply to any activity of man resulting in a new or increased source which may cause degradation.

(2) Department review of proposals for new or increased sources will determine the level of protection required for the impacted water as follows:

(a) For all state waters, existing and anticipated uses and the water quality necessary to protect those uses must be maintained and protected.

(b) For high quality waters, degradation may be allowed only according to the procedures in ARM 17.30.708. These rules apply to any activity that may cause degradation of high quality waters, for any parameter, unless the changes in existing water quality resulting from the activity are determined to be nonsignificant under ARM 17.30.670, 17.30.715, or 17.30.716. If degradation of high quality waters is allowed, the department will assure that within the United States Geological Survey hydrologic unit upstream of the proposed activity, there shall be achieved the highest statutory and regulatory requirements for all point and nonpoint sources. This assurance will be achieved through ongoing administration by the department of mandatory programs for control of point and nonpoint discharges.

(c) For outstanding resource waters, no degradation is allowed and no permanent change in the quality of outstanding resource waters resulting from a new or increased point source discharge is allowed.

(3) The department will comply with the provisions of the Montana Environmental Policy Act in the implementation of this subchapter. (History: 75-5-301, 75-5-303, MCA; IMP, 75-5-303, MCA; NEW, 1994 MAR p. 2136, Eff. 8/12/94; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2000 MAR p. 843, Eff. 3/31/00; AMD, 2006 MAR p. 528, Eff. 2/24/06.)

17.30.706 INFORMATIONAL REQUIREMENTS FOR NONDEGRADATION SIGNIFICANCE/AUTHORIZATION REVIEW (1) Any person proposing an activity that may cause degradation is responsible for compliance with 75-5-303, MCA. Except as provided in (2), a person may:

(a) determine for themselves, using the standards contained in ARM 17.30.715 and 17.30.716, that the proposed activity will not cause significant changes in water quality as defined in ARM 17.30.705; or

(b) submit an application to the department pursuant to (3), for the department to make the determination.

(2) The department will determine whether a proposed activity may cause degradation based on information submitted by the applicant for all activities that are permitted, approved, licensed, or otherwise authorized by the department. If the department determines that additional information is necessary to determine whether the activity is nonsignificant according to criteria established by the board, the department may require the applicant to provide the information in (3)(a) through (e).

(3) Any person proposing an activity that may cause degradation and is not an activity included under (2) may complete a department "Application for Determination of Significance." Information required for the application includes, but is not limited to:

- (a) quantity and concentration of the parameters expected to change as a result of the proposed activity;
- (b) length of time that the water quality is expected to be changed;
- (c) character of the discharge;
- (d) an analysis of the existing water quality of the receiving water, and any other downstream or downgradient waters which may be reasonably expected to be impacted, including natural variations and fluctuations in the parameter(s) which may change as a result of the proposed activity; or
- (e) proposed water quality protection practices.

(4) The department will review an "Application for Determination of Significance" submitted under (3) and make a determination whether the proposed change in water quality is nonsignificant according to ARM 17.30.715 or 17.30.716 within 60 days of receipt of the completed application.

(5) Whenever the department determines that a proposed activity will not result in degradation, the department may require monitoring to verify compliance with this subchapter and 75-5-303, MCA.

(6) Whenever the department determines that a proposed activity will result in degradation, the applicant shall complete an application to degrade state waters if the applicant decides to proceed with the proposed activity as planned. The department will not begin review of the application until the required fee has been paid to the department.

(7) In order to provide the information that is required for the department to determine whether or not degradation is necessary because there are no economically, environmentally, and technologically feasible alternatives to the proposed activity that would result in no degradation, an application to degrade state waters shall include, but not be limited to, the following, when applicable:

- (a) a complete description of the proposed activity;
- (b) the proposed effluent or discharge limitation(s);
- (c) a statement of reasons for the proposed effluent or discharge limitation(s);

(d) an analysis of alternatives to the proposed activity, consistent with accepted engineering principles, demonstrating there are no economically, environmentally, and technologically feasible alternatives that are less-degrading or non-degrading. The analysis must be limited to only those alternatives that would accomplish the proposed activity's purpose;

(e) an analysis of the existing water quality of the receiving water and any other downstream or downgradient waters which may be impacted, including natural variations and fluctuations in the water quality parameter(s) for which an authorization to degrade is requested;

(f) the concentration, likely environmental fate, biological effects, and load for each parameter in the discharge likely to degrade existing water quality;

(g) the distribution of existing flows and their expected frequency;

(h) an analysis demonstrating the expected surface or ground water quality for all alternatives considered in (d);

(i) an analysis of the ground water flow system, including water-bearing characteristics of subsurface materials, rate and direction of ground water flow, and an evaluation of surface and ground water interaction;

(j) data concerning cumulative water quality effects of existing and authorized activities;

(k) a proposed monitoring and reporting plan that will determine the actual water quality changes.

(8) An applicant must demonstrate that the proposed activity will result in important economic or social development that exceeds the costs to society of allowing the proposed change in water quality.

(a) Factors to be addressed in the application may include, but are not limited to, the positive and negative effects of the following:

(i) allowing the proposed change in water quality;

(ii) employment considering the existing level of employment, unemployment, and wage levels in the area (i.e., increasing, maintaining, or avoiding a reduction in employment);

(iii) the fiscal status of the local, county, or state government and local public schools;

(iv) the local or state economies (i.e., increased or reduced diversity, multiplier effects);

(v) social or historical values;

(vi) public health;

(vii) housing (i.e., availability and affordability);

(viii) existing public service systems and local educational systems; or,

(ix) correction of an environmental or public health problem.

(b) Factors included in the demonstration required in (8)(a) must be quantified whenever this can be done reliably and cost-effectively. Other factors, which cannot be quantified, may be represented by an appropriate unit of measurement. If the department determines that more information is required, the department may require additional information from the applicant or seek such additional information from other sources.

(9) To determine whether or not existing and anticipated uses will be fully protected, the department shall require the following information:

(a) a showing that the change will not result in violations of Montana water quality standards outside of a mixing zone; and

(b) an analysis of the impacts of the proposed water quality changes on the existing and anticipated uses of the impacted state water.

(10) To demonstrate the least degrading water quality protection practices will be fully implemented prior to, during, and after the proposed activity, the applicant shall provide to the department a complete description and schedule for implementation of the water quality protection practices associated with the proposed activity and a viable plan showing the ability to implement the water quality protection practices.

(11) Any application submitted pursuant to this subchapter must comply with the signature and certification requirements of ARM 17.30.1323.

(12) The department shall notify the applicant in writing within 60 days after receipt of an application to degrade state waters that the application does or does not contain all the information necessary for the department's nondegradation review. If the information from the supplemental submittal and any subsequent supplemental submittal is inadequate, the department shall notify the applicant in writing, within 30 days after receipt of the supplemental submittal, what additional information must be submitted. In any review subsequent to the first, the department may not make a determination of incompleteness on the basis of a deficiency which could have been noted in the first review.

(13) The board adopts and incorporates by reference ARM 17.30.1323, as amended on February 14, 2003, which sets forth signature and certification requirements for MPDES permit applications. A copy of ARM 17.30.1323 may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. (History: 75-5-301, 75-5-303, MCA; IMP, 75-5-303, MCA; NEW, 1994 MAR p. 2136, Eff. 8/12/94; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 1274, Eff. 6/27/03; AMD, 2006 MAR p. 528, Eff. 2/24/06.)

17.30.707 DEPARTMENT PROCEDURES FOR NONDEGRADATION

REVIEW (1) Upon a determination by the department that an application to degrade state waters required under this rule is complete, the department will prepare a preliminary decision either authorizing degradation or denying the application to degrade according to the procedures in ARM 17.30.708.

(2) An application to degrade state waters will be denied unless the applicant has affirmatively demonstrated and the department finds, based on a preponderance of evidence, the proposed activity to be in full compliance with 75-5-303, MCA, using the standards set out in (3) through (6). The department shall consider an analysis by the applicant and any substantive relevant information either submitted by the public or otherwise available.

(3) To determine that degradation is necessary because there are no economically, environmentally, and technologically feasible alternatives to the proposed activity that would result in no degradation, the department shall consider the following:

(a) The department will determine the economic feasibility of the alternative water quality protection practices by evaluating the cost effects of the proposed alternatives on the economic viability of the project and on the applicant by using standard and accepted financial analyses.

(b) In order to determine the environmental feasibility of an alternative, the department will consider whether such alternative practices are available and will compare the overall environmental impacts of the various alternatives and the commitment of resources necessary to achieve the alternatives.

(c) In order to determine technological feasibility of an alternative, the department will consider whether such alternative practices are available and consistent with accepted engineering principles.

(4)(a) To determine that the proposed activity will result in important economic or social development that exceeds the benefit to society of maintaining existing high-quality waters and exceeds the costs to society of allowing degradation of high-quality waters, the department must find that the proposed activity will provide important economic or social development which outweighs any cost to society of allowing the proposed change in water quality. In making its determination, the department may consider factors that include, but are not limited to, the following:

(i) effects on the state or local community resulting from increased employment opportunities considering the existing level of employment, unemployment, and wage levels in the area;

(ii) effects on the state or local economies;

(iii) effects on the fiscal status of the local, county or state governments and local public schools;

(iv) effects on the local or state economies (i.e., increased or reduced diversity, multiplier effects);

(v) effects on social or historical values;
(vi) effects on public health;
(vii) effects on housing (i.e., availability and affordability);
(viii) effects on existing public service systems and local educational systems; or,

(ix) correction of an environmental or public health problem.

(b) In making the determination required in (a), the department must weigh any costs associated with the loss of high quality waters against any social or economic benefits demonstrated by the applicant. The department may also consider as a cost to society any identified and/or quantifiable negative social or economic effects resulting from the proposed activity.

(5) To determine that existing and anticipated uses of the receiving waters will be fully protected and that water quality standards will not be violated as a result of the proposed degradation, the department shall consider all available information.

(6) In order to authorize degradation under this rule, the department must determine that the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be implemented prior to, during, and after the proposed activity until the degradation no longer occurs.

(7) The department shall make its preliminary decision either authorizing degradation or denying the application to degrade within 180 days after receipt of a complete application from the applicant. This time period may be extended upon agreement of the applicant or whenever an environmental impact statement must be prepared pursuant to Title 75, chapter 1, parts 1 and 2, MCA.

(8) To the maximum extent possible, the department will coordinate any application to degrade state waters with the permitting and approval requirements of other laws or programs administered by the department or by any other local, state, or federal agency. (History: 75-5-301, 75-5-303, MCA; IMP, 75-5-303, MCA; NEW, 1994 MAR p. 2136, Eff. 8/12/94; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.708 DEPARTMENT PROCEDURES FOR ISSUING PRELIMINARY AND FINAL DECISIONS REGARDING AUTHORIZATIONS TO DEGRADE (1) A preliminary decision to deny or authorize degradation must be accompanied by a statement of basis for the decision and, if applicable, a detailed statement of conditions imposed upon any authorization to degrade.

(2) The preliminary decision must include the following information, if applicable:

- (a) a description of the proposed activity;
- (b) the level of protection required, e.g., for high-quality waters;
- (c) a determination that degradation is or is not necessary based on the availability of economically, environmentally and technologically feasible alternatives that will prevent degradation;
- (d) a determination of economic or social importance;
- (e) a determination that all existing and anticipated uses will or will not be fully protected;
- (f) the amount of allowed degradation;
- (g) a description of the required water quality protection practices;
- (h) a description of all monitoring and reporting requirements; and
- (i) a specific identification of any mixing zone the department proposes to allow.

(3) A statement of basis for the decision must be prepared for every preliminary decision. In general, the statement of basis must briefly set forth the principal facts and significant factual, legal, methodological, or policy questions considered in preparing the authorization. The statement of basis must include, when applicable:

- (a) a description of the proposed activity which is the subject of the authorization;
- (b) the type and quantity of degradation which will result if the proposed activity is authorized;
- (c) a summary of the basis for the conditions imposed in any preliminary decision, including references to applicable statutory or regulatory provisions;
- (d) a summary and analysis of alternatives to the proposed activity;
- (e) a description of the procedures for reaching a final decision on the draft authorization including:
 - (i) the beginning and ending dates of the comment period and the address where comments will be received;
 - (ii) procedures for requesting a hearing; and
 - (iii) any other procedures by which the public may participate in the final decision;
- (f) name and telephone number of a person to contact for additional information; and
- (g) reasons supporting the preliminary decision.

(4) The preliminary decision, accompanying statement of basis, and, if applicable, the statement of conditions imposed, must be publicly noticed and made available for public comment for at least 30 days but not more than 60 days prior to a final decision. In providing public notice, the department shall comply with the following:

- (a) procedures for public notice set forth in ARM 17.30.1372; and

(b) procedures for the distribution of information set forth in ARM 17.30.1041.

(5) During the public comment period any interested person may submit written comments on the preliminary decision and may request a public hearing. 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. The department shall hold a hearing if it determines that there may be a significant degree of public interest in the preliminary decision. Any public hearing conducted under this subsection is not a contested case hearing under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA.

(6) Within 60 days after the close of the public comment period, the department shall issue a final decision accompanied by a statement of basis for the decision and, if applicable, a statement of conditions. The final decision and statement of basis will be prepared according to the requirements of (2) and (3). In addition, the statement of basis for a final decision must include the following:

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

(b) a description and response to all substantive comments on the preliminary decision raised during the public comment period or during any hearing.

(7) Upon issuing a final decision, the department shall notify the applicant and each person who has submitted written comments or requested notice of that decision. The notice must include reference to the procedures for appealing the decision. The final decision is effective upon issuance.

(8) The board hereby adopts and incorporates by reference ARM 17.30.1372, which sets forth procedures for issuing public notices of MPDES permit applications and hearings, and ARM 17.30.1041 which sets forth requirements for distribution and copying of public notices and permit applications. Copies of ARM 17.30.1372 and 17.30.1041 may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. (History: 75-5-301, 75-5-303, MCA; IMP, 75-5-303, MCA; NEW, 1994 MAR p. 2136, Eff. 8/12/94; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2006 MAR p. 528, Eff. 2/24/06.)

Rules 17.30.709 through 17.30.714 reserved

17.30.715 CRITERIA FOR DETERMINING NONSIGNIFICANT CHANGES IN WATER QUALITY (1) The following criteria will be used to determine whether certain activities or classes of activities will result in nonsignificant changes in existing water quality due to their low potential to affect human health or the environment. These criteria consider the quantity and strength of the pollutant, the length of time the changes will occur, and the character of the pollutant. Except as provided in (2), changes in existing surface or ground water quality resulting from the activities that meet all the criteria listed below are nonsignificant, and are not required to undergo review under 75-5-303, MCA:

(a) activities that would increase or decrease the mean monthly flow of a surface water by less than 15% or the seven-day 10 year low flow by less than 10%;

(b) discharges containing carcinogenic parameters or parameters with a bioconcentration factor greater than 300 at concentrations less than or equal to the concentrations of those parameters in the receiving water;

(c) discharges containing toxic parameters or nutrients, except as specified in (1)(d) and (e), which will not cause changes that equal or exceed the trigger values in department Circular DEQ-7. Whenever the change exceeds the trigger value, the change is not significant if the resulting concentration outside of a mixing zone designated by the department does not exceed 15% of the lowest applicable standard;

(d) changes in the concentration of nitrate in ground water which will not cause degradation of surface water if the sum of the predicted concentrations of nitrate at the boundary of any applicable mixing zone will not exceed the following values:

(i) 7.5 mg/L for nitrate sources other than domestic sewage;

(ii) 5.0 mg/L for domestic sewage effluent discharged from a conventional septic system;

(iii) 7.5 mg/L for domestic sewage effluent discharged from a septic system using level two treatment, as defined in ARM 17.30.702; or

(iv) 7.5 mg/L for domestic sewage effluent discharged from a conventional septic system in areas where the groundwater nitrate level exceeds 5.0 mg/L primarily from sources other than human waste.

For purposes of this subsection (d), the word "nitrate" means nitrate as nitrogen; and

(e) changes in concentration of total inorganic phosphorus in ground water if water quality protection practices approved by the department have been fully implemented and if an evaluation of the phosphorus adsorptive capacity of the soils in the area of the activity indicates that phosphorus will be removed for a period of 50 years prior to a discharge to any surface waters;

(f) changes in the quality of water for any harmful parameter for which water quality standards have been adopted other than nitrogen, phosphorous, and carcinogenic, bioconcentrating, or toxic parameters, in either surface or ground water, if the changes outside of a mixing zone designated by the department are less than 10% of the applicable standard and the existing water quality level is less than 40% of the standard;

(g) changes in the quality of water for any parameter for which there are only narrative water quality standards if the changes will not have a measurable effect on any existing or anticipated use or cause measurable changes in aquatic life or ecological integrity.

(2) Notwithstanding compliance with the criteria of (1), the department may determine that the change in water quality resulting from an activity which meets the criteria in (1) is degradation based upon the following:

(a) cumulative impacts or synergistic effects;

(b) secondary byproducts of decomposition or chemical transformation;

(c) substantive information derived from public input;

(d) changes in flow;

(e) changes in the loading of parameters;

(f) new information regarding the effects of a parameter; or

(g) any other information deemed relevant by the department and that relates to the criteria in (1).

(3) The department may determine that a change in water quality resulting from an activity or category of activities is nonsignificant based on information submitted by an applicant that demonstrates conformance with the guidance found in 75-5-301(5)(c), MCA. In making a determination under this subsection, the department shall allow for public comment prior to a decision pursuant to the public notice procedures in ARM 17.30.1372. (History: 75-5-301, 75-5-303, MCA; IMP, 75-5-303, MCA; NEW, 1994 MAR p. 2136, Eff. 8/12/94; AMD, 1995 MAR p. 1040, Eff. 6/16/95; AMD, 1995 MAR p. 2256, Eff. 10/27/95; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 387, Eff. 2/15/02; AMD, 2003 MAR p. 217, Eff. 2/14/03; AMD, 2004 MAR p. 725, Eff. 4/9/04; AMD, 2006 MAR p. 528, Eff. 2/24/06.)

17.30.716 CATEGORIES OF ACTIVITIES THAT CAUSE NONSIGNIFICANT CHANGES IN WATER QUALITY

(1) In addition to the activities listed in 75-5-317, MCA, the categories or classes of activities that are identified in this rule have been determined by the department to cause changes in water quality that are nonsignificant due to their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301, MCA.

(2) Except as provided in (5), a subsurface wastewater treatment system (SWTS) that meets all of the criteria in (2)(a) and falls within one of the categories in (2)(b) is nonsignificant.

(a) The SWTS, including primary and replacement drainfields must meet all of the following criteria:

(i) the drainfield must be 1,000 feet or more (400 feet or more for lots that meet the criteria in (2)(b)(iv)) from the nearest downgradient high quality state surface water that might be impacted. This distance may be reduced by 50% (to 500 and 200 feet, respectively) if the drainfield is pressure-dosed;

(ii) if the drainfield is not pressure-dosed:

(A) the soil percolation rate must be between 16 and 50 minutes per inch, if a percolation test has been conducted for the drainfield; and

(B) the natural soil beneath the absorption trench must contain at least six feet of very fine sand, sandy clay loam, clay loam, or silty clay loam;

(iii) the SWTS must serve no more than two single-family residences, or must serve a facility that produces non-residential, non-industrial wastewater with a wastewater design flow of 700 gallons per day or less;

(iv) there must be only one SWTS receiving wastewater from the lot;

(v) the SWTS must be located on the lot where wastewater is produced;

(vi) the SWTS must meet the current design standards defined in ARM Title 17, chapter 36, subchapter 3 and department Circular DEQ-4; and

(vii) for lots smaller than 20 acres, and for lots 20 acres and larger on which the drainfield is 500 feet or less from the downgradient property boundary, the background nitrate (as N) concentration in the shallowest ground water must be less than two mg/L.

(A) The department may require multiple ground water samples over a specified time period to determine whether seasonal variation of ground water nitrate concentrations may affect compliance with this requirement.

- (b) The SWTS must fall within one of the following five categories:
- (i) for category one:
- (A) the lot size is two acres or larger;
 - (B) the percolation rate is 16 minutes per inch or slower, if a percolation test has been conducted for the drainfield;
 - (C) the natural soil beneath the absorption trench contains at least six feet of very fine sand, sandy clay loam, or finer soil; and
 - (D) the depth to bedrock and seasonally high ground water is eight feet or greater;
- (ii) for category two:
- (A) the drainfield is pressure-dosed;
 - (B) the lot size is two acres or larger;
 - (C) the percolation rate is six minutes per inch or slower, if a percolation test has been conducted for the drainfield;
 - (D) the natural soil beneath the absorption trench contains at least six feet of medium sand, sandy loam, or finer soil; and
 - (E) the depth to bedrock and seasonally high ground water is 12 feet or greater;
- (iii) for category three:
- (A) the drainfield is pressure-dosed;
 - (B) the lot size is one acre or larger;
 - (C) the subdivision consists of five lots or fewer;
 - (D) there is no existing or approved SWTS within 500 feet of the subdivision boundaries;
 - (E) the percolation rate is six minutes per inch or slower, if a percolation test has been conducted for the drainfield;
 - (F) the natural soil beneath the absorption trench contains at least six feet of medium sand, sandy loam, or finer soil; and
 - (G) the depth to bedrock and ground water is 100 feet or greater;
- (iv) for category four:
- (A) the total number of subdivision lots that were reviewed pursuant to 76-4-101 et seq., MCA, and were created in a county during the previous 10 state fiscal years is fewer than 150; and
 - (B) the lot is not within one mile of the city limits of an incorporated city or town with a population greater than 500 as determined by the most recent census; or
- (v) for category five:
- (A) the SWTS is a level II system;
 - (B) the lot size is two acres or larger;

(C) the bottom of the drainfield absorption trenches is not more than 18 inches below ground surface; and

(D) the depth to limiting layer (based on test pit data) is greater than six feet below ground surface.

(3) A mixing zone is not required for SWTSs that meet the criteria in this rule. However, SWTS drainfields must be located so that there is a 100-foot setback between existing and approved water supply wells and the boundaries of a 100-foot mixing zone that is provisionally designated for purposes of applying this setback.

(4) The department may require that on-site information be provided to verify any of the criteria required in this rule.

(5) Notwithstanding an activity's designation as nonsignificant in this rule, the department may review the activity for significance under the criteria in ARM 17.30.715(1) based upon the following:

(a) cumulative impacts or synergistic effects;

(b) secondary byproducts of decomposition or chemical transformation;

(c) substantive information derived from public input;

(d) changes in flow;

(e) changes in the loading of parameters;

(f) new information regarding the effects of a parameter; or

(g) any other information deemed relevant by the department and that relates to the criteria in ARM 17.30.715(1).

(6) The department may determine that the categorical exclusion in (2) does not apply to lots within a specific geographic area. This determination must be based upon information submitted in a petition demonstrating that the categorical exclusions should not apply within that area.

(a) A petition submitted under this rule may be considered only if it is submitted by a local governing body, a local department or board of health, a local water quality district, or by either 10% or 20, whichever is fewer, of the landowners (or persons with a contract interest in land) within the affected geographic area.

(b) A petition submitted under this rule must contain the following information:

(i) a legal description of the petition area, which is the geographic area within which the categorical exclusions would not apply;

(ii) a detailed description of the soils, geology, and hydrogeology of the area described in (6)(b)(i);

(iii) a current listing from a title insurance company of the names and addresses of all persons who either own or have a contract interest in land within the petition area; and

(iv) data from ground water samples taken from wells that withdraw water from the uppermost aquifer underlying the petition area or from wells that withdraw water from the uppermost aquifer underlying an area within the same or adjacent county with similar climatic, soil, geologic, and hydrogeologic conditions and a density of individual sewage systems similar to that allowed in (2)(b). The ground water data must demonstrate that one of the following conditions is met:

(A) nitrate as nitrogen concentrations exceed 5.0 mg/L in ground water samples from more than 25% of at least 30 wells that are not located within a standard mixing zone, as defined in ARM 17.30.517(1)(d)(viii), for a septic system; or

(B) data from ground water samples collected at least three years apart from the same 15 wells indicate a statistically significant increase of greater than 1.0 mg/L in nitrate as nitrogen concentrations in the uppermost aquifer.

(c) Within 90 days after receipt of the information required in (6)(b), the department shall issue a preliminary decision as to whether the petitioner has satisfied the requirements in (6)(b), and describe the reasons for either granting or denying the petition. The preliminary decision must be mailed to the petitioner and to all landowners or persons with a contract interest in land within the petition area and must include the following information:

- (i) a description of the petition area;
- (ii) a summary of the basis for the preliminary decision including any modifications to the boundaries of the petition area;
- (iii) a description of the procedures for public participation and of the opportunity to comment prior to the department's final decision on the petition;
- (iv) the ending dates of the comment period and the address where comments will be received;
- (v) procedures for requesting a hearing; and
- (vi) the name and telephone number of a person to contact for additional information.

(d) Within 60 days after the close of the public comment period, the department shall issue a final decision and provide written notice of its decision to the petitioner and to each person who submitted written comments. The final decision must set forth the department's reasons for granting or denying the petition and must include a response to all substantive comments received by the department during the public comment period or during any hearing. (History: 75-5-301, 75-5-303, MCA; IMP, 75-5-303, 75-5-317, MCA; NEW, 1994 MAR p. 2136, Eff. 8/12/94; TRANS, from DHES, 1996 MAR p. 1499; AMD, 1997 MAR p. 2071, Eff. 11/18/97; AMD, 1998 MAR p. 936, Eff. 4/17/98; AMD, 2003 MAR p. 2274, Eff. 10/17/03; AMD, 2004 MAR p. 2579, Eff. 10/22/04; AMD, 2006 MAR p. 528, Eff. 2/24/06.)

17.30.717 IMPLEMENTATION OF WATER QUALITY PROTECTION

PRACTICES (1) The owner of a new or increased source for which no water quality protection practices are approved by the department must design and submit a viable plan for implementation of the necessary water quality protection practices for department review, modification, and approval prior to implementation. (History: 75-5-301, 75-5-303, MCA; IMP, 75-5-303, 75-5-317, MCA; NEW, 1994 MAR p. 2136, Eff. 8/12/94; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.718 CRITERIA FOR NUTRIENT REDUCTION FROM SUBSURFACE WASTEWATER TREATMENT SYSTEM (SWTS)

(1) This rule describes the information that must be submitted to obtain a department classification of a SWTS as level 1a, level 1b, or level 2, as those terms are defined in ARM 17.30.702. The nitrogen treatment efficiency that a SWTS is granted under this rule may be used as the effluent concentration in mixing zone calculations.

(2) A person seeking classification of a SWTS as level 1a, level 1b, or level 2 must submit the following background information to the department regarding the SWTS, in addition to any other information the department determines is necessary to verify the long-term treatment capabilities of the system:

(a) a description of the technology utilized by the system and the system components;

(b) engineering details regarding component sizes and materials specifications. Components include, but are not limited to, tanks, pumps, piping, control panels, and treatment media;

(c) operation and maintenance requirements;

(d) a description of the long-term reliability of the system components;

(e) a description of the installation process; and

(f) information verifying the reliability of the SWTS manufacturer and vendor.

At a minimum, the vendor or manufacturer must either:

(i) have maintained an office in Montana for the past five years with a significant portion of its business related to design, construction, or installation of SWTSs; or

(ii) demonstrate an equivalent level of experience and reliability in Montana.

(3) A person seeking classification of a SWTS as level 1a, level 1b, or level 2 must submit monitoring information as provided in this section. The department may require additional information (particularly for technologies not included in department Circular DEQ-4) if necessary to verify the long-term reliable treatment capabilities of the system.

(a) The following background information must be submitted for each system monitored:

- (i) system address (including legal description);
- (ii) system start-up date;
- (iii) description of current and historical system use, particularly during the performance monitoring period; and
- (iv) monitoring data collected prior to and after the required performance monitoring period.

(b) For a SWTS that uses the effluent total nitrogen concentration to determine treatment efficiency, the monitoring must be from at least six systems. For a SWTS that uses the percent total nitrogen removed from measured raw sewage to determine treatment efficiency, the monitoring must be from at least three systems.

(c) For each SWTS that is monitored, at least one representative sample of raw sewage must be collected and analyzed for nitrate (as N), nitrite (as N), ammonia (as N), total kjeldahl nitrogen (TKN) (as N), biological oxygen demand (BOD), and total suspended solids (TSS). This information will be used to determine the raw sewage strength, which must not exceed residential strength. Chemical characterization of raw sewage must be based on one of the following representative samples:

- (i) if the septic tank or other initial tank is used only for primary treatment of the sewage, the sample should be collected from that tank;
- (ii) if the septic tank or other initial tank is used for treatment beyond primary treatment, the sample should be collected prior to start-up of the SWTS from that tank; or
- (iii) another department-approved location.

(d) Each SWTS must be monitored for one year. At least one SWTS must be monitored for at least two years.

(e) Sampling frequency must be at least monthly (or equivalent frequency as approved by the department) during the winter months (November through April), and at least quarterly during the summer months (May through October). At least 50% of the monitoring data from each SWTS must be collected during the winter months.

(f) Each effluent sample must be analyzed for nitrate (as N), nitrite (as N), ammonia (as N), TKN (as N), BOD, TSS, and flow. If influent monitoring is conducted, each influent sample must be analyzed for TKN (as N) or total nitrogen. If the SWTS is experiencing significant infiltration and inflow, the department may require that influent samples be collected and analyzed during each effluent monitoring event to determine an accurate representation of the nitrogen-reducing capabilities of the system.

(g) Monitored SWTSs must be in Montana or located in a climate similar to Montana.

(h) The arithmetic mean of the available data will be used to determine compliance with this rule.

(i) All water analyses, except for temperature, must be conducted according to an EPA-approved method by an independent laboratory. Temperature measurements must be conducted on-site.

(j) The department may waive specific requirements in this rule if:

(i) the monitoring data are substantially equivalent to those requirements; or

(ii) the SWTS uses a proven nutrient reduction technology listed in DEQ-4 with proprietary variations.

(4) The results from a SWTS that is tested under the EPA/National Science Foundation (NSF) environmental technology verification (ETV) program may be used to demonstrate compliance with the requirements in (3).

(5) In response to a request for classification of a SWTS as level 1a, level 1b, or level 2, the department may, after evaluating the SWTS under the criteria in this rule:

(a) approve the request;

(b) approve the request with modifications or conditions;

(c) deny the request; or

(d) deny the request pending submittal of additional information.

(6) If a SWTS that is classified as level 1a, level 1b, or level 2 is modified, the department may require that the SWTS be re-evaluated under the criteria in this rule.

(7) If subsequent data indicate that a SWTS classified under this rule is not reliable or cannot meet required nutrient reductions, the department may rescind the classification.

(8) All SWTSs classified as a level 1a, level 1b, or level 2 must have an operation and maintenance (O&M) contract in perpetuity for each system installed. The O&M contract will be required in the subdivision approval, or as a deed restriction if a subdivision plat approval is not required for the property. O&M must be conducted by the system manufacturer, an approved vendor, or other qualified personnel. The SWTS vendor or manufacturer must offer an O&M plan that meets the requirements of this section and the requirements in department Circular DEQ-4. At a minimum, the O&M contract must include:

(a) an on-site inspection of all the major components of the SWTS twice a year for the first two years after use of the system begins, and annually thereafter. Inspections of suspended growth systems must be twice as frequent. Inspection items must include verifying proper operation of the visual/audible alarm system required in (9) and determining whether any water treatment devices have been added, modified, or removed from the water system that discharges to the SWTS; and

(b) annual effluent sampling and analysis for nitrate (as N), nitrite (as N), ammonia (as N), TKN (as N), BOD, TSS, fecal coliform, specific conductance, and temperature. Effluent sampling must be conducted after all treatment is complete, but before discharge to the absorption area. All monitoring data collected from a type of SWTS may be requested by the department if the department has reason to believe that a type of SWTS that has been approved as a nutrient-reducing system is not meeting the required treatment efficiencies.

(9) All SWTSs classified as level 1a, level 1b, or level 2 must have the following features:

(a) a visual and/or audible alarm warning that indicates if a hydraulic malfunction is occurring in any portion of the treatment system prior to the absorption system; and

(b) a physical barrier that prevents the discharge of wastewater to the absorption system if a hydraulic malfunction is occurring in any portion of the treatment system prior to the absorption system. (History: 75-5-301, 75-5-303, MCA; IMP, 75-5-303, MCA; NEW, 2004 MAR p. 1384, Eff. 6/18/04.)

Subchapters 8 and 9 reserved

CO2: Regulation and Permitting Framework Considerations

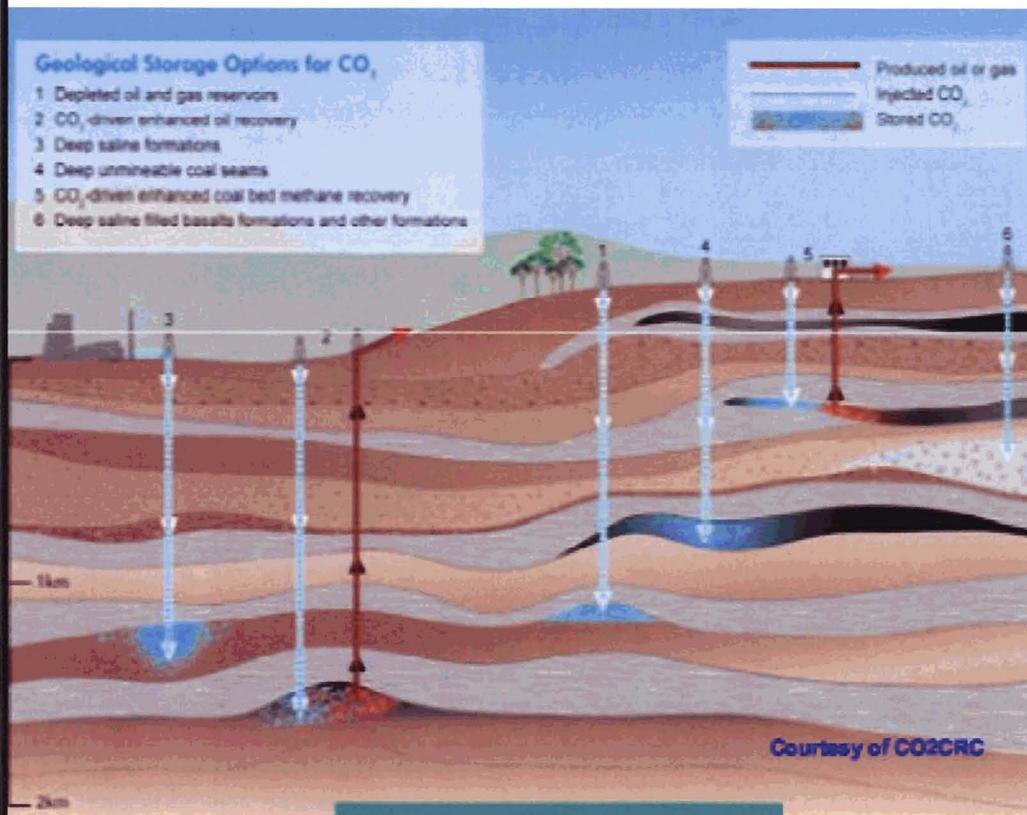
Presented to Energy and Telecommunications Interim
Committee

October 5, 2007

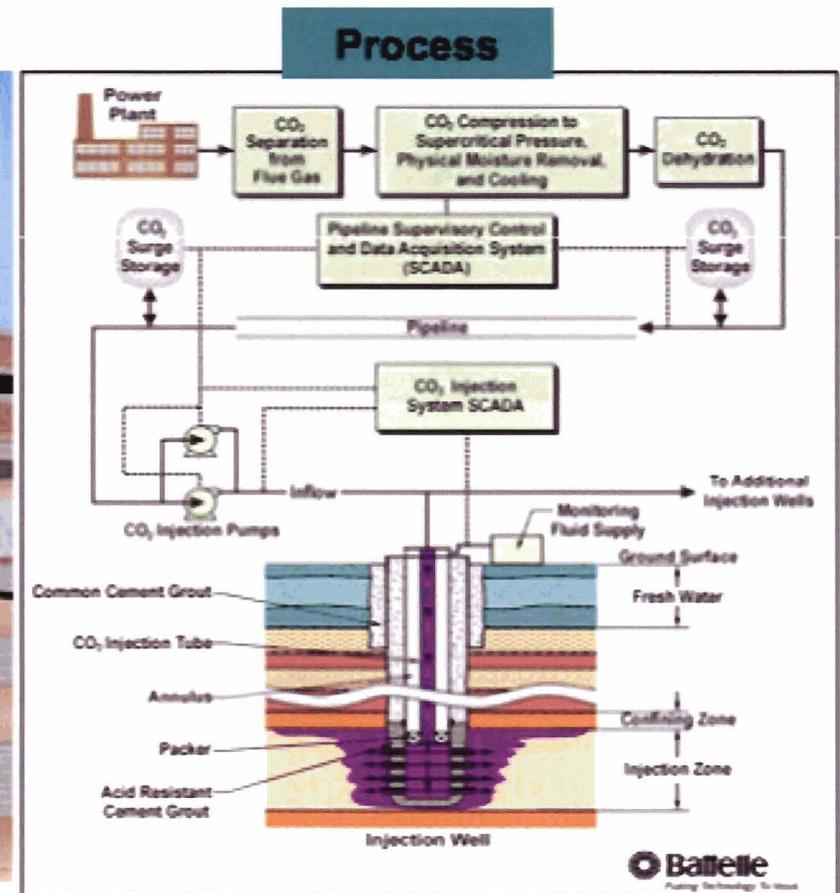
Bonnie Lovelace, Chief

Water Protection Bureau, DEQ

Geologic Sequestration



Target Formations



Regulatory Framework—is there one?

- There is no overarching regulatory regime dedicated to carbon capture and storage
- CO₂ used for enhanced oil recovery is regulated under the Safe Drinking Water Act—Underground Injection Control (UIC) Class II
- EPA has released guidance for experimentation of the carbon capture and storage industry as Class V UIC.

Regulation, continued

- Resource Conservation and Recovery Act (RCRA) may attach if substance is found to be hazardous.
 - Key to RCRA regulation is whether or not the substance is “characteristic” of hazardous waste: (toxicity, ignitability, reactivity, corrosivity)
 - If inert or otherwise marketable, may not be considered hazardous.

40CFR261.4 b 4: possible exclusion

- Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste, generated primarily from the combustion of coal or other fossil fuels, except as provided by §266.112 of this chapter for facilities that burn or process hazardous waste.

Regulation, continued

- Interstate Oil and gas Compact Commission (IOGCC) has prepared a model statute and rules for regulation of geologic sequestration.
- CO₂ is viewed as a commodity under these rules.

Montana Regulation: if CO₂ is captured and “discharged” into ground

- Liabilities for any damages, undefined scope and magnitude
 - Mineral rights impacts, undefined
 - Plumes –may reach surface, may stay in ground
 - If reaching surface, would be a gas
 - If staying in ground, could be in groundwater
 - --CO₂, methane, N₂O (nitrous oxide), chlorofluorocarbons (CFCs), Ozone, H₂S, Mercury, etc.

Groundwater Discharge Montana Water Quality Act

- Definitions: 75-5-103
- Nondegradation:
 - 75-5-301=Classification
 - 75-5-303= Policy
 - 75-5-317=Nonsignificant Activities
- Exemptions: 75-5-401
- Permitting/Prohibitions: 75-5-605
- What we do not know

Definitions of interest

- High Quality waters
- Pollution
- State Waters

Nondegradation

- 75-5-301
 - We are to have standards
 - We are to define mixing zones
 - We are to determine significance of degradation of state waters.
- 75-5-303
 - We are to protect uses
 - May authorize degradation

Nonsignificant Activities

- 75-5-317 lists “predesignated” activities that are nonsignificant in terms of degradation of state waters
- Subpart k --Oil and gas drilling
- Subpart o—hazardous waste management facilities

Exemptions from Permitting

- 75-5-401 (5) lists exemptions:
 - a. oil and gas activities
 - d. Hazardous waste management facilities
 - e. Water injection wells and activities associated with oil and gas field operations.

Permits and Prohibitions

- 75-5-605 (2)
- It is unlawful except for exemptions, to construct, modify, or operate a disposal system that discharges into any state waters without a permit.

What don't we know?

- Most of what will happen when the substance is injected.
- Content of captured gases and variability.
- Stability, transport and effect of injected CO₂ in the subsurface.
- Effect of injecting substance into geology: geologic stability, geochemical stability
- MEPA compliance requires an analysis: level of analysis, types of analyses

Montana Code Annotated - 2007

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75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of environmental review provided for in [2-15-3502](#).

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in [2-15-2107](#).

(4) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(5) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to [75-5-301\(5\)\(c\)](#).

(6) "Department" means the department of environmental quality provided for in [2-15-3501](#).

(7) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(10) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

(11) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(12) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(13) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to [75-5-303](#). The term includes a person who has requested authorization to degrade high-quality waters.

(14) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(15) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(16) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(17) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(18) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(19) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(20) "Outstanding resource waters" means:

- (a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or
- (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.
- (21) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.
- (22) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.
- (23) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.
- (24) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.
- (25) (a) "Pollution" means:
- (i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or
- (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.
- (b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.
- (26) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.
- (27) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.
- (28) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.
- (29) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.
- (b) The term does not apply to:
- (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or
- (ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.
- (30) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.
- (31) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:
- (a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
- (b) documented adverse pollution trends.
- (32) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.
- (33) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.
- (34) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.
- (35) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of

performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(36) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(37) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

History: En. Sec. 122, Ch. 197, L. 1967; amd. Sec. 2, Ch. 21, L. 1971; amd. Sec. 1, Ch. 506, L. 1973; amd. Sec. 59, Ch. 349, L. 1974; amd. Sec. 2, Ch. 455, L. 1975; amd. Sec. 3, Ch. 308, L. 1977; amd. Sec. 1, Ch. 444, L. 1977; R.C.M. 1947, 69-4802; amd. Sec. 1, Ch. 337, L. 1993; amd. Sec. 1, Ch. 340, L. 1993; amd. Sec. 1, Ch. 595, L. 1993; amd. Sec. 184, Ch. 418, L. 1995; amd. Sec. 1, Ch. 495, L. 1995; amd. Sec. 3, Ch. 497, L. 1995; amd. Sec. 1, Ch. 501, L. 1995; amd. Secs. 524, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 541, L. 1997.

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75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-201 and this chapter, the board shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) (a) formulate and adopt standards of water quality, giving consideration to the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312.

(b) Standards adopted by the board must meet the following requirements:

(i) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1×10^{-3} in the case of arsenic and 1×10^{-5} for other carcinogens. However, if a standard established at a risk level of 1×10^{-3} for arsenic or 1×10^{-5} for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(ii) standards for the protection of aquatic life do not apply to ground water.

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health, a beneficial use, or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur;

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter from sources other than sewage;

(ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;

(iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(part); amd. Sec. 26, Ch. 668, L. 1989; amd. Sec. 2, Ch. 595, L. 1993; (7)En. Sec. 5, Ch. 595, L. 1993; amd. Sec. 5, Ch. 497, L. 1995; amd. Sec. 4, Ch. 501, L. 1995; amd. Sec. 1, Ch. 539, L. 1995; amd. Sec. 1, Ch. 40, L. 1997; amd. Sec. 5, Ch. 195, L. 1999; amd. Sec. 1, Ch. 588, L. 1999.

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75-5-303. Nondegradation policy. (1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3) or exempted from review under [75-5-317](#), the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated by a preponderance of evidence to the department that:

(a) degradation is necessary because there are no economically, environmentally, and technologically feasible modifications to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development and that the benefit of the development exceeds the costs to society of allowing degradation of high-quality waters;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation.

(5) An interested person wishing to challenge a final department decision may request a hearing before the board within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Periodically, but not more often than every 5 years, the department may review authorizations to degrade state waters. Following the review, the department may, after timely notice and opportunity for hearing, modify the authorization if the department determines that an economically, environmentally, and technologically feasible modification to the development exists. The decision by the department to modify an authorization may be appealed to the board.

(7) The board may not issue an authorization to degrade state waters that are classified as outstanding resource waters.

(8) The board shall adopt rules to implement this section.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(c)(ii), (1)(c)(iii); amd. Sec. 3, Ch. 595, L. 1993; (7)En. Sec. 5, Ch. 595, L. 1993; amd. Sec. 2, Ch. 495, L. 1995; amd. Sec. 5, Ch. 501, L. 1995.

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75-5-317. Nonsignificant activities. (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

- (a) existing activities that are nonpoint sources of pollution as of April 29, 1993;
- (b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;
- (c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;
- (d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;
- (e) changes in existing ground water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;
- (f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices and if no discharge to surface water will occur;
- (g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;
- (h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;
- (i) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;
- (j) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;
- (k) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;
- (l) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:
 - (i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;
 - (ii) fording of streams or other bodies of water by vehicular or other means; and
 - (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;
- (m) coal and uranium prospecting that does not result in a discharge to surface water, that does not involve a test pit located in surface water or that may affect surface water, and that is performed in accordance with Title 82, chapter 4;
- (n) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;
- (o) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;
- (p) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;
- (q) stream-related construction projects or stream enhancement projects that result in temporary changes to water quality but do not result in long-term detrimental effects and that have been authorized pursuant to 75-5-318;
- (r) diversions or withdrawals of water established and recognized under Title 85, chapter 2;
- (s) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to

existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and

(t) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c).

History: En. Sec. 6, Ch. 501, L. 1995; amd. Sec. 4, Ch. 588, L. 1999.

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75-5-401. Board rules for permits -- ground water exclusions. (1) Except as provided in subsection (5), the board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) The board may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(d), (1)(e); amd. Sec. 1, Ch. 412, L. 1991; amd. Sec. 2, Ch. 297, L. 1995; amd. Sec. 9, Ch. 497, L. 1995; amd. Sec. 1, Ch. 582, L. 1995; amd. Sec. 6, Ch. 588, L. 1999; amd. Sec. 1, Ch. 413, L. 2001; amd. Sec. 6, Ch. 231, L. 2003.

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75-5-605. Prohibited activity -- exemption. (1) It is unlawful to:

(a) cause pollution, as defined in [75-5-103](#), of any state waters or to place or cause to be placed any wastes where they will cause pollution of any state waters. Any placement of materials that is authorized by a permit issued by any state or federal agency is not a placement of wastes within the prohibition of this subsection if the agency's permitting authority includes provisions for review of the placement of materials to ensure that it will not cause pollution of state waters.

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in the permit;

(c) site and construct a sewage lagoon less than 500 feet from an existing water well;

(d) cause degradation of state waters without authorization pursuant to [75-5-303](#);

(e) violate any order issued pursuant to this chapter; or

(f) violate any provision of this chapter.

(2) Except for the permit exclusions identified in [75-5-401\(5\)](#), it is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system that discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters.

(3) Activities associated with routine or periodic maintenance, repair, replacement, or operation of irrigation water conveyance systems, including activities associated with any constructed channel, canal, ditch, pipeline, or portion of any constructed channel, canal, ditch, or pipeline, are not prohibited activities under this chapter if the activities do not result in exceeding water quality standards for any receiving water outside the irrigation water conveyance system. The diversion of water in accordance with an existing water right or permit pursuant to Title 85, chapter 2, is not a prohibited activity under this chapter.

History: En. Sec. 126, Ch. 197, L. 1967; amd. Sec. 5, Ch. 21, L. 1971; amd. Sec. 3, Ch. 455, L. 1975; amd. Sec. 2, Ch. 444, L. 1977; R.C.M. 1947, 69-4806; amd. Sec. 2, Ch. 337, L. 1993; amd. Sec. 4, Ch. 595, L. 1993; amd. Sec. 11, Ch. 497, L. 1995; amd. Sec. 2, Ch. 582, L. 1995; amd. Sec. 1, Ch. 460, L. 2003.

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