PART V. STANDARD CONDITIONS

The following standard permit conditions apply to all facilities authorized to discharge under this Permit.

A. Duty to Comply

The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application (NOI). The permittee shall give the Department advance notice of any planned changes at the permitted facility or of an activity, which may result in permit noncompliance.

B. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall first apply for and obtain a new permit. The application (NOI) form and fee must be submitted at least 30 days before the expiration date of this permit. The Department reserves the authority to administratively extend permit coverage in the event the General Permit is no longer effective, if the permittee has reapplied for permit coverage.

C. Need to Halt or Reduce Activity not a Defense

It may not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

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

F. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or

termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

G. Property Rights

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

H. Duty to Provide Information

The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

I. Inspection and Entry

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

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

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

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

J. Signatory and Certification Requirements

All applications (NOIs), reports, or information submitted to the Department must be signed and certified.

1. All permit applications (NOIs) shall be signed as follows:

    a. For a corporation, by a responsible corporate officer. A responsible corporate officer means:

        i. a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who

performs similar policy- or decision-making functions for the corporation; or

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

b. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes:

i. the chief executive officer of the agency; or

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

2. All reports required by permits, other information requested by the Department, must be signed by a person described in Part V.J.1. or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. the authorization is made in writing by a person described in Part V.J.1.;

b. the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and,

c. the written authorization is submitted to the Department.

3. Changes to authorization. If an authorization under Part V.J.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part V.J.2. must be submitted to the Department prior to or together with any reports, information, or applications (NOIs) to be signed by an authorized representative.

4. Certification. Any person signing a document under this Part shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

K. Planned Changes

The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit.

L. Anticipated Noncompliance

The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

M. Permit Transfers

Permit coverage is not transferable to any person except after notice is given to the Department and a transfer fee is paid. Notice of transfer must be completed on the form provided by the Department and must be received by the Department at least 15 days prior to the anticipated date of transfer. The form must be signed by both the existing owner/operator and the new owner/operator following the signatory requirements of Part V of this General Permit. If the new permittee develops a new SWPPP, the new permittee shall implement the old SWPPP until the new SWPPP is developed and implemented (ARM 17.30.1117).

N. Compliance Schedules

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

O. Twenty-Four Hour Reporting

1. The permittee shall report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time the permittee becomes aware of the circumstances.

2. A written submission must also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

3. The following must be included as information which must be reported within 24 hours:

   a. any unanticipated bypass which exceeds any effluent limitation in the permit;

   b. any upset which exceeds any effluent limitation in the permit; and

   c. violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

4. The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Protection Bureau.

5. Reports shall be submitted to the address in Part III.B.1.c. of this General Permit.

P. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Part IV or Parts V.K., V.N., or V.O. at the time monitoring reports are submitted. The reports must contain the information listed Part V.O. above.

Q. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application (NOI), or submitted incorrect information in a permit application (NOI) or in any report to the Department, it shall promptly submit such facts or information.

R. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2. and 3. below.

2. Notice:

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the Department, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part V.O. (Twenty-Four Hour Reporting).

3. Prohibition of bypass.

a. Bypass is prohibited and the Department may take enforcement action against a permittee for a bypass, unless:

i. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

iii. The permittee submitted notices as required under Part V.R.2. above.

4. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in Part V.R.3.i.

S. <u>Upset</u>

1. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part V.S.2. below are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

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

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

b. the permitted facility was at the time being properly operated;

c. the permittee submitted notice of the upset as required in Part V.S.3.b. (24-hour notice); and

d. the permittee complied with any remedial measures required under Part V.D.

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

T. Penalties for Violations of Permit Conditions

The Montana Water Quality Act provides that any person who violates a permit condition of the Act is subject to a civil penalty not to exceed $25,000 per day or one year in prison, or both, for the first conviction, and $50,000 per day of violation or by imprisonment for not more than two years, or both, for subsequent convictions. Except as provided in permit conditions on Part V.R. (Bypass of Treatment Facilities), nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

U. Penalties for Falsification of Reports

The Montana Water Quality Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than $25,000 per violation, or by imprisonment for not more than six months per violation, or both.

V. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.

W. Severability

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

X. Reopener Provision

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

1. Water Quality Standards

   The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.

2. Wasteload Allocation

   A wasteload allocation is developed and approved by the Department and/or EPA for incorporation in this permit.

3. Water Quality Management Plan

   A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit.

Part VI. DEFINITIONS

1. The "Act" means the Federal Clean Water Act.

2. "Best Management Practices" ("BMPs") means schedule of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

3. The "Department" means the Montana Department of Environmental Quality.

4. "Discharge" means the injection, deposit, dumping, spilling, leaking, placing, or failing to remove any pollutant so that it or any constituent thereof may enter into state waters.

5. "Disturbance" related to construction activity means areas that are subject to clearing, excavating, grading, stockpiling earth materials, and placement/removal of earth material performed during construction projects.

6. "Ephemeral stream" means a stream or part of a stream that flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and whose channel bottom is always above the local water table.

7. "Facility or activity" means any MPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the MPDES program.

8. "Final stabilization" means the time at which all soil-disturbing activities at the site have been completed, and a vegetative cover has been established with a density of at least 70% of the pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. Final stabilization using vegetation must be accomplished using seeding mixtures or forbs, grasses, and shrubs that are adapted to the conditions of the site. Establishment of a vegetative cover capable of providing erosion control equivalent to pre-existing conditions at the site will be considered final stabilization.

9. "Larger common plan of development or sale" means a contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan. These separate and distinct construction activities which form a larger common

plan of development or sale may have areas of disturbance which are not physically connected.

10. "Owner/Operator" means a person who owns, leases, operates, controls or supervises a point source

11. "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

12. "Receiving state surface waters" is the river, stream, lake, etc., which receives the discharge from the site.

13. "Regional administrator" means the administrator of Region VIII of the Environmental Protection Agency, which has jurisdiction over federal water pollution control activities in the state of Montana.

14. "Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

15. "Significant sediment" means sediment, solids, or other wastes discharged from construction site, or a facility or activity regulated under the General Permit which exceeds 1.0 cubic foot in volume in any area of 100 square feet that may enter state surface water or a drainage that leads directly to state surface water.

16. "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

17. "State waters" is defined at 75-5-103, MCA.

18. "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

19. "Storm water discharge associated with construction activity" means a discharge of storm water from construction activities including clearing, grading, and excavation that result in the disturbance of equal to or greater than one acre of total land area. For purposes of these rules, construction activities include clearing, grading, excavation, stockpiling earth materials, and other placement or removal of earth material performed during construction projects. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger

common plan of development or sale if the larger common plan will ultimately disturb one acre or more.
(a) Regardless of the acreage of disturbance resulting from a construction activity, this definition includes any other discharges from construction activity designated by the department pursuant to ARM 17.30.1105(1)(f).
(b) For construction activities that result in disturbance of less than five acres of total land area, the acreage of disturbance does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
(c) For construction activities that result in disturbance of five acres or more of total land area, this definition includes those requirements and clarifications stated in ARM 17.30.1102(29)(a), (b), (d) and (e).

20. "SWPPP" or "Storm Water Pollution Prevention Plan" means a document developed to help identify sources of pollution potentially affecting the quality of storm water discharges associated with a facility or activity, and to ensure implementation of measures to minimize and control pollutants in storm water discharges associated with a facility or activity. The Department determines specific requirements and information to be included in a SWPPP based on the type and characteristics of a facility or activity, and on the respective MPDES permit requirements.

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