

7/22/09 DPARB Handout



4th Floor Parmly Billings Library
510 Broadway

PLANNING AND COMMUNITY SERVICES DEPARTMENT



Billings, MT 59101
406-657-8246

Memorandum

To: DPARB Committee
CC: Kim Palmieri, Vern Heisler, Mike Black, Tim Miller
From: Candi Beaudry, Director *CB*
Date: 7/22/2009
Re: Construction Time Limit

Problem: New and remodel residential and commercial construction projects that are not completed in a timely manner create hardships for neighboring properties and residents. Unfinished construction projects are perceived to reduce adjacent property values, may be potentially dangerous, and result in an attractive nuisance. Billings City Code does not have any provision for construction time limits. Existing code only specifies the expiration time of a building permit when work has not commenced or is delayed. The expiration time is based either on the date the permit was issued or the date of the last inspection.

Need: To reduce the potentially harmful affects on neighboring property and residents, City Council requested staff to explore options to impose a time limit on construction.

Findings: A preliminary on-line search of city codes for Montana communities did not find any provisions for construction time limits. A wider internet search produced four communities that do impose time limits on construction: Belmont, CA; Sausalito, CA; Ross, CA; and Mankato, MN.

The California communities share similar elements: 1) time limits apply to all construction; 2) construction time limits are tied to valuation; 3) extensions may be granted by the Building Official; and 4) penalty and appeal provisions. The Town of Ross, CA also requires a construction completion deposit based on the value of the project. The following table compares the construction time limits for the three communities:

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City Code

12 . Construction, Housing and Building Codes, Regulations and Permits

12.03 : Time Limits for Construction Authorized by a Building Permit.

1.000: When a building permit is issued for the construction of a new structure or for the exterior alteration of an existing structure, all exterior work authorized by the building permit shall be completed within eighteen (18) months of the date the building permit was issued, and all exterior surfaces of the building addressed by the building permit shall comply with the Uniform Building Code and Uniform Housing Code as adopted in this Chapter.

2.000: The Building Official may grant an extension, not to exceed 12 months, to the time limit contained in Subdivision 1; provided the Building Official's findings for the extension are related to a unique circumstance and the activities authorized by the building permit have been engaged in a timely manner. A unique circumstance may include, but is not limited to, product shortages, inclement weather, labor disputes, project complexity and size, governmental actions, and financial difficulties.

3.000: The enforcement of this Section is authorized per Section 9.001, Subd. 5 of the Mankato City Code. Appeals from the decision of the Building Official regarding the issuance of extensions shall be heard by the Board of Adjustments and Appeals per the procedures established in Section 10.99 of the Mankato City Code.

(Ord. of 4-28-97, Ord. of 10-23-95)

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R. STEPHEN BROWNING- Retired

MEMORANDUM

TO: Cary Hegreberg
FROM: Steve Wade
Jessie Luther
DATE: June 5, 2009
RE: Proposed DEQ Amendments to ARM 17.30.201

Administrative Rule of Montana Section 17.30.201 deals with permit applications, degradation authorizations, and annual permit fees. The DEQ is proposing to significantly amend this rule pertaining to the fees charged for permit applications and annual fees charged for permit holders.

ARM 17.30.201(1) Types of Fees.

Subsection (1) distinguishes between application permits for new or increased sources, existing sources, and other activities in order to charge different fee levels for each type of application. While this change seems reasonably calculated to make the regulations easier to understand, it is important to note that they bring with them dramatically increased fees to be assessed.

ARM 17.30.201(2) Definitions.

Subsection (2) adds definitions of certain terms in an effort to clarify those terms as used in this rule.

ARM 17.30.201(3) Types of Applications.

Subsection (3) includes applications for "plan review, waiver, nonsignificance determination" and other authorizations under MCA § 75-5-402 in the types of review for which fees are assessed. The amendments to this subsection now allows for 25% of the fee to be returned if the application is withdrawn within 30 days or if the permit is not issued. This section also clarifies that an application is not deemed complete until the fee is paid.

ARM 17.30.201(5)



Subsection (5) amends the rule to state that the basis of the annual permit fee will be the number of outfalls, effluent characteristics (such as gallons per day or population) or total acreage of permitted area.

Schedule I.A Application Fee for Individual Permits

The amendments to Schedule I.A provide a fee for the renewal of a permit versus a higher fee for a new permit. Groundwater permits for industrial uses are changed from a flat fee to be based upon the gallons per day flow rate. The flat fee for this type of application was \$1,500. Now the renewal application fee ranges from \$1,000 to \$4,800 and the new application fee ranges from \$1,500 to \$5,000. The application fee for storm water permits for construction, industrial, and mining, oil and gas activities is \$2,000 for a renewal application and \$3,200 for a new application. If the application is for "Significance Review," the fee is \$4,000 for a renewal and \$5,000 for a new permit.

The notes to Schedule I.A, found in ARM 17.30.201(6)(a)-(d), allow the Department to further increase fees by assessing separate fees for each outfall, the number of discharges to different receiving waters, and for each effluent limit from a single outfall. This compounding of fees has the potential for excessive fees to be charged. The notes also state that if the applications for new permits "constitute a new or increased source," the significance review fee of \$4,000-\$5,000 will be assessed *in addition to the application fee*.

Schedule I.B Application Fee for General Permits

The Schedule I.B amendments reflect the different fees charged for renewals of permits and new permits. The fees for construction dewatering permits are increased \$100 for renewal permits and \$600 for new permits. The fees for sand and gravel production are increased \$450 for renewal applications and \$750 for new permits. Subsection (6)(e) states that a fee will be assessed for each outfall, but that for new permits, the annual fee is included with the new permit application fee.

Schedule I.C Application Fee for Stormwater General Permits

Schedule I.C is an entirely new table that deals with storm water general permits. It breaks down the fees per acreage as well as a renewal and new permit amount. These permits are based upon acreages—smaller acreages have a lower fee and larger acreages have a higher fee—in general, the fees are much higher, for example for construction storm water permits, a renewal application fee increased from \$250 to between \$900-\$3500, depending on acreage. Subsections (6)(f)-(g) state that the acreage that the fees are based on is the total site area for construction sites, the total size of the regulated facility or activity for industrial and mining, oil and gas instead of the disturbed area, often times the entire acreage of a construction operation will not affect storm water.

Subsection (6)(i) states that modifications to the original application within 6 months of the date of issuance will be processed under the original application, but after 6 months, the department will process any modification as a new application. This seems like a punitive provision to assess additional fees. It would make sense that updated application information would be welcomed rather than penalized.

Schedule I.D Application Fee for Other Activities

Schedule I.D., the Application fee for Other Activities was also updated in that the fee amounts were increased for all activities. The availability under the original version of this schedule allowed for storm water no exposure certifications and storm water construction waivers were placed in the new Schedule I.C. Subsections (6)(I)-(n) provide notes on this Schedule and include additional penalization fees for incomplete applications or failure to cure application deficiencies. The department will assess a \$500 resubmittal fee if the application is deemed deficient and the resubmitted application has substantial changes or repeated deficiencies. If an application is deemed deficient and the applicant does not respond within one year, the applicant must submit a new application for permit and new application fees.

Schedule II Review of Authorizations to Degrade

This Schedule increases the fee for a domestic sewage treatment facility to degrade state waters to \$5,000, leaves the fee for industrial activities at \$5,000, and removes the subdivision categories. Under Subsection (7), if the department denies an application for an Authorization to Degrade state waters, only 15% of the application fee will be refunded, instead of the entire fee.

Schedule III.A Annual Fee for Individual Permits

Schedule III.A dealing with Annual Fees for Individual Permits was amended to increase fees generally. For privately owned treatment works-minor permits, the fee was increased by \$500. Ground water permits for industrial or other wastes was increased from \$500 to \$1,500 depending on the gallons per day. Storm water permits for construction, industrial, and mining, oil and gas activities were given a \$2,000 minimum annual fee. The notes to this Schedule state that each outfall is assessed its own fee, and privately owned treatment works will have an annual fee of \$800 per million gallons of effluent per day if the effluent is non-contact cooling water.

Schedule III.B Annual Fee for Non Storm Water General Permits

The amendments to Schedule III.B generally increased all fees, removed storm water permit annual fees from this table, and clarified that the department will assess a fee for each outfall.

Schedule III.C Annual Fee for Stormwater General Permits

Because the annual fees for storm water general permits were removed above, they were given their own table and were broken down by construction and industrial site acreage. It was again clarified that the acreage includes the entire construction site and the total size of the regulated facility. The annual 25% fee reduction was amended to only apply to facilities that maintain compliance with effluent limitations, reporting requirements, compliance with other permits for the previous year. The year that the annual fees are based upon was changed from state fiscal year to the calendar year. Additional penalties in the form of a percentage of the annual fee were added if the initial invoice for the annual fee is not paid within a 90 days of receipt of the invoice.

Basically, all of the changes to ARM 17.30.201 increase fees for permit applications as well as annual fees. **Fees are further increased by setting the fee amount based upon the total**

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acreage of a construction site or industrial facility rather than the actual acreage disturbed by the activity. Each outfall is assessed its own fee which can further increase fees due to the department. Even in the department's reasons behind the amendments, it states that the new fee schedules and increases will generate approximately \$1.7 million to cover the department's costs.

FEE INCREASES

Schedule I.A Application Fee for Individual Permits

Type of Permit	Old Fee	New Renewal Fee	New Application Fee
Ground water permit, industrial or other wastes	\$1,500		
0-1,000 gpd		\$1,000	\$1,500
1001-5000 gpd		\$1,500	\$2,500
5001-10,000 gpd		\$4,800	\$5,000
Storm water permit construction, industrial and mining, oil and gas activities	\$250; \$450; \$500	\$2,000	\$3,200
Significance review	—	\$4,000	\$5,000
Storm water outfall-integrated	—	\$1,000	\$1,500

Schedule I.B. Application Fee for General Permits

Type of Permit	Old Fee	New Renewal Fee	New Application Fee
Construction dewatering	\$300	\$400	\$900
Sand and gravel	\$450	\$900	\$1,200
Petroleum cleanup	\$500	\$800	\$1,200

Schedule I.C Application Fee for Storm Water General Permits

Type of Permit	Old Fee	New Renewal Fee	New Application Fee
Storm water associated w/construction			
Residential	\$250		
Public/Commercial	\$450		
Less than 1 to 5 acres		\$900	\$900
5-10 acres		\$1,000	\$1,000
10-25 acres		\$1,200	\$1,200
25-100 acres		\$2,000	\$2,000
100+ acres		\$3,500	\$3,500
Storm water associated w/industrial Activities	\$500		
Less than 5 acres		\$1,200	\$1,500

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5-20 acres		\$1,500	\$1,800
20+ acres		\$1,800	\$2,000
Storm water associated w/mining, oil and gas	\$500		
Less than 5 acres		\$1,200	\$1,500
5-20 acres		\$1,500	\$1,800
20+ acres		\$1,800	\$2,000
Storm water no exposure certification required once every 5 years	\$100	\$300	\$500
Storm water construction waiver	\$100		\$400

Schedule II. Review of Authorizations to Degrade

- Industrial activities say the same at \$5,000
- Subdivisions are removed from this schedule on a fee/per lot, but a maximum fee of \$20,000 is set for each subdivision

Schedule III.A Annual Fee for Individual Permits

Type of Permit	Old Fee	New Minimum Fee
Ground water permit, industrial or other wastes	\$1,500	
0-1,000 gpd		\$2,000
1,00-5,000 gpd		\$2,500
5,001-10,000 gpd		\$2,800
More than 10,000 gpd		\$3,000
Storm water permit construction, industrial and mining, oil and gas activities	—	\$2,000

- Each fee is assessed per outfall or by the annual average daily flow in gallons per day

Schedule III.B Annual Fee for non-storm water general permits

Type of Permit	Old Fee	New Fee
Construction dewatering	\$250	\$450
Sand and gavel production	\$450	\$750
Petroleum cleanup	\$450	\$750

Schedule III.C Annual Fee for Storm Water General Permits

- Used to be included in Schedule III.B

Type of Permit	Old Fee	New Fee
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Storm water assoc w/construction	\$450	
1-5 acres		\$700
5-10 acres		\$800
10-25 acres		\$1,200
25-100 acres		\$2,000
100+ acres		\$3,000
Storm water assoc w/industrial activities	\$650	
Less than 5 acres		\$1,000
5-20 acres		\$1,200
20+ acres		\$1,500
Storm water assoc w/mining, oil, and gas	\$650	
Less than 5 acres		\$1,000
5-20 acres		\$1,200
20+ acres		\$1,500