

**MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET  
JANUARY 30, 2018**

**AGENDA ITEM: PROGRAMMATIC EXCEPTION FROM CONSULTATION REQUIREMENT FOR CERTAIN WATER POLLUTION DISCHARGE PERMITS ISSUED BY THE MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER PROTECTION BUREAU**

**ACTION NEEDED: REVIEW AND APPROVAL**

**SUMMARY:**

Exceptions to the requirements for Sage Grouse Program consultation for state permitted activities, authorizations, grants, or state technical assistance are approved by the Montana Sage Grouse Oversight Team (MSGOT), not granted by the Sage Grouse Habitat Conservation Program (Program). Executive Order 12-2015 Attachment D sets forth the review process for consultation when a proponent seeks a permit, grant or technical assistance from the State of Montana. Executive Order 21-2015 designates the sage grouse habitats to which Executive Order 12-2015 applies.

Montana Department of Environmental Quality, Water Protection Bureau (Bureau), permits certain pollution discharges into state waters. The Montana Pollutant Discharge Elimination System (MPDES) Permitting Section regulates point source discharge of pollutants to state surface waters through Individual or General Permits (e.g. waste water treatment plants, sewage lagoons, mining, or oil and gas production sites). The Montana Ground Water Pollution Control System (MGWPCS) implements the Montana Water Quality Act by regulating discharges of pollutants to state (ground) waters through Individual Permits (e.g. municipal sewage treatment facilities).

In consultation with the Program, the Bureau identified three situations for existing in which existing permitted surface or groundwater discharge facilities should be granted a programmatic exception from the consultation requirement when no new surface disturbance or disrupting activities near active leks during the breeding, nesting, and early brood-rearing seasons would occur. They are:

1. modification of a permit for existing facilities pursuant to ARM 17.30.1361;
2. minor modifications to existing permits pursuant to ARM 17.30.1362; and
3. renewal of existing permits.

The proposed exception to the consultation requirement for permit modifications is limited to the circumstances in which the modifications do not result in new surface disturbance or disrupting activities. Examples within the scope of the exception are:

- The permittee is working within the existing, disturbed footprint of the facility, adding new pollution control equipment within the disturbed footprint of the facility, etc.;
- The permittee is seeking a change in operating conditions such as a change in sampling frequency or effluent limitations, but the changes do not change the physical nature or extent of the existing operation.

Consultation with the Program will still be required where modification of a facility would result in new surface disturbances or disrupting activities. Examples outside the scope of the exception are:

- construction of a new lagoon or expansion of an existing lagoon;
- addition of new outfalls or relocation of an outfall; or
- expansion of a mine.

Existing facilities are already considered non-habitat due to land conversion and are associated with existing human development. If substantive changes to facility operation or expansion of the footprint are proposed, the permit modification process would still require consultation and application of stipulations. Likewise, new discharge permit applications would still require consultation and be subject to the stipulations.



If approved by MSGOT, the above three circumstances (modification, minor modification, and renewal) would be granted a programmatic exception for existing facilities holding discharge permits. These are specific and narrow circumstances. See narrative Table 1 for a list of existing permitted facilities covered by this exception request.

**PROGRAM RECOMMENDATION:**

The Program recommends MSGOT approve a narrow programmatic exception from the consultation requirement of Executive Order 12-2015 for the facilities listed in Table 1 of the Narrative for modifications, minor modifications, or renewal of existing permits, provided that no new surface disturbance or disrupting activities near active leks during the breeding, nesting, and early brood-rearing seasons would occur.