STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

STORM WATER
RAINFALL EROSIVITY WAIVER FORM

for Exclusion from MPDES Permitting for Storm Water Discharges Associated with Construction Activity

INSTRUCTIONS

Discussion:

The authority for providing a Rainfall Erosivity Waiver Form is stated in the Administrative Rules of Montana (ARM) 17.30.1105(5)(a). The Form is to be used for a "storm water discharge associated with construction activity", as defined in the Administrative Rules of Montana (ARM) 17.30.1102(28), that results in a construction-related disturbance of less than five acres of total land area, and which results in the construction activity having a Rainfall Erosivity Factor ("R" in the Revised Universal Soil Loss Equation - RUSLE) of less than five (5), as determined using a state-approved method. If this Form was not used, these storm water discharges associated with construction activity would need to have permit coverage under the Department's Montana Pollutant Discharge Elimination System (MPDES) "*General Permit for Storm Water Discharge Associated with Construction Activity*", Permit Number MTR100000 (referred to as the "General Permit"). 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", as defined in the General Permit, if the larger common plan will ultimately disturb one acre or more.

There are two state-approved methods to determine the Rainfall Erosivity Factor as listed on this Form:

Method #1 - This first method is recommended, and is called the "Erosivity Index Calculator for Construction Sites". It is much easier to use, but you need access to the internet. It is an online calculator of the Rainfall Erosivity Factor, developed by Texas A & M University and the federal Environmental Protection Agency (EPA). It may be found at the following internet address: http://ei.tamu.edu/index.html

Method #2 - This second method is contained in an EPA January 2001 Fact Sheet 3.1 entitled "Construction Rainfall Erosivity Waiver". It is more difficult to use and involves more manual calculations. It may be obtained in hard-copy by contacting the Department, or may be found and printed out at the following internet address: http://www.epa.gov/npdes/pubs/fact3-1.pdf

In order to use either method, and calculate your construction activity site's R-Factor, you must read the directions provided on these internet sites or on the hard-copy of Fact Sheet 3.1. This Rainfall Erosivity Waiver Form does not contain specific instructions for actually calculating the R-Factor number using either state-approved method, it is only a regulatory form used to report the determined information and actually obtain the waiver. You will not be able to complete this Form without reading the respective instructions and directions for either method.

Based on the Department's experience in permitting storm water discharge associated with construction activity in Montana, it needs to be emphasized that the majority of construction activities performed in Montana will likely not qualify for using this Waiver Form. This is because in determining the construction project's Rainfall Erosivity Factor or "R" Factor, the construction activity time period which must be used in the determination begins with the initiation of construction-related disturbance and ends when the construction-related disturbance has achieved "final stabilization" (as defined in the General Permit). In most circumstances, unless stabilizing the site's disturbed sediment is performed by paving and/or using sod for vegetation, the length of time, soils, precipitation, and other conditions necessary to adequately revegetate most disturbed areas could make the overall construction activity time period so long that it makes the "R" factor too high in this determination. On some projects, it has taken two or more growing seasons to achieve adequate revegetation from seeding and to achieve "final stabilization". Even in the most eligible portions of the state, if the time period between the initiation of construction and the establishment of "final stabilization" at a construction project is over 10 months, the project's R Factor will likely not fall below five, and therefore the project will not qualify for the Rainfall Erosivity Waiver. The bottom line, for construction sites depending on the reestablishment of vegetation, is that the realistic time period necessary to establish "final stabilization" must be evaluated and utilized in the consideration of whether the construction activity qualifies for use of this Waiver Form.

A Rainfall Erosivity Waiver Confirmation Letter from the Department indicating acceptance of a Rainfall Erosivity Waiver Form submittal constitutes notice that the construction activity does not require MPDES permit coverage for its "storm water discharge associated with construction activity". However, use and acceptance of this Form does not relieve the construction activity owner/operator from being subject to other applicable MPDES discharge permitting requirements, other permitting requirements, local requirements, or other obligations.

A separate Rainfall Erosivity Waiver Form must be provided for each construction activity qualifying for the Waiver. All portions of the construction activity's work which are part of the "larger common plan of development or sale" must be included in the determination stated on the Rainfall Erosivity Waiver Form. In other words, the waiver from MPDES storm water discharge permitting is available on a development-wide basis only, not for individual filings, phases, or other portions of the "larger common plan of development or sale".

By signing and submitting this Rainfall Erosivity Waiver Form, the entity in Section A is certifying that the project Rainfall Erosivity Factor is less than five, as determined using the state-approved method.

Coverage under the General Permit is required if the construction project's Rainfall Erosivity Factor ever becomes greater than five due to changes, or anticipated changes, in the project's construction period, such as due to unexpected delays. Also, if the overall construction project or "larger common plan of development or sale" becomes, or is anticipated to become, five or more acres of construction-related disturbance, the project no longer qualifies for the Rainfall Erosivity Waiver. If a construction project's anticipated construction period or schedule changes such that the project's Rainfall Erosivity Factor would be greater than five, or the disturbance becomes five or more acres, the discharger could be in violation, and MPDES permit coverage needs to be obtained. The applicant is responsible for periodically assessing their project to assure that they still qualify for the Rainfall Erosivity Waiver, and applying for the appropriate permit if needed due to changing conditions.

Due Dates: For "storm water discharges associated with construction activity" beginning on or after March 10, 2003, this Rainfall Erosivity Waiver Form must be received by the Department's Water Protection Bureau by the construction start date where construction-related disturbance initiates. If the submitted Form is complete and acceptable, the Waiver Confirmation Letter will be sent to the owner/operator following Department review. If not complete and acceptable, the submitted package will be returned to the applicant for revision or bringing to a complete status. The applicant will then need to resubmit the package, but not the $100 fee if already paid.

Fee: There is a non-refundable $100 fee associated with the submittal and processing of this Form. There is no annual fee associated with the Form. Also, if your storm water discharges are currently covered under an MPDES General Permit, any invoices already received or annual fees due for active permit coverage must still be paid.

Form Completeness: All items on this Form must be completed accurately and in their entirety or the submittal will be deemed incomplete, and submittal of the Form will not be considered complete until all information is received. The Form must be completed in ink. A copy of the Form must be kept by the submitting facility or activity for their records. **One original copy** (with original signatures) of the completed Form **(no copies)**, shall be submitted to:

Montana Department of Environmental Quality
Water Protection Bureau
Storm Water Program
P.O. Box 200901
Helena, Montana 59620-0901

If the storm water discharge from the facility or activity is into a Small Municipal Separate Storm Sewer System (MS4), then an additional copy of this Form must be submitted to the Small MS4 operator. Entities which are defined as a Small MS4 may be found under the definition in ARM 17.30.1102(23). The Small MS4 operator must be allowed to inspect the facility with respect to this Form, and any resulting inspection reports must be made available to the public upon request.

Storm Water Pollution Prevention Plan: A Storm Water Pollution Prevention Plan (SWPPP) is not required by the Department for storm water discharges associated with construction activity that qualify for, and submit, the Rainfall Erosivity Waiver Form. However, a project operating under the waiver may still be held liable if storm water discharges from construction activities cause or threaten to cause pollution, contamination, or degradation of surface waters. For this reason, the Department encourages the development and implementation of a SWPPP which incorporates various Best Management Practices, particularly those related to sediment and erosion control. Part IV of the General Permit states information which is typically included in a SWPPP and may be used as guidance.

Definitions in the Storm Water Rules and in the General Permit must be referred to as necessary to understand and complete this Rainfall Erosivity Waiver Form properly. In the Rules, ARM 17.30.1102 needs to be referenced for at least the following important definitions: Best Management Practices (BMPs); Final Stabilization; Small Municipal Separate Storm Sewer System; Storm Water; Storm Water Discharge Associated with Construction Activity; Storm Water Pollution Prevention Plan; and, Surface Waters. The General Permit provides additional useful definitions such as: Disturbance; Ephemeral Stream; Larger Common Plan of Development or Sale; and, Receiving Surface Waters.

The aforementioned General Permit, Storm Water Rules, and other related construction storm water discharge permitting information may be obtained at: http://www.deq.mt.gov

INSTRUCTIONS FOR SECTIONS ON THE FORM:

Section A: Provide the name and address of the applicant, including the company name, local contact, and mailing address. Indicate whether the applicant is the owner or contractor for the construction project.

Section B: Provide the street address of the construction site. If the street address is not available, include the nearest intersection or other identifying information. Provide the latitude/longitude for the approximate center point of the construction project, to the nearest 15 seconds. For long linear construction projects, provide the latitude/longitude for each of the two endpoints. Latitude/longitude information can be obtained using a GPS instrument, a U.S. Geological Survey topographical map, or use "Topofinder" on the following website: http://nris.mt.gov/interactive.html

Section C: Briefly describe the purpose and nature of the construction activity. Include such factors as what is being constructed, the ultimate land use, construction methods, or other factors which might affect pollutant (sediment, etc.) discharge and storm water quality.

Section D: Provide an estimate of the total acreage of construction-related disturbance. Remember that you must consider the entire construction project, or "larger common plan of development or sale" as defined in the General Permit, even if various aspects are spread out over time.

Section E: Identify the names of the receiving surface waters. Surface waters are defined in ARM 17.30.1102(32). To further clarify, "surface waters" include perennial (year-round) and intermittent (seasonal) waterbodies, as well as ephemeral streams. In other words, this definition may include all potentially flowing water courses, even if they are usually dry. In identifying the name of the receiving surface water, provide a description of the storm water discharge flow from the construction project site down to the nearest receiving surface water as shown on a USGS topographic map. Attach a USGS topographic map showing the construction project location and surface waters. If storm water from the construction site enters a storm sewer system, identify that system and indicate the ultimate named receiving surface water for the storm sewer system.

Section F - Start Date: this is the day you expect to begin disturbing soils, including grubbing, clearing, stockpiling, excavating, and grading activities.

Section F - End Date: this is when the site has achieved "final stabilization" as defined in ARM 17.30.1102(5). It is similarly defined in the General Permit. "Final stabilization" essentially means that all disturbed areas have either been built-on with structures, paved, or had a uniform vegetative cover established with a density of at least 70 percent of pre-disturbance levels. If General Permit coverage was obtained instead of this waiver, permit coverage would normally be maintained until "final stabilization" is achieved. Consequently, completion of "final stabilization" is also used as the "end date" for this waiver as well. Also, even if you are only doing one part of the project, the estimated completion date must be for the overall project. If permit coverage is still required once your part is completed, and the <u>total</u> time of permit coverage does <u>not</u> result in an R-Factor of less than five, then your part does <u>not</u> qualify for the waiver. It is very important to provide an accurate estimate. If

in doubt, assume a longer period of time. Underestimating the anticipated construction schedule can result in a lower calculated project R-Factor. If a construction site operator underestimates the project R-Factor and does not apply for permit coverage, and the actual R-Factor for the project is five or above, the operator may be held liable for discharging pollutants to surface waters without a permit.

Section G: The eligible signatory must sign the certification statement as required.

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

RAINFALL EROSIVITY WAIVER FORM

for Exclusion from MPDES Permitting for Storm Water Discharge Associated with Construction Activity

Please print or type, and read the instructions. This Form can be completed electronically on the computer, and a hard-copy must be obtained or printed-out. This Form must be filled out completely.

A. Name and Address of Applicant:

Company or Party Name:

_____

Mailing Address:

_____

City, State, and Zip Code:

_____

Phone Number: _____

Who is applying (check): Construction Project Owner ○ Contractor ○

Contact Person (familiar with facility):

_____

Title: _____ Phone Number: _____

B. Location of the Construction Site:

Street Address or Location Description:

_____

City, State, and Zip Code:

_____

County: _____

Name of Facility:

Latitude/Longitude of the Facility:

_____ _____

C. Briefly Describe the Nature of the Construction Activity:

D. Area of Construction-Related Disturbance of the Construction Site:

E. Indicate the name of the receiving surface water(s) (Attach a USGS topographic map showing the construction project location and surface waters. If storm water from the construction site enters a storm sewer system, identify that system and indicate the ultimate named receiving surface water for the storm sewer system.):

F. Rainfall Erosivity Factor:

Indicate the determined Rainfall Erosivity Factor, otherwise known as "R"-Factor, to the nearest tenth of a decimal place (this value must be less than five in order to qualify for the use of this Form):

The Department reserves the right to revoke or refuse to grant the waiver based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to state waters.

The Department will not grant waivers for construction sites located in areas where snow cover can exist at the site for extended periods of time, if the construction site will remain active and unstabilized during the spring runoff. The Department will make the decision on whether or not a project qualifies for the waiver based on information provided by the permittee, and other sources, such as local government agencies.

Check which one of the following two methods was used to determine the Rainfall Erosivity Factor:

- ○ **Method #1** - Using "Erosivity Index Calculator for Construction Sites" (Online Calculator developed by Texas A & M University and EPA); or

- ○ **Method #2** - Using Tables & Maps from EPA's Storm Water Phase II Final Rule Fact Sheet 3.1: Low Rainfall Erosivity Waiver (EPA 833-F-00-014, published 01/01/2001)

For all applicants (using either Method #1 or #2), referring to the instructions, please provide the following information which was used in the Rainfall Erosivity Factor determination:

1.	The start date of the construction project.	**Start Month / Day / Year**
2.	The end date of the construction project (after "final stabilization" is achieved).	**End Month / Day / Year**
3.	The county the project is located in. If the project is in two or more counties, the county that the majority of the project lies within must be used.	**County**

For those applicants which used Method #1, please submit an original print-out of the "Query Result" page (from the website's online R-Factor calculator) demonstrating the above provided information, and which indicates the R-Factor is below five. If you use Method #1, you do not need to complete Items 4a through 11a, and 4b through 12 below.

For those applicants using Method #2, if your entire construction activity start date and end date (site final stabilization date) fall within the same calendar year, you need to complete items 4a through 11a, and the result indicated in Item 11a is your determining R-Factor. However, if the project start date and end date are in two different calendar years (during winter months), you will need to complete Items 4a through 11a for the first calendar year (with an End Date of December 31st), and Items 4b through 11b and Item 12 for the second calendar year (with a Start Date of January 1st). Your determining R-Factor would then be the sum total of Items 11a and 11b, which is Item 12.

For those applicants which used Method #2, you must read and follow the directions from EPA's Fact Sheet 3.1. Based on the maps and tables provided in Fact Sheet 3.1, please provide the following additional information (in the boxes to the right) for the initial (or only) calendar year between your Start Date and End Date:

4.	Provide the Erosivity Index Zone Number from Figure 1 (for Montana this will be either 41, 42, 43, 44, 45, 46, or 47)	**Erosivity Index Zone**
5.	Provide the Annual Erosivity Factor Number from Figure 3 (for Montana this will be an interpolated whole number ranging from 10 to 40)	**Annual Erosivity Factor**
6a.	Provide the Erosivity Index 15-day period that your start date (Item 1) falls within from those along the top of Table 1 (e.g., June 1-15).	**Start Period**
7a.	Provide the corresponding Erosivity Index value in Table 1 for the Start Period indicated in Item 6a above.	**Start R-Factor**
8a.	Provide the Erosivity Index 15-day period that your end date (Item 2) falls within from those along the top of Table 1 (e.g., Oct 16-31). If the completion date falls within the same 15-day period as the starting date, the next 15-day period must be used. For example, if the project will begin on June 1st and end on June 10th, the period used for the start of the project would be "June 1-15" and the period used for the end of the project would be the next period, "June 16-30"	**End Period**
9a.	Provide the corresponding Erosivity Index value in Table 1 for the End Period indicated in Item 8a above.	**End R-Factor**
10a.	Subtract the Start R Factor (Item 7a) from the End R Factor (Item 9a), and provide this Percent Erosivity Index for your site.	**Site Erosivity Index**
11a.	Multiply the site's Percent Erosivity Index (Item 10a) times the Annual Erosivity Factor (Item 5) and provide this end product, which is the construction activity site's Rainfall Erosivity (R) Factor for the first calendar year.	**Site R Factor**

For a second calendar year:

6b.	Provide the Erosivity Index 15-day period that your start date falls within from those along the top of Table 1 (for second calendar year will always be January 1-15).	January 1-15 **Start Period**
7b.	Provide the corresponding Erosivity Index value in Table 1 for the Start Period indicated in Item 6b above.	**Start R-Factor**
8b.	Provide the Erosivity Index 15-day period that your end date (Item 2) falls within from those along the top of Table 1 (e.g., February 16-31). If the completion date falls within the same 15-day period as the starting date, the next 15-day period must be used. For example, if the project will begin on January 1st and end on January 10th, the period used for the start of the project would be "January 1-15" and the period used for the end of the project would be the next period, "January 16-30"	**End Period**
9b.	Provide the corresponding Erosivity Index value in Table 1 for the End Period indicated in Item 8b above.	**End R-Factor**
10b.	Subtract the Start R Factor (Item 7b) from the End R Factor (Item 9b), and provide this Percent Erosivity Index for your site.	**Site Erosivity Index**
11b.	Multiply the site's Percent Erosivity Index (Item 10b) times the Annual Erosivity Factor (Item 5) and provide this end product, which is the construction activity site's Rainfall Erosivity (R) Factor for the second calendar year.	**Site R Factor**

For projects spanning into two calendar years:

12.	Add the R Factors from Items 11a and 11b above. This total R-Factor is the construction activity site's Rainfall Erosivity (R) Factor for the entire duration of the construction project in both calendar years.	**Total R Factor**

G. Waiver Certification Statement (must be completed whether Method #1 or #2 was used):

Important Note: ARM 17.30.1323(1) requires this Form and certification statement to 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 1 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.

If the Project R-Factor in Method #1, or calculated in Item 11a (single calendar year projects) or Item 12 (projects spanning two calendar years) when using Method #2, is **less than five** the project qualifies for the waiver.

If the Project R-Factor in Method #1, or calculated in 11a or 12 when using Method #2, is **equal to or greater than five** the project **does not** qualify for the waiver, and the site owner or operator must submit an application for coverage under a MPDES General Permit, and comply with its requirements.

Please check the following boxes indicating you understand the requirements presented herein, and sign the certification:

☐ I understand that if the construction project's or larger common plan of development or sale's anticipated schedule changes so that the start date is earlier or the end date is later, such that the Project R-Factor changes, then this Form must be filled out with the new information and resubmitted if the site still qualifies for the waiver, or if it doesn't qualify a Notice of Intent Package for coverage under the MPDES *General Permit for Storm Water Discharges Associated with Construction Activity* must be submitted to the Department.

☐ I understand that if the project or larger common plan of development or sale exceeds, or is expected to exceed five acres of disturbance, a Notice of Intent Package for coverage under the MPDES *General Permit for Storm Water Discharges Associated with Construction Activity* must be submitted to the Department.

"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 gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature	Date Signed
Name (printed)	Title

Clear Form Print Form