

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the back of each register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PUBLIC HEARING ON  
of ARM 17.36.345 pertaining to ) PROPOSED AMENDMENT  
adoption by reference of DEQ-4 )  
) (SUBDIVISIONS)

TO: All Concerned Persons

1. On July 13, 2004, at 2:00 p.m., the Department of Environmental Quality will hold a public hearing, in conjunction with the Board of Environmental Review's hearing for MAR Notice No. 17-213, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., June 28, 2004, to advise us of the nature of the accommodation that you need. Please contact Janet Skaarland, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1801; fax (406) 444-1374; or email jskaarland@state.mt.us.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.36.345 ADOPTION BY REFERENCE (1) For purposes of this chapter, the department hereby adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) through (c) remain the same.

(d) Department Circular DEQ-4, "Standards for Subsurface Wastewater Treatment Systems", ~~2002~~ 2004 edition;

(e) through (2) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: This amendment is necessary to adopt the most current edition of DEQ-4. The reasons for each change to the 2002 Circular are described in MAR Notice No. 17-213 published in this issue of the Montana Administrative Register. The specific changes to the Circular are shown, in underline/strikeout format, at <http://www.deq.state.mt.us/wqinfo/Sub/Circulars.asp>.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Ray Lazuk,

Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, phone (406) 444-3638, fax (406) 444-1374, or email rlazuk@state.mt.us and must be received no later than 5:00 p.m., July 21, 2004. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board of Environmental Review, has been designated to preside over and conduct the hearing.

6. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to ejohnson@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

BY: Jan P. Sensibaugh  
JAN P. SENSIBAUGH, Director

Certified to the Secretary of State, June 7, 2004.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF PUBLIC HEARING ON
of ARM 17.30.716, 17.36.912, )	PROPOSED AMENDMENT
17.36.914, 17.36.916, )	
17.36.922, 17.38.101, and )	(WATER QUALITY)
17.38.106 pertaining to )	
incorporation by reference of )	
DEQ-4 as it pertains to water )	
quality )	

TO: All Concerned Persons

1. On July 13, 2004, at 1:30 p.m., the Board of Environmental Review will hold a public hearing, in conjunction with the Department of Environmental Quality's hearing for MAR Notice No. 17-212, in Room 111, Lee Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., June 28, 2004, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.30.716 CATEGORIES OF ACTIVITIES THAT CAUSE NON-SIGNIFICANT CHANGES IN WATER QUALITY (1) remains the same.

(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) through (v) remain the same.

(vi) the SWTS must meet the current design standards defined in ARM Title 17, chapter 36, subchapter 3 and department Circular DEQ-4, 2004 edition; and

(vii) through (6)(d) remain the same.

AUTH: 75-5-301, 75-5-303, MCA

IMP: 75-5-303, 75-5-317, MCA

17.36.912 DEFINITIONS (1) through (7) remain the same.

(8) "Experimental system" means a wastewater treatment system for which specific design standards are not provided in

department Circular DEQ-4, ~~2002~~ 2004 edition, DEQ-2, 1999 edition, or this subchapter.

(9) through (34) remain the same.

(35) "Variance" means the grant, pursuant to ARM 17.36.922, by the reviewing authority of an exception to the minimum requirements set out in this subchapter or department Circular DEQ-4, ~~2002~~ 2004 edition.

(36) through (37) remain the same.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

17.36.914 WASTEWATER TREATMENT SYSTEMS - TECHNICAL REQUIREMENTS

(1) Except as provided in ARM 17.36.916, all wastewater treatment systems must be designed and constructed in accordance with the applicable requirements in ARM 17.36.913 and in department Circular DEQ-4, ~~2002~~ 2004 edition.

(2) Department Circular DEQ-4, ~~2002~~ 2004 edition, which sets forth standards for subsurface sewage treatment systems is adopted and incorporated by reference for purposes of this subchapter. Copies are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

(3) through (7) remain the same.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

17.36.916 ABSORPTION BEDS, HOLDING TANKS, SEEPAGE PITS, PIT PRIVIES, CESSPOOLS - TECHNICAL REQUIREMENTS AND PROHIBITIONS

(1) The wastewater treatment systems described in (3) through (7) may be allowed only if the reviewing authority determines that:

(a) site constraints prevent the applicant from constructing any system described in department Circular DEQ-4, ~~2002~~ 2004 edition;

(b) through (2) remain the same.

(3) Absorption beds may be used for replacement systems only and may not be constructed in unstabilized fill. Absorption beds must also meet the design and construction requirements in department Circular DEQ-4, ~~2002~~ 2004 edition.

(4) Seepage pits may be used for replacement systems only, and only when no other means of treatment and disposal is available.

(a) remains the same.

(b) Permit applications for seepage pits must include plans for the proposed pit. Seepage pits must meet the design and construction requirements in department Circular DEQ-4, ~~2002~~ 2004 edition.

(5) Holding tank systems may be approved only if the facility to be served is for seasonal use.

(a) remains the same.

(b) Holding tanks must meet the design and construction requirements in department Circular DEQ-4, ~~2002~~ 2004 edition.

(c) through (iv) remain the same.

(6) Sealed pit privy systems may be approved only if the facility to be served does not have a piped water supply, and the facility is a seasonal-use recreational site.

(a) Permit applications for sealed pit privies must include plans for the proposed sealed pit. Sealed pit privy systems must meet the design and construction requirements in department Circular DEQ-4, ~~2002~~ 2004 edition.

(7) and (8) remain the same.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

17.36.922 LOCAL VARIANCES (1) As provided in this rule, a local board of health, as defined in 50-2-101, MCA, may grant variances from the requirements in this subchapter and in department Circular DEQ-4, ~~2002~~ 2004 edition.

(2) through (4) remain the same.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) through (3)(h)(ii) remain the same.

(4) Before commencing or continuing the construction, alteration, extension, or operation of a public water supply system or wastewater system, the applicant shall submit a design report along with the necessary plans and specifications for the system to the department or a delegated division of local government for its review and written approval. Two sets of plans and specifications are needed for final approval. Approval by the department or a delegated division of local government is contingent upon construction and operation of the public water supply or wastewater system consistent with the approved design report, plans, and specifications. Failure of the system to operate according to the approved plans and specifications or the department's conditions of approval is an alteration that requires resubmittal of a design report, plans, and specifications for department approval.

(a) through (c) remain the same.

(d) The board hereby adopts and incorporates by reference ARM 17.36.320 through 17.36.325, 17.36.327 and 17.36.345. The design report, plans, and specifications for public subsurface sewage treatment systems must be prepared in accordance with ARM 17.36.320 through 17.36.325, 17.36.327 and 17.36.345 and in accordance with the format and criteria set forth in Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems," ~~2002~~ 2004 edition.

(e) through (13) remain the same.

(14) The board hereby adopts and incorporates by reference the following:

(a) through (c) remain the same.

(d) Department of Environmental Quality Circular DEQ-4, ~~2002~~ 2004 edition, which sets forth standards for subsurface wastewater treatment systems.

(e) and (15) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, 75-6-112, 75-6-121, MCA

17.38.106 FEES (1) remains the same.

(2) Fees for review of plans and specifications are based on (2)(a) through (e) and (3). The total fee for the review of a set of plans and specifications is the sum of the fees for the applicable parts or sub-parts listed in these citations. Approval will not be given until fees calculated under this rule have been received by the department.

(a) and (b) remain the same.

(c) The fee schedule for designs requiring review for compliance with department Circular DEQ-4, ~~2002~~ 2004 edition, is as specified in the fee schedule in ARM 17.36.802 for wastewater disposal systems.

(d) through (5) remain the same.

AUTH: 75-6-108, MCA

IMP: 75-6-108, MCA

REASON: These amendments are proposed because it is necessary to revise the current edition of DEQ-4. The reasons for each change to the 2002 Circular are described below. The specific changes to the Circular are shown, in underline/strikeout format, at <http://www.deq.state.mt.us/wqinfo/Sub/Circulars.asp>.

#### CHAPTER 4 SITE MODIFICATIONS, Section 4.3.3.2

The current language in 4.3.3.2 is contradictory. The original intent of this section was to disallow the use of fill for the purpose of meeting the minimum separation distance to a limiting layer. The first sentence suggests the contrary, and is being replaced with language consistent with the original intent.

#### CHAPTER 5 WASTEWATER FLOW, Section 5.4

The current language in section 5.4 conflicts with language in section 16.1 for recirculating sand filters that states "The wastewater strength discharged to the sand filter must not exceed residential strength wastewater." The original intent of section 5.4 was to require the use of treatment systems specifically designed to pretreat high strength wastewater. The sand filter mentioned in this section is not the same type of sand filter described in Chapter 16. Therefore, the reference to sand filters and aerobic treatment units in this section is being eliminated to avoid confusion, and the reader is instead referred to EPA guidance.



CHAPTER 6 DESIGN OF SEWERS, Section 6.2.1

CHAPTER 7 SEPTIC TANKS, Section 7.1

CHAPTER 8 STANDARD ABSORPTION TRENCHES, Section 8.1

The 2000 edition of Circular DEQ-4 allowed the discharge of water softener backwash into septic systems with a recommendation that the effluent should not be discharged to septic system drainfields in soils with clay that exhibit shrink/swell properties. During subdivision task force meetings on proposed revisions to the 2000 edition, several members expressed concerns that there were apparent links between failed septic systems and the use of water softeners. The circular was revised such that the 2002 edition prohibited the discharge of water softener backwash into septic systems. After publication, representatives of the water softener industry approached DEQ with concerns that such a prohibition was unsubstantiated, and that there was no clear evidence of detrimental impacts to septic systems from water softeners that were properly operated and maintained.

To address the water softener industry's concerns, a committee was formed that included members of the subdivision task force and industry representatives to discuss the issue and exchange information. Based on the information presented during the discussions, it became apparent that the evidence for prohibiting water softener backwash into septic systems was inconclusive. The main body of technical documentation presented to the committee indicated that there should not be problems with discharging backwash to septic systems. The DEQ also contacted state agencies across the country and found that, of the agencies that responded back to DEQ, most do not prohibit water softener backwash into septic systems. To determine if there were any problems with water softeners and septic systems occurring on a statewide level, DEQ surveyed sanitarians in 38 counties/regions in Montana. The results of that survey indicated that there were no documented septic system failures that could be directly attributed to water softener backwash or the discharge of backwash into soils that contained clay with shrink/swell properties. Many of the respondents, however, did indicate that there were probably cases of septic system failures that were caused by hydraulic overloading from improperly sized drainfields that received discharge from water softeners and reverse osmosis units.

The proposed revision to Circular DEQ-4 removes the prohibition against discharge of water softener backwash into septic systems, and imposes a set of conditions on the use of water softeners and other water treatment devices such as iron filters and reverse osmosis units. To minimize the amount of water softener backwash discharged to the septic system, the new language incorporates the use of a demand-initiated regeneration (DIR) control device and adds the requirement to treat only interior water. This is nearly identical to the solution developed by the state of Texas, which also had previously prohibited the discharge of backwash from water softeners and

reverse osmosis units into septic systems. The state of Wisconsin has a similar DIR requirement.

The new circular language also addresses potential impacts to aerobic, nonstandard, and proprietary sanitary wastewater treatment systems by requiring that the discharge meet the specifications of the designer/manufacturer of the system. The issue of potential hydraulic overloading also is addressed by adding a requirement in Chapter 8 to accommodate the additional flow of backwash water in drainfield sizing. Lastly, the potential for problems with backwash in clay soils is addressed with a recommendation that septic system designers consult with local health officials to determine if area soils contain clay with shrink/swell properties that may lead to premature septic system failure.

The revised language concerning water softeners and other water treatment devices is intended to strike a balance between the need to impose protective measures for septic systems/water quality and the level of scientific information currently available to justify those protective measures statewide. As needed, each county also has the ability to impose more stringent requirements than those specified in Circular DEQ-4 so that they may tailor their wastewater treatment regulations to local/regional conditions.

CHAPTER 8 STANDARD ABSORPTION TRENCHES, TABLE 8-1 and TABLE 8-2  
CHAPTER 12 SAND-LINED ABSORPTION TRENCHES, Section 12.1

Footnote (a) in Tables 8-1 and 8-2 currently requires pressure-dosed systems if the soil for three feet below the infiltrative surface contains more than 15 percent gravel. The term "gravel" is general and covers a broad spectrum of soil textures, some of which may not require pressure dosing. For clarification, the term gravel is replaced with "gravelly sand or very coarse sands". This is consistent with the soil texture associated with a percolation rate of less than three minutes per inch. Further clarification also is added to the footnote to require sand-lined trenches in very gravelly sand or coarser-textured soils. The revised language for pressure dosing is then carried over to section 12.2 for sand-lined absorption trenches so that the requirement for pressure dosing in soils with a percolation rate less than three minutes per inch is consistent with the requirements in Tables 8-1 and 8-2.

CHAPTER 17 RECIRCULATING TRICKLING FILTERS, Section 17.2.6

With the exception of the filter media, a recirculating trickling filter is nearly identical to a recirculating sand filter from an engineering design perspective. New language is proposed to be added to section 17.2.6 that is identical to the requirements imposed in section 16.2.6 for recirculating sand filters. The reason for the tank to be sized to 1.5 times the daily flow is because it must have sufficient volume to accept the normal daily flow, a portion of the preceding day's flow,

and still allow for a holding period for biological activity to occur.

CHAPTER 20 AEROBIC WASTEWATER TREATMENT UNITS, Section 20.3.4.1  
CHAPTER 22 EXPERIMENTAL SYSTEMS, Section 22.5.1

The requirements in these sections are being replaced by those in a new rule that is currently in the process of adoption by the Board. These revisions are being made in anticipation of amendments to ARM 17.30.702 and new rule I [ARM 17.30.718] pertaining to the definition of nutrient-reducing subsurface wastewater treatment systems. The amendments to ARM 17.30.702 and new rule I have been publicly noticed in the Montana Administrative Register (MAR Notice No. 17-206, February 26, 2004, page 387). The proposed amendments to sections 20.3.4.1 and 22.5.1 refer to ARM 17.30.718 concerning nutrient reduction.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us and must be received no later than 5:00 p.m., July 21. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@state.mt.us, or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

By: Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.,  
Chairman

Certified to the Secretary of State June 7, 2004.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF PUBLIC HEARING ON
of ARM 17.8.505 and 17.8.514 )	PROPOSED AMENDMENT
pertaining to air quality )	
operation fees and open )	
burning fees )	(AIR QUALITY)

TO: All Concerned Persons

1. On July 14, 2004, at 10:00 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Lee Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., July 6, 2004, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.505 AIR QUALITY OPERATION FEES (1) through (3) remain the same.

(4) Annually, the department shall provide the owner or operator of each facility required to pay an air quality operation fee, with written notice of the amount of the fee and the basis for the fee assessment.

(a) The air quality operation fee is due within 30 days after receipt of the notice, unless the fee assessment is appealed pursuant to ARM 17.8.511. If any portion of the fee is not appealed, that portion of the fee that is not appealed is due within 30 days after receipt of the notice. Any remaining fee that is due after completion of an appeal, is due within 30 days after issuance of the board's decision or within 30 days after issuance of the final decision in any judicial review of the board's decision.

(b) remains the same.

(5) The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted by the facility during the previous calendar year and is an administrative fee of \$400, plus ~~\$20.61~~ 21.58 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted.

(6) through (9) remain the same.

AUTH: 75-2-111, 75-2-220, MCA  
IMP: 75-2-211, 75-2-220, MCA

REASON: Pursuant to 75-2-220, MCA, the Department assesses air quality permit application fees, annual air quality operation fees, and major open burning permit fees. In the aggregate, these fees must be sufficient to cover the Department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the Board.

Air quality operation fees are required for all facilities that hold an air quality permit or that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program. The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted. The amount of money the Department needs to generate through air quality operation fees depends on the legislative appropriation and the amount of carryover from the previous fiscal year. The emission component of the operation fee is also revised to account for changes in the total amount of pollutants emitted in the state in the previous calendar year. This rulemaking would set the air quality operation fees to be billed in calendar year 2004. Air quality fees billed in 2004 will be based on emissions from calendar year 2003 and will fund the Department's activities in fiscal year 2005.

The legislative appropriation for fiscal year 2004 was \$2,676,705. The amount of the carryover from fiscal year 2003 was \$287,659. The total amount of pollutants reported for calendar year 2003 fees was 103,917 tons, and the per-ton component of the air quality operation fee was \$20.61.

The appropriation for fiscal year 2005 is \$2,706,877, an increase of \$30,172 from last fiscal year. The projected carryover from fiscal year 2004 is \$152,021. The total amount of pollutants reported for 2004 fees is 103,986 tons. Based upon the appropriation, the carryover, the projected permit application fees, and the emission inventory, to cover the Department's costs of developing and administering the air quality permitting program, it is necessary for the Board to increase the per-ton charge to \$21.58. Therefore, the Board is proposing to amend ARM 17.8.505(5) by replacing the per-ton charge of \$20.61 with \$21.58.

In calendar year 2003, the total amount of fees assessed was \$2,342,002. The amount of fees that would be assessed to meet this fiscal year's appropriation would be \$2,463,228, for an increase of \$121,226. In calendar year 2004, fees would be assessed for 550 facilities.

Also, the Board is proposing to make a minor clerical correction to ARM 17.8.505(4)(a) to delete an unnecessary comma. This amendment is not intended to change the meaning of the rule.

17.8.514 AIR QUALITY OPEN BURNING FEES (1) through (3) remain the same.

(4) The air quality major open burning permit application fee shall be based on the actual, or estimated actual, amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality major open burning permit required under ARM 17.8.610.

(a) The air quality major open burning permit application fee is the greater of the following, as adjusted by any amount determined pursuant to (4)(b):

(i) a fee calculated using the following formula:

tons of total particulate emitted in the previous appropriate calendar year, multiplied by ~~\$16.60~~ 7.67; plus tons of oxides of nitrogen emitted in the previous appropriate calendar year, multiplied by ~~\$4.15~~ 1.92; plus tons of volatile organic compounds emitted in the previous appropriate calendar year, multiplied by ~~\$4.15~~ 1.92; or

(ii) and (b) remain the same.

AUTH: 75-2-111, MCA

IMP: 75-2-211, 75-2-220, MCA

REASON: The Board is proposing to amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2005. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the Department develops a budget reflecting the cost the Department will incur that fiscal year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2003, the major open burners reported 14,370.0 tons of emissions, compared to 6,129.1 tons for calendar year 2002, or an increase of 8,240.9 tons.

The budget for operating the program for 12 major open burners in fiscal year 2005 is \$45,628, compared to a budget of \$47,737 for fiscal year 2004. The \$2,109 budget decrease is due to expected decreases of \$1,350 for meteorological equipment, \$90 for Kalispell utilities, \$404 for data management staff space rent, \$330 for internet annual expense, and \$1,383 for travel. Anticipated increases include \$639 for personnel services, \$539 for benefits, and \$271 for indirect costs. Due to the increase in the emission inventory and the expected decrease in expenses for the program, it is necessary to decrease the per-ton charge. The Board is proposing to decrease the permit fees from \$16.60 per ton of particulate, \$4.15 per ton of oxides of nitrogen, and \$4.15 per ton of volatile organic

compounds emitted to \$7.67, \$1.92 and \$1.92, respectively.

The increased amount of emissions generated by the major open burners during calendar year 2003 and the projected \$2,109 budget decrease for fiscal year 2005 would result in a total cumulative decrease in fees of \$2,109. This amount would be distributed among the 12 major open burners.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@state.mt.us, no later than 5:00 p.m., July 21, 2004. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@state.mt.us; or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

David Rusoff  
DAVID RUSOFF  
Rule Reviewer

BY: Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.,  
Chairman

Certified to the Secretary of State June 7, 2004.



BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF PUBLIC HEARING ON
of ARM 17.8.504, 17.8.505, and )	PROPOSED AMENDMENT AND
17.8.744 and adoption of New )	ADOPTION
Rules I through X pertaining )	
to registration of certain air )	
contaminant sources including )	(AIR QUALITY)
non-metallic mineral )	
processing plants )	

TO: All Concerned Persons

1. On July 14, 2004, at 10:30 a.m., a public hearing will be held in Room 111, Lee Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., July 6, 2004, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.504 AIR QUALITY PERMIT APPLICATION AND REGISTRATION FEES (1) through (4) remain the same.  
 (5) Concurrent with the submittal of a registration form, as specified in [New Rules I through V], the owner or operator shall submit a registration fee of \$500.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA  
 IMP: 75-2-211, 75-2-220, 75-2-234, MCA

17.8.505 AIR QUALITY OPERATION FEES (1) An annual air quality operation fee must be submitted to the department by the owner or operator of each facility:  
 (a) ~~each facility~~ for which a Montana air quality permit has been issued by the department and remains in effect; ~~and~~  
 (b) ~~each facility~~ for which an air quality operating permit has been issued by the department and remains in effect; ~~and~~  
 (c) registered with the department in accordance with [New Rules I through V].  
 (2) through (9) remain the same.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA  
IMP: 75-2-211, 75-2-220, 75-2-234, MCA

17.8.744 MONTANA AIR QUALITY PERMITS -- GENERAL EXCLUSIONS (1) A Montana air quality permit is not required under ARM 17.8.743 for the following:

- (a) through (i) remain the same.
- (j) temporary process or emission control equipment, replacing malfunctioning process or emission control equipment, and meeting the requirements of ARM 17.8.110(7) through (9); ~~or~~
- (k) routine maintenance, repair, or replacement of equipment and equipment used to perform routine maintenance, repair, or replacement; ~~or~~
- (l) any facility that has registered with the department in accordance with this subchapter.

AUTH: 75-2-111, 75-2-204, 75-2-234, MCA  
IMP: 75-2-211, 75-2-234, MCA

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Bucket elevator" means a conveying device for non-metallic minerals consisting of a head and foot assembly that supports and drives an endless single or double strand chain or belt to which buckets are attached.

(2) "Conveyor" means a device for transporting materials from one piece of equipment or location to another piece of equipment or location within a plant. Conveyors include, but are not limited to, the following:

- (a) feeders;
- (b) belt conveyors;
- (c) bucket elevators; and
- (d) pneumatic systems.

(3) "Crusher" means a machine used to crush any non-metallic mineral and includes, but is not limited to, the following types:

- (a) jaw;
- (b) gyratory;
- (c) cone;
- (d) roll;
- (e) rod mill;
- (f) hammermill; and
- (g) impactor.

(4) "Dust suppression control" means 50% reduction in particulate emissions applied for the required use of water, water spray bars, and/or chemical dust suppression.

(5) "Grinding mill" means a machine used for wet or dry fine crushing of any non-metallic mineral. A grinding mill includes the air conveying system, air separator, or air classifier, where such systems are used. Grinding mills include, but are not limited to, the following types:

- (a) hammer;
- (b) roller;
- (c) rod;
- (d) pebble and ball; and
- (e) fluid energy.

(6) "Haul road" means any roadway within the physical boundary of a non-metallic mineral processing facility that is used as a material transport road or access road, or for a similar purpose.

(7) "Modified non-metallic mineral processing plant" means a plant at which equipment has been added or replaced or construction or changed conditions of operation have occurred after registration.

(8) "Non-metallic mineral processing plant" means any equipment, or combination thereof, including material transfer points, that is used to crush, grind, or screen any non-metallic mineral, as defined in 40 CFR Part 60, Subpart 000.

(9) "PM<sub>10</sub>" means particulate matter with an aerodynamic diameter of 10 microns or less.

(10) "PM<sub>10</sub> non-attainment areas" means certain PM<sub>10</sub> non-attainment areas in Montana including, but not limited to, the Libby, Thompson Falls, Kalispell, Whitefish, Columbia Falls, and Butte PM<sub>10</sub> non-attainment areas.

(11) "Potential to emit" means the maximum capacity of a facility or emitting unit, within physical and operational design, to emit a pollutant. Any physical or operational limitation on the capacity of the facility or emitting unit to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions are not considered in determining potential to emit.

(12) "Registered facility" means any registration eligible facility that has registered for operation under the requirements in this subchapter.

(13) "Registration" means identifying equipment and/or processes to the department in accordance with this subchapter.

(14) "Registration eligible facility" means:

(a) a non-metallic mineral processing plant that operates only within the boundaries of areas for which a current mined land reclamation permit has been issued pursuant to Title 82, chapter 4, part 4, MCA,

(i) having the potential to emit less than:

(A) 50 tons per year (tpy) of particulate matter with an aerodynamic diameter less than 10 microns (PM<sub>10</sub>) and oxides of sulfur (SO<sub>x</sub>);

(B) 100 tpy of any other criteria pollutant; and

(C) 10 tpy of any one hazardous air pollutant (HAP), 25 tpy of a combination of all HAPs, or any lesser quantity as the board may establish by rule; or

(ii) that limits its production to a level that equates to controlled emissions less than or equal to the emission levels in (a)(i)(A), (B), and (C).

(15) "Screen" means a device for separating material according to size by passing undersize material through one or more mesh surfaces (screens) in series, and retaining oversize material on the mesh surfaces (screens).

(16) "Stockpile" means any non-metallic mineral storage pile, reserve supply, or similar sources of material. Non-metallic minerals may be stockpiled by conveyor, truck dumping, or similar means of pile forming.

(17) "Transfer point" means a point in a conveying operation where the non-metallic mineral is transferred to or from a conveyor.

AUTH: 75-2-111, 75-2-234, MCA

IMP: 75-2-234, MCA

NEW RULE II INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference:

(a) 40 CFR Part 60, Subpart 000, specifying standards of performance for non-metallic mineral processing plants.

(2) A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 East Sixth Avenue, P.O. Box 200901, Helena MT 59620-0901.

(3) Copies of federal materials also may be obtained from:

(a) the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, phone: (703) 487-4650, fax: (703) 321-8547, internet: [orders@ntis.fedworld.gov](mailto:orders@ntis.fedworld.gov);

(b) the National Center for Environmental Publications and Information, (800) 490-9198;

(c) the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328; and

(d) at the libraries of each of the 10 EPA regional offices.

(4) Copies of the Code of Federal Regulations may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328.

AUTH: 75-2-111, 75-2-234, MCA

IMP: 75-2-234, MCA

NEW RULE III APPLICABILITY (1) An owner or operator of a registration eligible facility may register with the department in lieu of submitting an application for, and obtaining, a Montana Air Quality Permit (MAQP). Nothing in this subchapter shall preclude an owner or operator from obtaining and/or maintaining a MAQP in accordance with ARM Title 17, chapter 8, subchapter 7.

AUTH: 75-2-111, 75-2-234, MCA  
IMP: 75-2-234, MCA

NEW RULE IV REGISTRATION PROCESS (1) A registration eligible facility is registered upon the department's receipt of the form and information required in (2) and in [New Rule VI] and the appropriate fee required in [New Rule V]. The department shall acknowledge the receipt of the registration within 30 days after receiving the registration.

(2) The owner or operator shall provide the following information to the department using a form provided by the department:

- (a) facility name and mailing address;
- (b) owner or operator's name, address, and telephone number;
- (c) physical location of facility (legal description to the nearest 1/4 section). For portable facilities, the physical location is the intended initial or current location of operation at the time of registration;
- (d) contact person and telephone number;
- (e) general nature of business;
- (f) standard industrial classification code (SIC);
- (g) SIC description;
- (h) narrative description of the site and facility. For portable facilities, the intended initial or current location of operation at the time of registration must be described;
- (i) site map. For portable facilities, the intended initial or current location of operation at the time of registration must be shown on the map;
- (j) the number of the permit issued pursuant to 82-4-432, MCA; and
- (k) any additional equipment-specific information required by [New Rule VII], as applicable.

(3) The owner or operator shall notify the public of the initial location or any transfer of location that has been made through a legal notice in a newspaper of general circulation in the area where the facility will be located. The notification must be made at least 10 days before submittal of the registration information for the initial location or at least 15 days prior to a change of location. The form of the notice must be as provided by the department. An affidavit of publication must be submitted to the department with the registration form.

(4) The owner or operator of a registered facility must notify the department, using the registration form provided by the department, of any change(s) to the registration information provided within 15 days of the change(s).

(5) An owner or operator of a new or modified registration eligible facility may not commence operations under the provisions of this subchapter until registered with the department.

(6) The owner or operator of any registration eligible facility for which a valid MAQP has been issued may register with the department and request revocation of the MAQP.

AUTH: 75-2-111, 75-2-234, MCA  
IMP: 75-2-234, MCA

NEW RULE V REGISTRATION FEE (1) The registration fee as required by ARM 17.8.504 must be submitted to the department with each registration submitted in accordance with this subchapter. No fee is required for notifying the department of changes to registration information pursuant to [New Rule IV(4)] or for transfer of location of registered facilities.

(2) The registration fee must be paid in its entirety at the time the registration form is submitted to the department.

AUTH: 75-2-111, 75-2-234, MCA  
IMP: 75-2-234, MCA

NEW RULE VI NON-METALLIC MINERAL PROCESSING PLANTS: REGISTRATION INFORMATION (1) The owner or operator of a non-metallic mineral processing plant shall provide the following additional equipment-specific information to the department at registration:

- (a) For crushers, grinding mills, and/or screens:
  - (i) manufacturer's name;
  - (ii) unit type;
  - (iii) serial number;
  - (iv) date of manufacture; and
  - (v) maximum rated design capacity (material throughput).
- (b) For electrical generators:
  - (i) manufacturer's name;
  - (ii) maximum rated design capacity;
  - (iii) serial number;
  - (iv) date of manufacture; and
  - (v) the fuel used by the unit.
- (c) For all other associated equipment including, but not limited to, conveyors, material hoppers, and bucket elevators:
  - (i) manufacturer's name;
  - (ii) maximum rated design capacity;
  - (iii) serial number; and
  - (iv) date of manufacture.

(2) The owner or operator of a registered facility shall notify the department, using the registration form provided by the department, of any changes to the information provided under [New Rule IV] and [New Rule VI].

AUTH: 75-2-111, 75-2-234, MCA  
IMP: 75-2-234, MCA

NEW RULE VII NON-METALLIC MINERAL PROCESSING PLANTS OPERATING REQUIREMENTS: FACILITY-WIDE (1) The following requirements apply to registered non-metallic mineral processing plants:

- (a) The owner or operator shall allow the department's representatives access to the facility at all reasonable times

for the purpose of making inspections or surveys, collecting samples, obtaining data, auditing any monitoring equipment, observing any monitoring or testing, and otherwise conducting all necessary functions related to this subchapter.

(b) The owner or operator shall comply with the conditions contained in this subchapter while operating at any location in Montana, except within those areas that are subject to a board approved local air quality permitting program.

(c) The owner or operator shall treat all unpaved portions of haul roads, access roads, parking lots, or the general plant area with water and/or chemical dust suppressant, as necessary, to maintain compliance with ARM 17.8.308.

(d) Water and spray bars must be available on site at all times and operated as necessary to maintain compliance with the opacity limitations in this subchapter, as applicable.

(e) If the registered facility is used in conjunction with any other equipment owned or operated by the owner or operator, at the same operating site, production is limited to correspond with an emission level that does not exceed 100 tons of any regulated pollutant during any rolling 12-month time period.

(f) The owner or operator shall comply with all applicable standards and limitations, and reporting, recordkeeping, testing, and notification requirements contained in 40 CFR 60, Subpart 000.

(g) Emissions from any crusher affected by new source performance standards (NSPS), as defined in 40 CFR 60, Subpart 000, may not exhibit an opacity of 15% or greater averaged over six consecutive minutes.

(h) Emissions from any other NSPS affected equipment, such as screens or conveyor transfers, may not exhibit an opacity of 10% or greater averaged over six consecutive minutes.

(i) Emissions from any non-NSPS affected equipment may not exhibit an opacity of 20% or greater averaged over six consecutive minutes.

(j) Within 60 days after achieving maximum production, but no later than 180 days after initial start-up, an environmental protection agency (EPA) Method 9 opacity test and/or other methods and procedures as specified in 40 CFR 60.675 must be performed on all NSPS affected equipment to demonstrate compliance with the emission limitations contained in [New Rule VII(1)(g) and (h)], as applicable. The owner or operator shall notify the department of the initial start-up date of all NSPS affected equipment within 30 days of the actual start-up date.

(i) All compliance source tests shall conform to the requirements of the Montana Source Test Protocol and Procedures Manual.

(ii) The department may require further testing.

(k) The owner or operator shall monitor and record the following information:

(i) annual production information for all emission points, as required by the department in the annual emission inventory request. The request will include, but is not limited to, all equipment and associated emissions registered to operate at the facility. Production information must be gathered on a calendar year basis and submitted to the department by the date required in the emission inventory request. Information must be in the units required by the department.

(ii) The owner or operator shall maintain on-site records showing daily hours of operation and daily production rates and corresponding emission levels for the previous 12 months. The records compiled in accordance with this subchapter must be maintained by the owner or operator for at least five years following the date of the measurement, must be available at the plant site for inspection by the department, and must be submitted to the department upon request.

(2) If a registered non-metallic mineral processing plant is moved to another location, the requirements of this subchapter must be followed. The applicable intent-to-transfer forms are available from the department upon request.

AUTH: 75-2-111, 75-2-234, MCA

IMP: 75-2-234, MCA

NEW RULE VIII NON-METALLIC MINERAL PROCESSING PLANTS  
OPERATING REQUIREMENTS: ELECTRICAL GENERATORS (1) The following requirements apply to all electrical generators used to provide electrical power at any registered facility:

(a) Electric generator fuels are limited to the following:

(i) American Society of Testing and Materials (ASTM) Grade 1 or 2 fuel oil;

(ii) gasoline;

(iii) liquefied petroleum gas (LPG); and/or

(iv) natural gas.

(b) The sulfur content of the fuel used may not exceed the limits stated in ARM 17.8.322.

(c) Visible emissions from any generator stack, vent, or other functionally equivalent opening may not exhibit an opacity of 20% or greater averaged over six consecutive minutes.

(d) Electric generator operating hours must be limited to correspond with an emission level that does not exceed the applicable registration eligible facility emission thresholds specified in this subchapter.

(e) The owner or operator shall monitor and record the following information:

(i) the rated output capacity, in kilowatts (kW) or horsepower (Hp), of each electrical generator;



(ii) the operating hours, documented by month, of each electrical generator. By the 25th day of each month, the owner or operator shall total the hours of operation during the previous 12 months to verify compliance with the limitation in (1)(d). The owner or operator shall submit a written report of the compliance verification with the annual emission inventory; and

(iii) if fuel oil is used, documentation that the fuel oil used is ASTM grade.

AUTH: 75-2-111, 75-2-234, MCA

IMP: 75-2-234, MCA

NEW RULE IX ADDITIONAL REQUIREMENTS FOR FACILITIES LOCATING IN OR WITHIN 10 KILOMETERS OF CERTAIN PM<sub>10</sub> NON-ATTAINMENT AREAS

(1) The requirements contained in this rule apply to registered facilities while operating at any location in, or within 10 km of, a PM<sub>10</sub> non-attainment area.

(2) Water spray bars must be operated on the crushers, screens, and all transfer points whenever the registered facility is operating.

(3) The owner or operator shall treat all unpaved portions of the access roads, parking lots, and general plant area with water and/or chemical dust suppressant as necessary to maintain compliance with the opacity limitation in [New Rule IX(7)].

(4) Total combined production of all equipment and processes at a non-metallic mineral processing plant are limited to correspond with an emission level that does not exceed 547 pounds per day of PM<sub>10</sub> emissions.

(5) A non-metallic mineral processing plant may be operated only from April 1 through September 30 of any given year.

(6) The owner or operator may not cause or authorize to be discharged into the atmosphere from any other equipment, such as conveyors and material transfer points, any visible emissions that exhibit an opacity of 10% or greater averaged over six consecutive minutes.

(7) The owner or operator may not cause or authorize to be discharged into the atmosphere from haul roads, access roads, parking lots, or the general plant property, any fugitive emissions that exhibit an opacity of 10% or greater averaged over six consecutive minutes.

(8) The owner or operator shall provide the department with written notification of completion of the project no later than 10 working days after project completion.

(a) The owner or operator shall provide the department with written notice of relocation of the registered facility no later than 15 working days before the physical transfer of the equipment.

(b) Production information for the sites covered by this rule must be submitted to the department with the annual emission inventory request or within 30 days after completion

of the project, whichever is sooner. At a minimum, the information must include:

- (i) tons of material crushed;
- (ii) tons of material screened;
- (iii) tons of bulk material loaded;
- (iv) daily hours of operation;
- (v) amount and type of fuel used for each generator;
- (vi) fugitive dust information, consisting of a listing of all plant vehicles, including the following for each vehicle type:

- (A) vehicle type;
- (B) number of vehicles;
- (C) vehicle weight, loaded;
- (D) vehicle weight, unloaded;
- (E) number of tires on vehicle;
- (F) average trip length;
- (G) number of trips per day per vehicle;
- (H) average vehicle speed;
- (I) area of activity;
- (J) type and amount of each fuel used (gasoline or diesel);

- (vii) fugitive dust control for haul roads and general plant area including:

- (A) hours of operation of water trucks; and
- (B) application schedule for chemical dust suppressant, if applicable.

(c) The owner or operator shall document, by day, combined total crushing production. The owner or operator shall calculate the combined total crushing production during the previous 24 hours to verify compliance with the limitation in [New Rule IX(4)]. A written report of compliance verification and the emissions inventory shall be submitted to the department annually.

(d) The owner or operator shall document, by day, combined total screening production and the number of material transfer points. The owner or operator shall calculate the combined total screening production during the previous 24 hours to verify compliance with the limitation in [New Rule IX(4)]. A written report of compliance verification and the emissions inventory shall be submitted to the department annually.

(e) The owner or operator shall document, by day, combined total crusher/screen production. The owner or operator shall calculate the combined total crusher/screen production during the previous 24 hours to verify compliance with the limitation in [New Rule IX(4)]. A written report of compliance verification and the emissions inventory shall be submitted to the department annually.

(f) The owner or operator shall document, by day, the combined total generator operation. The owner or operator shall calculate the combined total generator operating hours during the previous 24 hours to verify compliance with the limitation in [New Rule IX(4)]. A written report of

compliance verification and the emissions inventory shall be submitted to the department annually.

AUTH: 75-2-111, 75-2-234, MCA  
IMP: 75-2-234, MCA

NEW RULE X REPORT TO THE BOARD (1) The department shall report biennially to update the board regarding current emission limitations and operating requirements for non-metallic mineral processing plants compared to current requirements for permitted facilities.

AUTH: 75-2-111, 75-2-234, MCA  
IMP: 75-2-234, MCA

REASON: The Board is proposing to adopt new rules to implement a registration system for certain facilities that presently require an air quality permit. Currently, the administrative rules adopted under the Clean Air Act of Montana require some sources of air pollution to obtain a permit prior to construction or operation. House Bill 700, passed by the 2003 Montana Legislature and codified as 75-2-234, MCA, allows the Board to adopt a registration system in lieu of permitting.

The proposed new rules would allow some facilities, which now require an air quality permit to operate, to register with the Department in lieu of submitting a permit application and obtaining a permit. Registered facilities would still be required to supply information that is consistent with the type and amount of information currently required in a permit application. Registered facilities would still be required to follow rules of operation that are similar to current permit conditions. These rules of operation would include emission limitations and requirements for testing, monitoring and reporting.

The proposed new rules would apply to non-metallic mineral processing operations. The development of a registration process for homogenous facilities where permit conditions and environmental impact vary little from permit to permit would allow the Department to use air program staff more efficiently, focusing on major source permitting issues and field compliance activities.

The registration process would not include a public comment period or appeal process for each individual facility as is currently provided under the permitting system. However, there is a public comment period on this rulemaking that would establish the registration process as well as on the programmatic environmental assessment applying to the proposed new rules.

New Rules I through V provide facility registration general information including definitions, applicability, facilities eligible for registration, a description of the registration process and information that must be provided,

and a cross-reference to ARM 17.8.504 for the registration fee.

New Rules VI through X contain the proposed registration requirements for non-metallic mineral processing plants. The proposed rules include: registration information; facility-wide applicable requirements, including general requirements, operating requirements, emission limitations, and testing, monitoring, and recordkeeping requirements; requirements for electrical generators; and additional requirements for facilities locating in a PM<sub>10</sub> non-attainment area.

The Board is also proposing to amend ARM 17.8.504 and 17.8.505 to include the fees for registered facilities, and to amend ARM 17.8.744 to exclude registered facilities from requiring Montana Air Quality Permits.

The proposed amendments to ARM 17.8.504 and 17.8.505 would require the owner or operator of a registered facility to pay a registration fee in lieu of a Montana air quality permit application fee and pay an annual operation fee. These fees would be the same as the air quality permit application and annual operation fees. The Board does not know the cumulative amount of registration fees and annual operating fees that would be paid for registered facilities or the number of persons that would be affected because the registration process would be an optional alternative to the air quality permit process for facilities eligible for registration. However, the total fees paid and the fees paid by individual owners and operators would be the same as under the existing rules because the fees for registered facilities would be the same as the fees for facilities subject to an air quality permit.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or emailed to ber@state.mt.us, no later than 5:00 p.m., July 21, 2004. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

7. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine

reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@state.mt.us; or may be made by completing a request form at any rules hearing held by the Board.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

REVIEWED BY: BOARD OF ENVIRONMENTAL REVIEW

David Rusoff BY: Joseph W. Russell  
David Rusoff JOSEPH W. RUSSELL, M.P.H.,  
Rule Reviewer Chairman

Certified to the Secretary of State June 7, 2004.

BEFORE THE BOARD OF HEARING AID DISPENSERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC  
amendment of ARM 24.150.510, ) HEARING ON PROPOSED  
regarding allowable dispensing fees) AMENDMENT

To: All Concerned Persons

1. On July 9, 2004, at 10:00 a.m., a public hearing will be held in room 438, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Hearing Aid Dispensers (Board) no later than 5:00 p.m. on July 2, 2004, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Hearing Aid Dispensers, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsddhad@state.mt.us.

3. The Board proposes to amend the following existing rule, deleted matter stricken, new matter underlined:

24.150.510 TRANSACTIONAL DOCUMENT REQUIREMENTS - FORM AND CONTENT (1) through (4) remain the same.

(5) Notice of cancellation must be given to the seller in writing within 30 days of the date of delivery of the hearing aid or related device. The notice of cancellation may be delivered by mail or in person, and must indicate the purchaser's intent not to be bound by the sale. The purchaser shall return the hearing aid or related device in substantially the same condition as it was received. Under this provision, the hearing aid dispenser shall refund to the purchaser the amount paid, minus a dispensing fee, within 10 days of receipt of the written notice of cancellation. The dispensing fee per hearing aid or related device may not exceed 15% of the purchase price or \$250, whichever is less. All fees to be retained by the dispenser, in the event the hearing aid(s) is returned, shall be prominently displayed in a dollar amount on all transactional documents.

AUTH: 37-1-131, 37-16-202, MCA  
IMP: 37-16-303, 37-16-304, MCA

REASON: The Board has determined it is reasonable and necessary to propose this amendment to specify the permissible maximum amount of a dispensing fee chargeable by a licensee. This rule

change will alleviate concerns expressed by the public regarding assessment of excessive fees by licensees and will provide guidance to licensees as to the 'proper amounts' of allowable dispensing fees. The AUTH and IMP cites are being amended to comprehensively state the sources of the Board's rulemaking authority and the statutes implemented by this rule as amended.

The Board does not have any solid data upon which to estimate the average number of consumers a year who are charged excessive dispensing fees. The Board receives at least 10 complaints a year about excessive dispensing fees. At an assumed price of \$6,000 a pair for hearing aids or devices, the savings to the consumer is approximately \$400 ( $\$6,000 \times 15\% = \$900 - \$500 (2 @ \$250) = \$400$ ). The Board estimates that there will be consumer savings of at least \$4,000 per year.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsddhad@state.mt.us](mailto:dlibsddhad@state.mt.us), and must be received no later than 5:00 p.m., July 19, 2004.

5. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://www.discoveringmontana.com/dli/had>. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The Board of Hearing Aid Dispensers maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Hearing Aid Dispensers administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [dlibsddhad@state.mt.us](mailto:dlibsddhad@state.mt.us), or may be made by completing a request form at any rules hearing held by the agency.

7. The Board of Hearing Aid Dispensers will meet at 1:00 p.m., July 29, 2004, during the Board's regular meeting in Helena, Montana at the Board's offices, 301 South Park, Helena, Montana, to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendment. Members of the public are welcome to attend the meeting and listen to the Board's deliberations.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

9. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF HEARING AID DISPENSERS  
SUSAN KALARCHIK, CHAIRPERSON

/s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

/s/ DARCEE L. MOE  
Darcee L. Moe  
Alternate Rule Reviewer

Certified to the Secretary of State June 7, 2004.



BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 24.301.138, ) ON PROPOSED AMENDMENT,  
24.301.154 and 24.301.622, the ) ADOPTION AND REPEAL  
proposed adoption of New Rules I, )  
II and III, and the proposed repeal )  
of ARM 24.301.160, pertaining to )  
energy conservation and building )  
codes )

TO: All Concerned Persons

1. On July 9, 2004, at 10:00 a.m., a public hearing will be held in the Park Avenue Building, Room B07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., July 2, 2004, to advise us of the nature of the accommodation that you need. Please contact Ms. Traci Smith, Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, Montana 59620-0517, (406) 841-2040 (telephone), (406) 444-0532 (TTD), (406) 841-2050 (fax), or trasmith@state.mt.us (e-mail).

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined.

24.301.138 CALCULATION OF FEES (1) through (1)(b) remain the same.

(c) For the period between January 1, 2003, and December 31, 2004, both the building permit fee and plan review fee shall be reduced by 35%. Upon written application to the department, on forms as prescribed by the department, a refund of the 35% reduction shall be given to the project owner.

(c) remains the same but is renumbered (d).

(2) through (8) remain the same.

AUTH: 50-60-104, 50-60-203, MCA  
IMP: 50-60-103, 50-60-104, 50-60-203, MCA

REASON: There is reasonable necessity to amend ARM 24.301.138 to reduce building permit fees and give refunds for fees paid during the period of January 1, 2003, through December 31, 2004. Because 50-60-104, MCA, dictates that fees must be commensurate with the costs of maintaining the program, the Department of Labor and Industry (Department) through the Building Codes Bureau (Bureau) must predict the number of permits that will be

issued and the valuation of those permits each year. A change in the economy or size (valuation) of the projects built each year significantly impacts the revenue brought in by the Bureau. Due to larger than anticipated revenues in the specified time frame, the Bureau has projected a surplus. The Department is proposing to return the surplus to those who have paid the fees and reduce future fees through the end of 2004.

The Department projects that approximately 1,900 building owners issued building permits between January 1, 2003, and August 1, 2004, will receive rebates averaging \$428 per rebate, for a total estimated rebate amount of \$813,200. In addition, the Department estimates that 500 building owners issued building permits from August 1, 2004, to December 31, 2004, will receive a 35% reduction in permitting fees for a total reduction in these fees of \$203,183.

The implementation cites are amended to more completely account for the statutes implemented by this rule as amended.

24.301.154 INCORPORATION BY REFERENCE OF INTERNATIONAL RESIDENTIAL CODE (1) through (8) remain the same.

(9) Subsection R405.1 is amended by adding the following: "A drainage system is not required when continuous rain gutters are installed incorporating drain extensions which divert storm water a minimum of six feet (1.83 m) away from the foundation and grading is done in accordance with R401.3. A drainage system may be required where high water tables are known to exist or geological conditions which require a soils engineering report, performed in accordance with R401.4, specify the need for foundation drainage."

(9) and (10) remain the same but are renumbered (10) and (11).

AUTH: 50-60-203, MCA

IMP: 50-60-102, 50-60-201, 50-60-203, MCA

REASON: There is reasonable necessity to amend ARM 24.301.154 to amend section R405.1 of the International Residential Code (IRC) to address the foundation drainage requirements found in this section. This section of the IRC requires foundation drainage systems to be installed in certain soil types. The amendment proposed by the Department gives the option of installing rain gutters as an alternative to installing the drainage system, as either option would adequately protect the foundation from water damage. The climate and soils typically found in Montana are dryer than many other parts of the country and therefore the Department determined the installation of rain gutters is a reasonable alternative to a drainage system. Local building officials and the Montana Building Industry Association requested this amendment.

24.301.622 INSPECTIONS BY CERTIFIED MAINTENANCE OR INSURANCE COMPANIES (1) through (1)(c) remain the same.

(d) The insurance or maintenance company shall attempt to secure compliance with the department's rules. If unsuccessful, it shall so report to the department. If it then becomes necessary for the department to make an inspection, the fee for each unit inspected will be charged as per other inspections made by the department, as listed in ARM ~~24.301.101~~ 24.301.138.

(e) The department may inspect any installation which is also inspected by a certified inspector employed by an insurance or maintenance company. Whenever the department inspection confirms that the insurance or maintenance company inspection report is substantially and materially incomplete, invalid or unacceptable, the department will assess the insurance or maintenance company the fee for inspection by the department, as listed in ARM ~~24.301.101~~ 24.301.138.

(f) Those units inspected by certified inspectors of insurance or maintenance companies shall pay the reduced fees, as listed in ARM ~~24.301.101~~ 24.301.138. The reduced fees are charged to cover costs of issuing the certificate of inspection, maintaining a complete record system for all units in Montana, consultation with owners, maintenance of the inspector certification program, cost of hearings for contested cases and other enforcement costs.

AUTH: 50-60-203, 50-60-701, 50-60-702, MCA

IMP: 50-60-203, 50-60-701, 50-60-702, MCA

REASON: There is reasonable necessity to amend ARM 24.301.622 to change the internal references to ARM 24.301.101 as this rule was repealed March 12, 2004. The current rule addressing inspection fees is 24.301.138.

4. The proposed new rules provide as follows:

NEW RULE I INCORPORATION BY REFERENCE OF INTERNATIONAL ENERGY CONSERVATION CODE (1) The department of labor and industry adopts and incorporates by reference the international code council's International Energy Conservation Code, 2003 Edition, referred to as the International Energy Conservation Code, unless another edition is specifically stated, together with the following amendments:

(a) Subsection 104.1, General, is deleted and replaced with the following: "With each application for a building permit, and when required by the building official, plans and specifications shall be submitted. The building official may require plans and specifications be prepared by an engineer or architect licensed to practice by the state, except for owner-occupied, single-family dwelling houses. All designs submitted under the provisions of Chapter 4 shall be prepared by an engineer or architect licensed to practice by the state.

"Exceptions:

"1. The code official is authorized to waive the submission of construction documents and other supporting data not required to be prepared by an engineer or architect licensed

to practice by the state if it is found the nature of the work applied for is such that reviewing of construction documents is not necessary to obtain compliance with this code.

"2. For residential buildings having a conditioned floor area of 5,000 square feet (465m<sup>2</sup>) or less, designs submitted under the provisions of Chapter 4 shall be prepared by anyone having qualifications acceptable to the code official."

(b) Subsection 105.2, Approvals required, is deleted in its entirety when the code is used by the building codes bureau of the department of labor and industry. It remains undeleted and available for use for certified local governments using the code.

(c) Subsection 502.2.3.6, Basement walls, is amended by adding the following: "Basement wall insulation below uninsulated floors, except for rim joists and perimeter cripple walls, may be delayed until such time as the basement is actually finished for occupancy."

(d) Subsection 502.2.4.1, Walls, is amended by adding the following: "Lesser R value may be allowed for log building walls."

(2) The purpose of the International Energy Conservation Code is to provide minimum requirements for the design of new buildings and structures and additions to existing buildings, regulating their exterior envelopes and selection of their heating, ventilating, air conditioning, service water heating, electrical distribution and illuminating systems, and equipment for effective use of energy.

(3) The International Energy Conservation Code is a nationally recognized model code for energy efficient construction of buildings. A copy of the International Energy Conservation Code may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, Montana 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Code Council, 4051 W. Flossmoor Road, Country Club Hills, Illinois 60478-5795.

AUTH: 50-60-203, 50-60-803, MCA

IMP: 50-60-201, 50-60-203, 50-60-803, MCA

REASON: There is reasonable necessity to adopt NEW RULE I to adopt the 2003 Edition of the International Energy Conservation Code (IECC), which is the most current version of the IECC. The IECC will replace the Model Energy Code (MEC) previously adopted by the Department. The MEC, which was adopted in rule 24.301.160 (proposed for repeal), is no longer published. The Energy and Telecommunications Interim Committee and the Governor's Energy Consumer Task Force both submitted letters asking the Department to proceed with the adoption of the 2003 IECC. The requirements of New Rule I are proposed in conformity with the residential energy efficiency policy established in 50-60-801, MCA, and do not conflict with any policy developed under Title 90, chapter 4, part 10, MCA.

NEW RULE II ENERGY LABELING STICKERS (1) Where the energy labeling sticker is required by 50-60-803, MCA, the labeling sticker shall describe the energy efficiency components of the home. The builder or representative shall sign, date, and complete the label and permanently attach it to the interior electrical panel. The energy efficiency component labeling sticker must be a permanent self-adhesive label four by six inches in size that includes the following information:

- (a) building address, name of builder or representative, date, and signature;
- (b) nominal R-values for flat and vaulted ceilings, above grade walls, basement and crawlspace foundation insulation, floors over unheated space, slab insulation, and exterior doors;
- (c) overall window unit U-factor. Window U-factor information is the factor stated on the window label from the national fenestration rating council (NFRC);
- (d) the energy efficiency rating of the heating system. This is the annual fuel utilization efficiency (AFUE) for gas heating systems and the heating season performance factor (HSPF) for heat pumps;
- (e) energy efficiency information for water heaters. This is the energy factor (EF) rating, from the manufacturer and stated on the water heater; and
- (f) other information that may be listed as an option to describe energy efficiency features of the home not stated above.

AUTH: 50-60-203, 50-60-803, MCA  
IMP: 50-60-201, 50-60-203, 50-60-803, MCA

REASON: There is reasonable necessity to adopt NEW RULE II to further implement 50-60-803, MCA, by prescribing the requirements of the energy labeling stickers affixed to new residential buildings. This New Rule outlines the required content of the stickers in describing the energy efficiency components of new residential buildings, and states that the stickers shall be affixed to each building's interior electrical panel.

NEW RULE III INVESTIGATION FEES ASSESSED FOR WORK COMMENCING WITHOUT BUILDING PERMIT (1) In accordance with Subsection 108.4 of the International Building Code, the department shall assess investigation fees for any work commenced on a building or structure before obtaining the necessary permits. The investigation fees will be 50% of the combined plan review and building permit fee, with a minimum fee of \$250.00 and a maximum fee not to exceed \$1,000.00.

AUTH: 50-60-104, 50-60-203, MCA  
IMP: 50-60-103, 50-60-104, 50-60-201, MCA

REASON: There is reasonable necessity to propose this rule to address situations where building permits are not obtained prior to starting work on a project. The proposed rule will implement

the assessment of investigation fees in conjunction with the adoption of the International Building Code (IBC) in March of 2004. In the past, procedures describing the failure to secure building permits were established by the Uniform Building Code, which was repealed in March of 2004. The IBC provides that the state or local building official will determine investigation fees.

Investigation fees are to be commensurate with the extra time and effort expended in determining the extent to which the work completed complies with the building code. When a project commences prior to a building permit being issued, it is also common that additional problems exist that may require involvement from additional Departmental staff, such as the Building Code Bureau chief and/or staff attorney. In most cases, the investigation fees proposed by the Department are lower than those previously allowed under the Uniform Building Code. The proposed rule also establishes both minimum and maximum amounts that may be charged. The Bureau projects that investigation fees will be assessed on 10% of 1,200 total building projects permitted each year or 120 projects. Based on estimated investigation fees of half the cost of an average combined plan review and building permit or \$535.50, additional annual revenue is expected to be \$64,260.

5. The rule proposed for repeal provides as follows:

24.301.160 INCORPORATION BY REFERENCE OF THE MODEL ENERGY CODE found at ARM page 24-30389.

AUTH: 50-60-201, 50-60-203, 50-60-803, MCA  
IMP: 50-60-201, 50-60-203, 50-60-803, MCA

REASON: There is reasonable necessity to repeal the above rule as the Department is proposing New Rule I to adopt the International Energy Conservation Code to replace it. The Department has adopted other international codes in order to bring the Montana construction industry current with contemporary construction trends, practices and standards. The Model Energy Code is no longer published; therefore, no updated editions of those codes will be available in the future.

6. Concerned persons may present their data, views, or comments, either orally or in writing, at the hearing. Written data, views, or comments may also be submitted to Tim Lloyd, Chief of the Building Codes Bureau, at P.O. Box 200517, Helena, Montana 59620-0517, by facsimile to (406) 841-2050, or by e-mail to [trasmith@state.mt.us](mailto:trasmith@state.mt.us), and must be received no later than 5:00 p.m., July 19, 2004.

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://www.state.mt.us/dli/bsd/bc/index.htm>. The Department strives to make the electronic copy of this Notice of Public

Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding any specific topic or topics over which the Department has rulemaking authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockett St., room 412, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to [mcadwallader@state.mt.us](mailto:mcadwallader@state.mt.us), or made by completing a request form at any rules hearing held by the Department of Labor and Industry.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

10. Mark Cadwallader, attorney, has been designated to preside over and conduct this hearing.

/s/ WENDY J. KEATING

Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

/s/ DARCEE L. MOE

Darcee L. Moe  
Alternate Rule Reviewer

Certified to the Secretary of State June 7, 2004.

BEFORE THE MONTANA PROMOTION DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 8.119.101 pertaining to )  
the Tourism Advisory Council )

TO: All Concerned Persons

1. On April 22, 2004, the Department of Commerce published MAR Notice No. 8-119-43 regarding the proposed amendment of the above-stated rule at page 774 of the 2004 Montana Administrative Register, Issue No. 8.

2. No comments or testimony were received.

3. The department has amended the rule as proposed.

MONTANA PROMOTION DIVISION  
DEPARTMENT OF COMMERCE

By: /s/ MARK A. SIMONICH  
MARK A. SIMONICH, DIRECTOR  
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE  
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State June 7, 2004.



BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 10.16.3136 )  
relating to special education)

TO: All Concerned Persons

1. On May 6, 2004, the Superintendent of Public Instruction published MAR Notice No. 10-16-112 regarding the proposed amendment of the above-stated rule concerning special education at page 1099 of the 2004 Montana Administrative Register, Issue Number 9.

2. The Superintendent of Public Instruction has amended ARM 10.16.3136 as proposed.

3. No comments or testimony were received.

/s/ Linda McCulloch  
Linda McCulloch  
Superintendent of Public  
Instruction

/s/ Catherine K. Warhank  
Catherine K. Warhank  
Rule Reviewer

Certified to the Secretary of State June 7, 2004.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF AMENDMENT AND
of ARM 17.30.702 and the )	ADOPTION
adoption of new rule I )	
pertaining to defining )	
nutrient reducing subsurface )	(WATER QUALITY)
wastewater treatment systems )	

TO: All Concerned Persons

1. On February 26, 2004, the Board of Environmental Review published MAR Notice No. 17-206 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 387, 2004 Montana Administrative Register, issue number 4.

2. The Board has amended ARM 17.30.702 and adopted new rule I (ARM 17.30.718) as proposed, but with the following changes, deleted matter interlined, new matter underlined:

17.30.702 DEFINITIONS (1) through (8) remain as proposed.

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

(a) remains as proposed.

(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) remains as proposed.

(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) through (26)(b) remain as proposed.

NEW RULE I (17.30.718) CRITERIA FOR NUTRIENT REDUCTION FROM SUBSURFACE WASTEWATER TREATMENT SYSTEM (SWTS) (1) through (7) remain as proposed.

(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) remains as proposed.

(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) is failing to provide the designated level of treatment; 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) is failing to provide the designated level of treatment; and~~

~~(c) a backflow prevention device installed between the house or facility and the septic tank to prevent sewage from entering the structure.~~

3. The following comments were received and appear with the Board's responses:

COMMENT NO. 1: New rule I(9)(a) requires an alarm that warns that the treatment system is failing to provide the designated level of treatment. To meet the letter of this rule would require complex monitoring equipment that would actually measure the system effluent for nitrogen concentration. This equipment may not exist for small systems and operation and maintenance of such equipment is not feasible for owners of small systems. The Department has indicated verbally that the intent of this rule was to provide an alarm if the system is not functioning properly hydraulically. It is very reasonable to provide alarms that would indicate if a pump is not operating and most, if not all, of these systems employ one or more pumps in the system. This requirement should be reworded to indicate the intent.

RESPONSE: The intent of new rule I(9)(a) was to provide the visual and/or audible alarm when there is a hydraulic malfunction of the treatment system. The most common malfunction would likely be a non-operational pump in the system. It would be prohibitively expensive, due to equipment and maintenance costs, to install a water quality monitor in the treatment system that monitors nitrogen concentrations in the effluent. In response to this comment the rule language will be modified to clarify that the purpose of the alarm is to detect hydraulic failure.

COMMENT NO. 2: New Rule I(9)(b) requires that a physical barrier be provided that prevents discharge to the absorption

system if any portion of the treatment system is failing to provide the designated level of treatment. Again, this would require difficult monitoring. The Department has indicated verbally that the intent was to make sure that the treatment system could not be simply by-passed if it was not working. This should be reworded to indicate the intent.

RESPONSE: The intent of new rule I(9)(b) was to prevent a by-pass of wastewater to the drainfield if there was a hydraulic malfunction in the treatment system. In response to this comment the rule language will be modified to clarify that intent.

COMMENT NO. 3: New rule I(9)(c) requires a backflow prevention device. The commentor is not aware of any such devices that are routinely used for raw sewage. Many devices are available for potable water, but the solids in raw sewage would render these devices unusable. In addition, such a device does not serve any purpose. The system will not back up into the house unless the flow into the system exceeds the flow out of the system. If there is a system failure that prevents flow out of the system, an alarm should be provided. However, closing a valve to prevent more water into the system doesn't stop the system from backing up. It actually backs up quicker, because if the line from the house to the septic tank is suddenly closed, this line simply fills up with sewage and backs up into the house. Backflow preventers are typically used where the pressure on the downstream side of the system can exceed the pressure on the upstream side, under adverse conditions. In these systems, that is not possible. This subsection of the rule should be deleted.

RESPONSE: As the comment notes, the proposed requirement in new rule I(9)(c) would likely create a greater chance that sewage could back-up into a residence, which is what the rule section was originally trying to prevent. Based on the comment new rule I(9)(c) will be removed. Removal of (9)(c) will not create a situation where sewage backing up into residences occurs any more frequently than with wastewater systems approved under the current rules and design circulars.

COMMENT NO. 4: Backflow prevention devices should not be required between the facility and the septic tank for nitrogen removal treatment systems as they do not present any greater likelihood of backing up into a residence than any other traditional septic systems. Backflow prevention is extremely atypical on building sewers due to the high likelihood of clogging. Any check-type backflow preventer would have to be installed in a manhole or similar vault to allow access for frequent cleaning. Septic systems using gravity flow drainfields, other pumped septic/drainfield individual systems, and municipal sewage collection systems do not require backflow prevention devices on building sewers because the maintenance requirements and potential for clogging outweigh the benefit of not having sewage backing up in the facility.

RESPONSE: See response to Comment No. 3.

COMMENT NO. 5: The following sentence should be added to the end of ARM 17.30.702(9)(b): "A Level 1a designation allows the use of 30 mg/l nitrate-N as the nitrates in effluent concentration for nitrate sensitivity analysis."

RESPONSE: The suggested language clarifies the proposed rule by specifying the exact nitrate concentration for level 1a systems that can be used in mixing zone calculations. In response to the comment the suggested language, with some editorial changes, has been added to the proposed rule as shown above.

COMMENT NO. 6: The following sentence should be added to the end of ARM 17.30.702(10)(b): "A Level 1b designation allows the use of 40 mg/l nitrate-N as the nitrates in effluent concentration for nitrate sensitivity analysis."

RESPONSE: The suggested language clarifies the proposed rule by specifying the exact nitrate concentration for level 1b systems that can be used in mixing zone calculations. In response to the comment the suggested language, with some editorial changes, has been added to the proposed rule as shown above.

COMMENT NO. 7: Because most nitrogen-reducing wastewater treatment systems are biological systems, they are easily upset by radical changes in wastewater flow or quality. New rule I(8) must be strengthened significantly in order to ensure adequate operation, maintenance and performance of advanced treatment systems. Section (8) calls for an operation and maintenance contract to be required in the subdivision approval or a deed restriction. However, it is clear that the Department will have little or no ability to enforce this requirement following subdivision approval. Maintenance contracts can and will be cancelled or ignored by individual homeowners faced with the cost of maintaining these systems.

RESPONSE: The comment is correct that the Department does not have the enforcement resources to ensure, for the life of each installed system, compliance with the requirement to have a viable O&M contract. However, the inclusion of the requirement in a subdivision approval or deed restriction makes the requirement a matter of public record. Under existing law, a copy of the subdivision approval must be given to every purchaser of property in a subdivision. Consequently, property owners in subdivisions should receive notice of the requirement and of the potential for enforcement action for violations. At a minimum, an owner's interest in having a properly functioning system will provide an incentive for keeping the contract current. Awareness of potential enforcement actions should create an additional incentive for compliance. The proposed rule will have benefits even if the Department cannot guarantee full compliance.

COMMENT NO. 8: A city-county health department is not comfortable approving significant numbers of these systems above a sole source aquifer unless the systems are managed by a

competent wastewater operator under the jurisdiction of a sewer and water district, special improvement district or local government with adequate financial resources to conduct operation, maintenance and replacement of systems. Leaving the operation and maintenance of these advanced treatment systems up to an individual homeowner or even a homeowners' association is a recipe for failure. The commentor has experienced multiple cases of failed operation and maintenance of conventional gravity septic tank/drainfield systems in the county. It is unrealistic to expect homeowners to adequately manage advanced treatment systems. Sewer districts, special improvement districts and local governments could provide the financial resources and management structure necessary to insure reliable operation, maintenance and performance.

RESPONSE: The comment requests that all subdivided lots proposing to use a nitrogen-reducing wastewater treatment system should be required to be part of a sewer district, special improvement district or under the authority of local government. If new rule I included such a requirement, it would limit the use of nitrogen-reducing systems to larger subdivisions or to areas of higher density where such management entities are practical. If specific counties want to require special districts for the use of nitrogen-reducing systems, they may adopt those requirements under their authority in 50-2-116(1)(i), MCA. The Department believes it is not necessary to have such a requirement statewide, because it would place unnecessary restrictions on the use of nitrogen-reducing wastewater systems in many areas within the state. The requirement for a viable O&M contract with the vendor will help ensure that systems are properly maintained.

COMMENT NO. 9: A significant concern with the use of advanced treatment systems is the inability to ensure their performance over a long period of time. The only way to really know if the system is performing as expected is to monitor influent and effluent quality and then make adjustments to optimize performance when monitoring results do not indicate adequate performance. Although new rule I(8)(b) would require annual effluent sampling to ensure performance, influent quality should also be sampled to ensure performance.

RESPONSE: Monitoring the influent quality of the wastewater can be useful in diagnosing treatment system problems when the effluent quality is outside the anticipated range. However, to keep operation costs reasonable for homeowners, new rule I does not require influent monitoring. It is anticipated that the vendors who administer the operation and maintenance agreements and conduct the annual effluent monitoring will collect influent samples to identify problems as they arise. The Department believes that mandatory influent sampling is not necessary and is only warranted to help solve inadequate treatment problems as those problems occur.

COMMENT NO. 10: New rule I should also require that the results of the sampling be submitted to DEQ for review. What happens if the system does not perform as expected or required?

RESPONSE: The commentor requests that all required annual monitoring results be submitted to the Department. This would require the Department to operate and maintain a database for logging results, entering data, checking data against requirements, and enforcing monitoring results submission.

New rule I requires annual operation and maintenance and annual monitoring to promote proper operation of these wastewater systems. It is in the vendors'/manufacturers' interest to maintain these systems properly. If the systems have frequent breakdowns or do not treat properly, the vendors/manufacturers risk losing new clients and risk losing nitrogen reduction certification from the Department. New rule I(2)(f) includes a provision to ensure that only reliable vendors/manufacturers are certified for distributing nitrogen-reducing systems. The Department believes the rule provides sufficient safeguards to ensure the large majority of treatment systems will be operated and maintained properly. However, in response to comments, the rule will be modified to clarify that the Department can request monitoring results if the Department has reason to believe the SWTS is not meeting required efficiencies. See Response to Comment No. 11.

COMMENT NO. 11: These rules should provide DEQ with the authority to require the system to be modified, upgraded or replaced with a system that will achieve the level of nitrogen removal required.

RESPONSE: Under the Water Quality Act (75-5-605, MCA), the Department has the authority to require replacement of a wastewater system that is not operating properly and causing degradation or pollution of state waters. The commentor proposes language that does not require the Department to demonstrate that degradation or pollution is being caused by a malfunctioning treatment system, just that the system is not operating properly. The proposed revision to the rule would not be supported by existing statutes. However, the Department has amended new rule I(8)(b), as shown above, to include a provision that allows the Department to request all monitoring data collected from previously approved systems. Those data can then be used by the Department to determine if the existing systems are meeting the nitrate removal efficiency that they are approved for. If the systems are not performing adequately the Department may rescind the nitrate-reducing classification as provided for in (7) of new rule I.

COMMENT NO. 12: If DEQ approves the use of these systems in a subdivision to comply with the nondegradation provisions of the Montana Water Quality Act, it must ensure that the systems will perform for as long as they are operated. If DEQ does not ensure adequate long-term performance and maintenance of these systems, then it is very likely that water quality degradation

or violation of the nitrate ground water standard will occur in subdivisions that use these advanced treatment systems.

RESPONSE: See response to Comment No. 11.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

By: Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.  
Chairman

Certified to the Secretary of State, June 7, 2004.



BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF AMENDMENT AND
of ARM 17.56.502, 17.56.504, )	ADOPTION
17.56.505, and 17.56.602 and )	
the adoption of new rules )	
pertaining to release )	(UNDERGROUND STORAGE
reporting, investigation, )	TANKS)
confirmation and corrective )	
action requirements for tanks )	
containing petroleum or )	
hazardous substances )	

TO: All Concerned Persons

1. On January 15, 2004, the Department of Environmental Quality published MAR Notice No. 17-204 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 1, 2004 Montana Administrative Register, issue number 1. On February 26, 2004, the Department published MAR Notice No. 17-205 regarding an amended notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 379, 2004 Montana Administrative Register, issue number 4. The public hearing was held on April 12, 2004 in Helena.

2. The Department has amended ARM 17.56.504 and 17.56.602 and adopted new rule IV (17.56.507) exactly as proposed. The Department has amended ARM 17.56.502 as published in MAR Notice No. 17-205 and 17.56.505, and adopted new rule I (17.56.506) as proposed as published in MAR Notice No. 17-205, but with the following changes. The Department is not adopting new rules II, III or V because the Department has determined that the rules related to long-term ground water management and release closure in new rule III require further development. New Rules II and V are interrelated to and cross reference new rule III so they also will not be adopted at this time. These three new rules will be addressed in a subsequent rulemaking procedure.

17.56.502 REPORTING OF SUSPECTED RELEASES (1) Owners and operators, ~~any installer,~~ any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report suspected releases to a person within the remediation division of the department and the implementing agency or to the 24-hour disaster and emergency services duty officer available at telephone number (406) 841-3911 within 24 hours of discovery of the existence of any of the following conditions:

(a) visual or olfactory observations, field monitoring results or other indicators of the presence of regulated substances in soil or nearby surface or ground water, or the

presence of free product or vapors in basements, sewer or utility lines;

(b) through (g) remain as proposed.

(h) inconclusive results from a tank tightness test, performed in accordance with subchapter 4, unless the tank system is found to be defective but not leaking; ~~and~~

(i) sampling, testing or monitoring results from a release detection method, required under subchapter 4, that are inconclusive and cannot rule out the occurrence of a release, unless the monitoring device is found to be defective and is immediately repaired, recalibrated or replaced, and subsequent monitoring, sampling or testing indicates that the system is not leaking; ~~and~~

(j) analytical results from contaminated soils that exceed 50 milligrams per kilogram for extractable petroleum hydrocarbons (EPH).

(2) Messages left on answering machines, received by facsimile, email, voice mail or other messaging device are not adequate 24-hour notice. For further assistance, the department's release reporting hotline may be reached at 1 (800) 457-0568.

#### 17.56.505 REPORTING AND CLEANUP OF SPILLS AND OVERFILLS

(1) and (2) remain as proposed.

(3) Telephone notification required in (1) or (2) must be made to a person in the remediation division of the department or to the 24-hour disaster and emergency services duty officer at (406) 841-3911. Messages left on answering machines, received by facsimile, email, voice mail or other messaging device are not adequate 24-hour notice. For further assistance, the department's release reporting hotline may be reached at 1 (800) 457-0568.

#### NEW RULE I (17.56.506) REPORTING OF CONFIRMED RELEASES

(1) Upon confirmation of a release in accordance with ARM 17.56.504, or after a release from the PST or UST system is identified in any other manner, owners and operators, ~~any installer,~~ any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report releases to the department and the implementing agency within the specified timeframes and in the following manner:

(a) Except as provided in (1)(b), all confirmed releases must be reported to a person within the remediation division of the department, the implementing agency, or the 24-hour disaster and emergency services duty officer available at telephone number (406) 841-3911 within 24 hours of confirming the release. Messages left on answering machines, received by facsimile, email or voice mail or other messaging device are not adequate 24-hour notice. For further assistance, the department's release reporting hotline may be reached at 1 (800) 457-0568.

(b) When a release is confirmed from laboratory analysis of samples collected from a site, the release must be reported

to the department and implementing agency by a method that ensures the department or the implementing agency receives the information within seven days of release confirmation. The date of release confirmation, for purposes of this rule, is the date the owner, operator, installer, remover, or person who performs subsurface investigations for the presence of regulated substances received notification of the sample results from the laboratory. Laboratory analytical results that exceed the following values confirm that a release has occurred:

- (i) risk-based screening levels (RBSLs) established for petroleum contaminants in surface soil, ~~or 50 micrograms per kilogram, for extractable petroleum hydrocarbon (EPH) compounds~~ at UST sites, published in Table 1 of Montana Tier 1 Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) for petroleum compounds and mixtures in surface and subsurface soil;
- (ii) and (iii) remain as proposed.

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: A telephone number for the DEQ Remediation Division should be provided in the rules for purposes of release reporting.

RESPONSE: The DEQ Remediation Division does not have a person available by telephone twenty-four hours a day and seven days a week to respond to release reports. The release reporting rules require reporting a release to a person. Messages left on answering machines will not satisfy this requirement.

The disaster and emergency services (DES) duty officer is available twenty-four hours a day and seven days a week to respond to releases. Therefore, at ARM 17.56.502(1), 17.56.505(3) and New Rule I (17.56.506(1)(a)), the twenty-four hour number for the DES duty officer, (406) 841-3911, is provided for petroleum release reporting.

The DEQ Remediation Division also maintains a release reporting hotline at telephone number 1-800-457-0568. Calls to this hotline are directed to the Remediation Division during state business hours and to the DES duty officer after hours. In considering this comment, the DEQ has determined that it would be helpful to the public to include the telephone number for the release reporting hotline in the release reporting rules at ARM 17.56.502(2), 17.56.505(3) and New Rule I (17.56.506(1)(a)) and has amended the rules as shown above.

COMMENT NO. 2: UST removers should be listed as persons who must report a release in the rules.

RESPONSE: Section 75-11-203(7), MCA, defines an "installer" as an individual who installs or closes USTs. By using the term installers, the Department intended to include removers. In response to this comment, the Department has amended the release reporting rules to specifically include UST removers as persons who must report a release at ARM 17.56.502(1) and at New Rule I (17.56.506(1)) as shown above.

COMMENT NO. 3: The extractable petroleum hydrocarbon (EPH) screening level, for soils at UST sites, is 50 milligrams per kilogram (ppm), not micrograms per kilogram (ppb). An EPH screen exceeding 50 parts per million (ppm) should not confirm a release. Instead, 50 ppm EPH should trigger a suspect release that requires further analysis. A release would be confirmed if further analyses show contaminant levels exceed risk-based screening levels (RBSLs) published in Montana Tier 1 Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA).

RESPONSE: In response to this comment, the Department corrected the units, from micrograms per kilogram (ppb) to milligrams per kilogram (ppm), for the EPH screen cited in the release reporting rules. In addition, an EPH screen exceeding 50 ppm at UST sites has been removed as an analytical result that confirms a release at New Rule I (17.56.506(1)(b)(i)), and ARM 17.56.502(1) has been amended to add an EPH screen that exceeds 50 ppm as a condition that must be reported within 24 hours as a suspected release. A release will be confirmed if further analysis shows contaminant levels in soil are in excess of RBSLs.

COMMENT NO. 4: The Tier 1 RBCA levels are too conservative and should not be applied to all sites as criteria for determining when a release has occurred. The commentor believes adopting RBCA will eliminate flexibility in applying the criteria and states that Tier 1 RBCA should not be adopted in a rule until a Tier 2 and Tier 3 process is adopted that can be used in conjunction with Tier 1 RBCA.

RESPONSE: These rules are intended to codify procedures DEQ has been using to confirm petroleum releases. Analytical values for petroleum compounds and mixtures in surface and subsurface soils that exceed the RBSLs published in Table 1 of Montana Tier 1 RBCA confirm a petroleum release. In considering this comment, the Department has determined that it was necessary to clarify that the analytical levels for surface soil published in Table 1 of the Tier 1 RBCA Guidance document confirm a petroleum release for samples from anywhere in the soil column. The previous draft of this rule stated that analytical results exceeding the RBSLs established for petroleum contaminants in surface soil published in the Tier 1 RBCA Guidance document would confirm a release. New Rule I (17.56.506(1)(b)(i)) has been amended to clarify that the RBSLs in Table 1 of RBCA apply to release confirmation from surface and subsurface soils.

The Department is still considering adopting a Tier 2 and Tier 3 RBCA Guidance document. However, Tier 2 and Tier 3 RBCA will address corrective action requirements and clean up goals, not release confirmation.

Tier 1 RBCA identifies conservative RBSLs designed to prevent leaching to ground water that may exceed WQB-7. The Department believes there is no room for flexibility in determining whether there is a confirmed petroleum release. Flexibility exists in how the release is addressed. Site

specific considerations may be given to risk analysis and remedial action requirements after a release is confirmed.

COMMENT NO. 5: The EPH screen often picks up non-petroleum hydrocarbons. Further testing should be evaluated before a release is confirmed.

RESPONSE: The Department believes using the EPH screen to trigger a suspect release and then requiring further analysis before a release is confirmed will address this problem. See the Department's response to Comment No. 3.

COMMENT NO. 6: Where will the new rules be located in ARM?

RESPONSE: See paragraph 2 above for numbering of new rules. In general, release reporting rules will be published at Title 17, Chapter 56, subchapter 5.

COMMENT NO. 7: All suspected releases should not be reported within 24 hours as required by ARM 17.56.502 (as amended). The Department's original proposal, published in the Montana Administrative Register under MAR Notice No. 17-204, divided suspect releases into two reporting categories, one requiring reporting in 24 hours and the other in seven days. Many conditions related to malfunctioning or defective equipment were to be reported within seven days rather than 24 hours. The commentor favored the original proposal because it is burdensome to owners and operators to report all suspected releases, especially equipment malfunctions, within 24 hours.

RESPONSE: DEQ amended its original proposal because it knew of situations where inconclusive monitoring and testing results were not reported within 24 hours and a significant release occurred. Significant impacts on the environment and public health may be reduced by promptly reporting all suspect releases to the Department and promptly addressing corrective action requirements. The rules do not require all equipment failures to be reported as suspected releases. If equipment is found to be defective, is immediately repaired or replaced, and subsequent monitoring or testing shows the system is not leaking, there is no release under the rules. The Department believes having two reporting categories will lead to confusion for owners and operators. Under the proposed amendments in MAR Notice No. 17-205, unusual operating conditions must be reported within 24 hours as a suspected release, unless the system is checked, repaired, and found not to be leaking within 24 hours. The Department has implemented procedures and a form for managing reports of unusual operating conditions. The unusual operating conditions reporting procedures are working well for owners, operators, and for the Department.

COMMENT NO. 8: "Inconclusive results from a tank tightness test" have been left out of the amended rule as a condition that would be considered a suspect release.

RESPONSE: An inconclusive tank tightness test is still a condition that must be reported as a suspect release under ARM

17.56.502(1)(h) unless the tank is found to be defective but not leaking and immediately repaired or replaced.

COMMENT NO. 9: In ARM 17.56.502, it is unclear when a suspect release is confirmed and how the confirmed release date is determined. The date of release confirmation should be the date of the lab report confirming a petroleum release.

RESPONSE: New Rule I addresses confirmed releases. Not all releases are confirmed by lab results. For those that are confirmed by lab results, the Department has determined that the release confirmation date is the date the owner, operator, installer, remover, or person who performs subsurface investigations for the presence of regulated substances receives a notice of the lab results.

COMMENT NO. 10: In New Rule I (17.56.506), there is no way for the Department to know when the lab results were received and when the seven-day time period for reporting a release confirmed by lab results begins to run.

RESPONSE: New Rule I (17.56.506(1)(b)) provides that, when a release is confirmed by laboratory analysis of samples from the site, the release must be reported within seven days of release confirmation. For purposes of the rule, the date of confirmation is the date the owner, operator, installer, remover, or person who performs subsurface investigations received the lab notice. The Department will make an initial determination of compliance with the seven-day time period by reference to the date of the laboratory report, with allowance for a reasonable time for delivery of the report to the responsible party. If the laboratory report date indicates that the release report should have been filed sooner, the Department will ask the responsible party to verify when the laboratory report was received.

COMMENT NO. 11: It is unnecessary to use both UST and PST in the rules. UST is a subset of PST.

RESPONSE: PSTs, that are not USTs, are regulated by the Montana Underground Storage Tank rules at Title 17, Chapter 56, only to the extent the PST is eligible, or may be eligible, for the Petroleum Tank Release Compensation Fund. The Department believes it is more clear to the regulated public to keep both terms in the rules. See ARM 17.56.102.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

James M. Madden By: Jan P. Sensibaugh  
JAMES M. MADDEN JAN P. SENSIBAUGH, DIRECTOR  
Rule Reviewer

Certified to the Secretary of State, June 7, 2004.

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment        )  
of NEW RULE I and NEW RULE II        )  
pertaining to branding and            ) NOTICE OF ADOPTION  
inspections                                )

To: All Concerned Persons

1. On May 6, 2004, the department of livestock published MAR Notice No. 32-4-165 regarding the proposed adoption of new rules pertaining to branding and inspections at page 1112 of the 2004 Montana Administrative Register, Issue Number 9.

2. The department of livestock has adopted New Rule I (32.18.108) and New Rule II (32.18.206) exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges  
Marc Bridges, Executive Officer,  
Board of Livestock  
Department of Livestock

By: /s/ Carol Grell Morris  
Carol Grell Morris,  
Rule Reviewer

Certified to the Secretary of State June 7, 2004.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION,
of Rule I and the amendment of ) AMENDMENT AND REPEAL
ARM 37.36.101, 37.36.401, )
37.36.402 and 37.36.603 and )
the repeal of ARM 37.36.406 )
pertaining to the Montana )
telecommunications access )
program (MTAP) )

TO: All Interested Persons

1. On December 24, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-313 pertaining to the public hearing on the proposed adoption, amendment and repeal of the above-stated rules relating to the Montana telecommunications access program (MTAP), at page 2833 of the 2003 Montana Administrative Register, issue number 24.

2. The Department has amended ARM 37.36.401, 37.36.402 and 37.36.603 and repealed ARM 37.36.406 as proposed.

3. The Department has adopted the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I [37.36.604] FINANCIAL ELIGIBILITY CRITERIA

(1) Individuals whose ~~gross~~ annual family income during the 12 months immediately preceding the month of application is less than 250% of the ~~2003~~ 2004 poverty guidelines published by the U.S. department of health and human services (HHS) are eligible for a loan of specialized telecommunications equipment based on income. ~~The HHS 2003 poverty guidelines and 250% of the HHS 2004 annual poverty guidelines for families of various sizes are shown in (2).~~

(2) ~~The 2003 poverty guidelines and 250% of the annual poverty guidelines are~~ is as follows:

Table with 3 columns: FAMILY SIZE, 100% OF POVERTY GUIDELINE, 250% OF ANNUAL POVERTY GUIDELINE. Rows for One, Two, Three, and Four family sizes.



Five	21,540	53,850	55,075
Six	24,680	61,700	63,025
Seven	27,820	69,550	70,975
Eight	30,960	77,400	78,925
Each Additional Person, Add	3,140	7,850	7,950

(3) remains as proposed.

AUTH: Sec. 53-19-305, MCA  
IMP: Sec. 53-19-307, MCA

4. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.36.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) through (6) remain as proposed.

(7) "Family" means the person with a telephone usage disability and the relatives with whom the person resides as specified in (7)(a) through (7)(d), except that if the person with a telephone usage disability is a foster child, "family" means the foster child only and does not include the persons with whom the foster child resides, whether related or unrelated to the child. Relatives of the person with a telephone usage disability included in the household when the person is not a foster child are:

(a) through (c) remain as proposed.

(d) ~~minor~~ siblings-, but only if the person with a telephone usage disability is a minor. This includes half-siblings and, at the option of the person with a telephone usage disability, may include stepsiblings.

~~(8) "Gross income" means the total income, including earned and unearned income, before taxes or any other deductions, of the family of the individual applying for or receiving a telecommunication device from MTAP. Gross income does not include in kind income.~~

(8) "Family income" means the combined income of all members of the family of the person with the telephone usage disability.

(9) remains as proposed.

(10) "Income" means income as defined in ARM 37.2.702.

(10) through (18) remain as proposed but are renumbered (11) through (19).

AUTH: Sec. 53-19-307, MCA  
IMP: Sec. 53-19-305 and 53-19-307, MCA

5. As a result of reviewing the proposed rule in order to

respond to comments received, MTAP is initiating two changes to Rule I in addition to those being made in response to public comment. First, the word "annual" is being inserted in front of "HHS poverty guidelines" to clarify that the income standards contained in Rule I are limits on the amount of income a family receives in one year. The rule as proposed did not specify what period of time the income standards were applicable to. Second, the 100% of poverty guidelines are being deleted. The 100% of poverty guidelines serve no purpose because the only criterion for eligibility is whether family income is less than 250% of poverty.

6. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: The proposed definition of "family" in ARM 37.36.101 is not consistent with the way that term is defined for purposes of many public assistance programs. MTAP should treat adult elderly parents living with a family member as a separate household as the Office of Public Assistance does. If MTAP's goal is to achieve consistency among programs, the proposed definition of "family" does not accomplish that goal. MTAP should define "family" in a manner which is consistent with the definition used by the Office of Public Assistance. In fact, it would be preferable to determine eligibility for a loan of telecommunications equipment based on the income of the applicant's "household", as the term "household" is defined by the Office of Public Assistance, rather than based on the income of the applicant's family.

RESPONSE: Rule I provides that eligibility is based on family income rather than household income because Section 53-9-307(1)(a), MCA, specifies that eligibility shall be "based on family income of less than 250% of the federal poverty level". Since the statute does not define the term "family", MTAP has defined family in a manner which is consistent with the commonly accepted definition of that word. In common usage, the mother and father would generally be considered part of the same family as their minor children and siblings of a minor child would generally be considered part of the same family as the minor child. However, under the proposed definition, when an elderly parent lives with his or her adult children or with his or her siblings, the children or siblings are not considered part of the elderly person's family, and hence their income will not be counted in determining the elderly person's eligibility. Subsection (7)(d) is being reworded to clarify the point that siblings of the person with a telephone usage disability are included in that person's family only if the person with a telephone usage disability is a minor.

In regard to the suggestion that MTAP should define "family" in a manner which is consistent with the definition used by the Office of Public Assistance, there is in fact no single

definition of family or household used by the Office of Public Assistance. Each of the programs administered by the Office of Public Assistance, such as Food Stamps, Temporary Assistance for Needy Families (TANF) cash assistance, Medicaid and the Low Income Energy Assistance Program (LIEAP), has its own definition. However, MTAP's proposed definition of family is consistent with the definition used in many public assistance programs, which do consider minor siblings who live together to be part of the same family or household.

COMMENT #2: The proposed rules do not clearly define "gross income". The proposed definition states that gross income means income before taxes or any other deductions. In the case of a small business owner, are the costs of operating the business included in the term "any other deductions"? If so, a small business owner whose gross income is over the income guideline but who has a large amount of business expenses will not be eligible. Additionally, the proposed definition of "gross income" is not consistent with that used in other public assistance programs. The Office of Public Assistance as well as low income housing programs consider out-of-pocket medical expenses in determining eligibility. Persons needing MTAP equipment most often are disabled or elderly individuals who often have extensive out-of-pocket medical expenses. The proposed definition of "gross income" is not consistent with the purpose of MTAP.

RESPONSE: MTAP agrees that it is more equitable to consider net rather than gross income in the case of self-employed persons. Therefore, Rule I is being changed to provide that family income, rather than gross family income, must be less than 250% of the poverty guideline in order for an individual to be eligible. Additionally, in ARM 37.36.101, the term "income" is being defined to mean income as defined in ARM 37.2.702. ARM 37.2.702, which is the rule defining income for purposes of state facility reimbursement, provides that income includes net receipts from farm and nonfarm self-employment and net rental income as well as gross wages, salaries, tips, commissions, bonuses and other earnings. ARM 37.2.702 also lists other types of income such as Social Security, unemployment and public assistance benefits, alimony, child support, pensions and many other payments.

MTAP is adopting the definition of income in ARM 37.2.702 for purposes of MTAP because that definition is a comprehensive list of payments and non-cash benefits which are commonly considered to be income and is the same definition used for determining eligibility for the Department's Vocational Rehabilitation Program.

The definition of "gross income" is being deleted from ARM 37.36.101 because Rule I now provides that eligibility is based on family income rather than gross family income, so it is unnecessary to define gross income. A definition of "family

income" is being added to ARM 37.36.101 to specify that family income means the combined income of all members of the family of the person with a telephone usage disability.

The commentor suggests that MTAP's proposed definition of income is not consistent with that used in other public assistance programs. In fact, there is no single definition of income used by the Office of Public Assistance, because each public assistance program has its own definition. However, public assistance programs generally do use net rather than gross income of self-employed persons, so by adopting the definition of income in ARM 37.2.702 the MTAP definition of income will be more consistent with that used in other public assistance programs than was the definition previously proposed.

In regard to the issue of deducting medical expenses from income, some public assistance programs allow for the deduction of medical expense in certain circumstances, but others do not. Federal Food Stamp regulations provide for the deduction of medical expenses over \$35 per month if the applicant is elderly or disabled, but medical expenses are not deducted in computing income in the Medicaid, TANF cash assistance or LIEAP programs. Since the Montana legislature in specifying the income limit in Section 53-19-307, MCA, did not provide for the deduction of medical or other expenses, no deductions will be allowed except in the case of deductions from gross income for self-employed individuals.

COMMENT #3: The commentor expressed concern for individuals who will not qualify for specialized telecommunications equipment because their income exceeds the limits set forth in the proposed rule. Many consumers who need this equipment are elderly and/or have a disability. If they do not qualify for a loan through MTAP, they will be referred to a retailer who will sell them adaptive equipment with an instruction booklet but will provide them little or no instructions about how to install and use the equipment. It will be difficult for these individuals to install and use the equipment without help from MTAP personnel. MTAP provides not only equipment but also services such as training and technical assistance. Everyone pays the surcharge which pays for MTAP, including many elderly people who will not qualify for equipment because of their income, so everyone should be able to receive equipment and services from MTAP.

RESPONSE: The income limits provided in Rule I are mandated by Section 53-19-307(1)(a), MCA, as amended in 2003, which provides that MTAP must develop a means test to determine eligibility to participate in MTAP based on family income of less than 250% of the federal poverty level. Although MTAP agrees that individuals who can afford to pay for specialized equipment because their income exceeds 250% of poverty nevertheless may need training and technical assistance which they may not get from a retailer, the statute does not authorize MTAP to provide

either equipment or services to them. The statute clearly limits participation in MTAP to persons whose income is less than 250% of poverty.

COMMENT #4: It is the understanding of the commentor that current consumers, i.e., persons who have already obtained equipment from MTAP, will be allowed to keep the equipment they currently have, but if their equipment fails, they will have to re-apply, in which case they may be ineligible due to their income. If MTAP is going to "grandfather in" the current consumers, then it should be without any conditions, i.e., they should not have to re-apply and comply with income requirements if they need new equipment in the future.

RESPONSE: The rules as proposed to be amended do not contain any provision for "grandfathering in" persons with family income in excess of 250% of poverty who currently have MTAP equipment because the MTAP statute does not contain a grandfather provision. Since Section 53-19-307, MCA, clearly states that MTAP participation must be limited to persons with income below 250% of poverty without providing any exception for current participants, MTAP has no authority to loan new equipment to an individual whose income exceeds the statutory income limit even if they received a loan of equipment in the past before the statute was amended.

Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Lynn Harris  
Chairman of the Montana  
Telecommunications Access  
Committee

Certified to the Secretary of State June 7, 2004.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 37.86.3806, 37.86.3810 )  
and 37.86.3811 pertaining to )  
case management services for )  
children at risk of abuse and )  
neglect )

TO: All Interested Persons

1. On April 22, 2004, the Department of Public Health and Human Services published MAR Notice No. 37-325 pertaining to the proposed amendment of the above-stated rules relating to case management services for children at risk of abuse and neglect, at page 971 of the 2004 Montana Administrative Register, issue number 8.

2. The Department has amended ARM 37.86.3806 and 37.86.3811 as proposed.

3. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.3810 MEDICAID REIMBURSED CASE MANAGEMENT SERVICES FOR CHILDREN AT RISK OF ABUSE AND NEGLECT, PROVIDER REQUIREMENTS

(1) through (2)(b) remain as proposed.

(3) A case management agency under contract with CFSD, to provide in-home services must:

(a) through (c) remain as proposed.

(d) employ case managers who have at least a two year degree in human services from an accredited institution or at least two years experience in a related field;

(e) through (f)(i) remain as proposed.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: A commentor suggested adding the words "at least" to the phrase "employ case managers who have a two year degree in human services from an accredited institution or two years experience in a related field" in ARM 37.86.3810(3)(d). This would clarify that a two year degree or two years of experience is the minimum standard for education and DPHHS approval is not required to employ case managers with more education or experience.

RESPONSE: The Department concurs.

COMMENT #2: A commentor suggested identifying in rule what related fields of experience the Department will accept as the equivalent of an associate degree in ARM 37.86.3810(3)(d).

RESPONSE: The Department will leave the language as proposed. The Department will accept experience in many related fields as equivalent. Listing all acceptable related fields would make the rule too lengthy and would not provide the latitude often needed in very rural areas of the state.

COMMENT #3: A commentor expressed concern that the minimum requirements of a two year degree for case managers and bachelor degree for supervisors are not adequate qualifications for such important work in ARM 37.86.3810(3).

RESPONSE: The Department considered the comments and decided to leave the language as proposed. A case manager is an employee of an agency that has responsibility over the case manager's activity. The case manager refers the client to providers who are more highly qualified in care or expertise. Case management services are not direct services or direct counseling, but rather the case manager assists the client in obtaining appropriate direct services.

Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 7, 2004.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment        )       NOTICE OF AMENDMENT  
of ARM 37.108.507 pertaining         )  
to components of quality             )  
assessment activities                 )

TO: All Interested Persons

1. On May 6, 2004, the Department of Public Health and Human Services published MAR Notice No. 37-330 pertaining to the proposed amendment of the above-stated rule relating to components of quality assessment activities, at page 1128 of the 2004 Montana Administrative Register, issue number 9.

2. The Department has amended ARM 37.108.507 as proposed.

3. No comments or testimony were received.

Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 7, 2004.



**NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

**Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

**Economic Affairs Interim Committee:**

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Office of the State Auditor and Insurance Commissioner;

and

- ▶ Office of Economic Development.

**Education and Local Government Interim Committee:**

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

**Children, Families, Health, and Human Services Interim Committee:**

- ▶ Department of Public Health and Human Services.

**Law and Justice Interim Committee:**

- ▶ Department of Corrections; and
- ▶ Department of Justice.

**Energy and Telecommunications Interim Committee:**

- ▶ Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

**State Administration, and Veterans' Affairs Interim Committee:**

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

**Environmental Quality Council:**

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA  
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- |                                     |   |
|-------------------------------------|---|
| Known<br>Subject                    | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.   |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2004. This table includes those rules adopted during the period April 1, 2004 through June 30, 2004 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2004, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2003 and 2004 Montana Administrative Registers.

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- I-VII First-Time Home Buyers, p. 422, 1033

- 42.4.103 and other rules - Personal Income Taxes, Credits, Incentives, and Exemptions, p. 429
- 42.5.201 and other rules - Electronic Signatures - Filing and Remittance of Tax Information, p. 2411, 2897
- 42.11.104 and other rules - Liquor Distribution - Liquor Vendors, p. 2059, 2899
- 42.12.104 and other rules - Liquor Licensing, p. 1303
- 42.15.601 and other rules - Medical Savings Accounts for Personal Income Taxes, p. 551
- 42.15.802 and other rules - Taxation of Family Education Savings Accounts, p. 414, 1031
- 42.19.401 and other rules - Extended Property Tax Assistance Program and Other Property Tax Rules, p. 45, 490
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## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in May 2004, appear. Vacancies scheduled to appear from July 1, 2004, through September 30, 2004, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of June 7, 2004.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

**BOARD AND COUNCIL APPOINTEES FROM MAY 2004**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Athletics</b> (Labor and Industry) Mr. Kevin McCarl Helena Qualifications (if required): public member	Governor	Langley	5/7/2004 4/25/2007
<b>Board of Crime Control</b> (Justice) Sen. William Crismore Libby Qualifications (if required): public member	Governor	Lucich	5/14/2004 1/1/2007
<b>Board of Plumbers</b> (Labor and Industry) Mr. Jeffrey Gruizenga Billings Qualifications (if required): mechanical engineer	Governor	Beaudry	5/6/2004 5/4/2008
<b>Board of Realty Regulation</b> (Labor and Industry) Ms. Marilyn Floberg Billings Qualifications (if required): real estate broker and an Independent	Governor	Odegard	5/25/2004 5/9/2008
<b>Montana Heritage Preservation and Development Commission</b> (Commerce) Mr. Pat Keim Helena Qualifications (if required): public member	Governor	reappointed	5/23/2004 5/23/2007
Mr. John Lawton Great Falls Qualifications (if required): person with community planning experience	Governor	reappointed	5/23/2004 5/23/2007
Ms. Judy McNally Billings Qualifications (if required): public member	Governor	reappointed	5/23/2004 5/23/2007

**BOARD AND COUNCIL APPOINTEES FROM MAY 2004**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Heritage Preservation and Development Commission</b> (Commerce) cont.			
Ms. Rosana Skelton	Governor	reappointed	5/23/2004
Helena			5/23/2007
Qualifications (if required): businessperson			
<b>State Library Commission</b> (State Library)			
Ms. Caroline Bitz	Governor	reappointed	5/22/2004
Box Elder			5/22/2007
Qualifications (if required): public member			
<b>Youth Justice Council</b> (Justice)			
Ms. Kacky Stout	Governor	not listed	5/6/2004
Helena			6/20/2005
Qualifications (if required): youth representative			



VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2004 through SEPTEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Aging Advisory Council</b> (Public Health and Human Services) Mr. Bud Clinch, Libby Qualifications (if required): public member	Governor	7/18/2004
Mr. Clayton Croff, Billings Qualifications (if required): public member	Governor	7/18/2004
Ms. Chuckie Cramer, Helena Qualifications (if required): public member	Governor	7/18/2004
Ms. Pat Ludwig, Chester Qualifications (if required): public member	Governor	7/18/2004
<b>Alternative Health Care Board</b> (Governor) Dr. Margaret Beeson, Billings Qualifications (if required): Naturopath	Governor	9/1/2004
<b>Board of Funeral Service</b> (Commerce) Mr. David G. Fulkerson, Plentywood Qualifications (if required): licensed mortician	Governor	7/1/2004
<b>Board of Hearing Aid Dispensers</b> (Commerce) Mr. David E. King, Billings Qualifications (if required): nationally certified audiologist with a master's level college degree	Governor	7/1/2004
<b>Board of Landscape Architects</b> (Commerce) Mr. Stacey Robinson, Billings Qualifications (if required): landscape architect	Governor	7/1/2004
<b>Board of Medical Examiners</b> (Commerce) Dr. Beth Thompson, Missoula Qualifications (if required): doctor of medicine	Governor	9/1/2004

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2004 through SEPTEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Nursing</b> (Commerce) Ms. Vickie Badgley, Stevensville Qualifications (if required): LPN	Governor	7/1/2004
Ms. Alma Gretchen McNeely, Bozeman Qualifications (if required): RN/educator	Governor	7/1/2004
<b>Board of Pharmacy</b> (Commerce) Mr. Albert A. (Tony) Fisher, Billings Qualifications (if required): licensed pharmacist	Governor	7/1/2004
<b>Board of Physical Therapy Examiners</b> (Labor and Industry) Mr. Bruce Lamb, Havre Qualifications (if required): physical therapist	Governor	7/1/2004
<b>Board of Private Security Patrol Officers and Investigators</b> (Labor and Industry) Mr. Gary Gray, Great Falls Qualifications (if required): representative of a contract security company	Governor	8/1/2004
Mr. Charles Geary, Belt Qualifications (if required): representative of a proprietary security organization	Governor	8/1/2004
<b>Board of Psychologists</b> (Commerce) Dr. Paul Silverman, Missoula Qualifications (if required): licensed psychologist engaged in the teaching of psychology	Governor	9/1/2004
Dr. George Watson, Bozeman Qualifications (if required): psychologist in private practice	Governor	9/1/2004
<b>Board of Public Accountants</b> (Commerce) Mr. Patrick Hanley, Billings Qualifications (if required): certified public accountant	Governor	7/1/2004

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2004 through SEPTEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Regents</b> (Education) Mr. Christian Hur, Missoula Qualifications (if required): student representative	Governor	7/1/2004
<b>Board of Research and Commercialization Technology</b> (Commerce) Mr. Michael Dolson, Hot Springs Qualifications (if required): Native American	Governor	7/1/2004
<b>Board of Sanitarians</b> (Commerce) Mr. Ted Kylander, Billings Qualifications (if required): sanitarian	Governor	7/1/2004
<b>Board of Veterans' Affairs</b> (Military Affairs) Mr. Donald Kettner, Glendive Qualifications (if required): veteran	Governor	8/1/2004
<b>Board of Veterinary Medicine</b> (Commerce) Dr. John Smith, Three Forks Qualifications (if required): licensed veterinarian	Governor	7/31/2004
<b>Board of Water Well Contractors</b> (Natural Resources and Conservation) Mr. Pat Byrne, Great Falls Qualifications (if required): water well contractor	Governor	7/1/2004
<b>Burial Preservation Board</b> (Administration) Mr. Mickey Nelson, Helena Qualifications (if required): representative of the Montana Coroners Association	Governor	8/22/2004
Mr. Duncan Standing Rock, Sr., Box Elder Qualifications (if required): representative of the Chippewa-Cree Tribe	Governor	8/22/2004
Mr. George Reed, Sr., Crow Agency Qualifications (if required): representative of the Crow Tribe	Governor	8/22/2004

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2004 through SEPTEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Burial Preservation Board</b> (Administration) cont.		
Ms. Sherri Deaver, Billings Qualifications (if required): representative of the Archeological Society	Governor	8/22/2004
Mr. Ben Speak Thunder, Harlem Qualifications (if required): representative of the Fort Belknap Tribe	Governor	8/22/2004
Mr. Ryan C. Rusche, Wolf Point Qualifications (if required): attorney	Governor	8/22/2004
<b>Commission on Community Service</b> (Labor and Industry)		
Mr. Erik Burke, Helena Qualifications (if required): representing labor unions	Governor	7/1/2004
Ms. Wendy Keating, Helena Qualifications (if required): representative of the Department of Labor and Industry	Governor	7/1/2004
Ms. Erin Butts, Bigfork Qualifications (if required): representing youth	Governor	7/1/2004
<b>Committee on Telecommunications Access Services for Persons with Disabilities</b> (Public Health and Human Services)		
Mr. Ben Havdahl, Helena Qualifications (if required): hard of hearing	Governor	7/1/2004
Mr. Ron Bibler, Great Falls Qualifications (if required): disabled	Governor	7/1/2004
Mr. Joe Mathews, Helena Qualifications (if required): representative of Department of Public Health and Human Services	Governor	7/1/2004

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2004 through SEPTEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Committee on Telecommunications Access Services for Persons with Disabilities</b> (Public Health and Human Services) cont.		
Ms. Chris Huth, Helena Qualifications (if required): non-disabled businessperson	Governor	7/1/2004
Mr. Jeff Brandt, Helena Qualifications (if required): representative of the Department of Administration	Governor	7/1/2004
<b>Economic Development Advisory Council</b> (Commerce)		
Mr. Paul Tuss, Havre Qualifications (if required): public member	Governor	7/23/2004
Mr. Evan Barrett, Butte Qualifications (if required): public member	Governor	7/23/2004
Mr. Tony Rudbach, Missoula Qualifications (if required): public member	Governor	7/23/2004
Ms. Elaina Zempel, Conrad Qualifications (if required): public member	Governor	7/23/2004
Ms. Anita Varone, Helena Qualifications (if required): public member	Governor	7/23/2004
<b>Family Education Savings Oversight Committee</b> (Commissioner of Higher Education)		
Mr. Pat Ellis, Bozeman Qualifications (if required): public member	Governor	7/1/2004
Mr. Scott Darkenwald, Helena Qualifications (if required): State Treasurer	Governor	7/1/2004

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2004 through SEPTEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Governor's Energy Consumer Protection Task Force</b> (Governor's Office) Sen. Chuck Swysgood, Helena Qualifications (if required): public member	Governor	7/30/2004
Mr. Haley Beaudry, Butte Qualifications (if required): public member	Governor	7/30/2004
Mr. Bob Rowe, Missoula Qualifications (if required): public member	Governor	7/30/2004
Mr. John Hines, Helena Qualifications (if required): public member	Governor	7/30/2004
Rep. Alan Olson, Roundup Qualifications (if required): public member	Governor	7/30/2004
Mr. John Alke, Helena Qualifications (if required): public member	Governor	7/30/2004
Mr. Bill Drummond, Missoula Qualifications (if required): public member	Governor	7/30/2004
Mr. Thomas Power, Missoula Qualifications (if required): public member	Governor	7/30/2004
Mr. Michael Uda, Helena Qualifications (if required): public member	Governor	7/30/2004
Mr. David Wheelihan, Great Falls Qualifications (if required): public member	Governor	7/30/2004

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2004 through SEPTEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Historical Records Advisory Council</b> (Historical Society) Ms. Samantha K. Pierson, Libby Qualifications (if required): public member	Governor	9/24/2004
Ms. Donna McCrea, Missoula Qualifications (if required): public member	Governor	9/24/2004
<b>Historical Society Board of Trustees</b> (Historical Society) Ms. Lee Rostad, Martinsdale Qualifications (if required): public member	Governor	7/1/2004
Mr. Ed Heinrich, Fairmont Qualifications (if required): public member	Governor	7/1/2004
Mr. James Utterback, Helena Qualifications (if required): public member	Governor	7/1/2004
<b>K-12 Public School Renewal Commission</b> (None) Rep. Carol C. Juneau, Browning Qualifications (if required): representing American Indian education	Governor	9/15/2004
Mr. John McNeil, Savage Qualifications (if required): representing rural schools	Governor	9/15/2004
Mr. Steve Gibson, Helena Qualifications (if required): representing youth correctional facilities	Governor	9/15/2004
Rep. Pat Wagman, Livingston Qualifications (if required): representing Montana at large	Governor	9/15/2004
Ms. Carmen McSpadden, Bozeman Qualifications (if required): representing school boards of trustees	Governor	9/15/2004

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2004 through SEPTEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>K-12 Public School Renewal Commission</b> (None) cont.		
Mr. Eric Feaver, Helena Qualifications (if required): representing teachers	Governor	9/15/2004
Mr. Darrell Rud, Helena Qualifications (if required): representing school administrators	Governor	9/15/2004
Mr. Tim Lund, Hamilton Qualifications (if required): representing the business community	Governor	9/15/2004
Mr. Scott Seilstad, Denton Qualifications (if required): representing taxpayers	Governor	9/15/2004
Mr. Ron Laferriere, Belgrade Qualifications (if required): representing special needs education	Governor	9/15/2004
Mr. Steve Johnson, Bozeman Qualifications (if required): representing school business officials	Governor	9/15/2004
Mr. Jules Waber, Great Falls Qualifications (if required): representing students	Governor	9/15/2004
Mr. Bruce Messinger, Helena Qualifications (if required): representing large schools	Governor	9/15/2004
Ms. Cathy Day, Great Falls Qualifications (if required): representing parents	Governor	9/15/2004
Mr. Keith Allen, East Helena Qualifications (if required): representing organized labor	Governor	9/15/2004
Mr. Mike Nicosia, Columbia Falls Qualifications (if required): representing education groups	Governor	9/15/2004



VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2004 through SEPTEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>K-12 Public School Renewal Commission</b> (None) cont.		
Ms. Lorri Coulter, Brusett Qualifications (if required): representing Montana at large	Governor	9/15/2004
Mr. Robert Murray, Poplar Qualifications (if required): representing Montana at large	Governor	9/15/2004
<b>Mental Disabilities Board of Visitors</b> (Governor)		
Ms. Joan-Nell Macfadden, Great Falls Qualifications (if required): experienced with emotionally disturbed children	Governor	7/1/2004
Mr. Graydon Davies Moll, Polson Qualifications (if required): experienced with developmentally disabled adults	Governor	7/1/2004
Mr. Steve Cahill, Clancy Qualifications (if required): experienced with the welfare of the mentally ill	Governor	7/1/2004
<b>Montana Agriculture Development Council</b> (Agriculture)		
Mr. Larry Barber, Coffee Creek Qualifications (if required): actively engaged in agriculture	Governor	7/1/2004
Mr. John L. Franklin, Sidney Qualifications (if required): actively engaged in agriculture	Governor	7/1/2004
<b>Montana Cooperative Development Center Advisory Council</b> (Agriculture)		
Mr. Greg Jergeson, Chinook Qualifications (if required): member-at-large	Director	7/1/2004
Mr. Steve Pilcher, Helena Qualifications (if required): Montana Stockgrowers Association	Director	7/1/2004
Mr. Paul Tuss, Havre Qualifications (if required): Montana Economic Developers Association	Director	7/1/2004

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2004 through SEPTEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Cooperative Development Center Advisory Council</b> (Agriculture) cont. Mr. Arthur Kleinjan, Chinook Qualifications (if required): Montana Association of Counties	Director	7/1/2004
Mr. Geoff Feiss, Helena Qualifications (if required): Montana Telecommunications Association	Director	7/1/2004
Mr. Rich Owen, Geraldine Qualifications (if required): Cenex Harvest States Cooperative	Director	7/1/2004
Mr. Walter Coffman, Dutton Qualifications (if required): Montana Council of Cooperatives	Director	7/1/2004
Mr. Scott Morrison, Helena Qualifications (if required): Montana Credit Union Network	Director	7/1/2004
Mr. Mack McConnell, Great Falls Qualifications (if required): Montana Electric Cooperatives Association	Director	7/1/2004
Mr. Greg Woods, Bozeman Qualifications (if required): Montana Farm Bureau/Montana Grain Growers	Director	7/1/2004
Mr. Brooks Dailey, Great Falls Qualifications (if required): Montana Farmers Union	Director	7/1/2004
Mr. Mike Strand, Great Falls Qualifications (if required): Montana Independent Telecommunications Systems	Director	7/1/2004
Ms. Mary Ann Murray, Jordan Qualifications (if required): Montana WIFE	Director	7/1/2004

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2004 through SEPTEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Historical Records Advisory Council</b> (Historical Society) Ms. Ellen Crain, Butte Qualifications (if required): public member	Governor	9/24/2004
Ms. Jodi L. Allison-Bunnell, Missoula Qualifications (if required): public member	Governor	9/24/2004
Ms. Judy Ellinghausen, Great Falls Qualifications (if required): public member	Governor	9/24/2004
Ms. Lory Morrow, Helena Qualifications (if required): public member	Governor	9/24/2004
Ms. Molly Miller, Helena Qualifications (if required): State Archivist	Governor	9/24/2004
Ms. Peggy Gow, Deer Lodge Qualifications (if required): public member	Governor	9/24/2004
<b>Montana Mint Committee</b> (Agriculture) Mr. David Tutvedt, Kalispell Qualifications (if required): mint grower	Governor	7/1/2004
<b>Montana Organic Commodity Advisory Council</b> (Agriculture) Ms. Nancy Matheson, Helena Qualifications (if required): producer	Director	9/4/2004
Mr. John Hoffland, Helena Qualifications (if required): consumer	Director	9/4/2004
Mr. Mikel Lund, Scobey Qualifications (if required): producer	Director	9/4/2004

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2004 through SEPTEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Power Authority</b> (Natural Resources and Conservation)		
Mr. Gary Buchanan, Billings	Governor	7/2/2004
Qualifications (if required): member at large with experience in financial, banking and bonding		
Ms. Kathy Ogren, Missoula	Governor	7/2/2004
Qualifications (if required): representing commercial and industrial enterprise energy consumption		
Mr. Steve Browning, Helena	Governor	7/2/2004
Qualifications (if required): public member		
<b>State Banking Board</b> (Governor)		
Ms. Jamie Doggett, White Sulphur Springs	Governor	7/1/2004
Qualifications (if required): public member		
<b>State Electrical Board</b> (Commerce)		
Mr. Ron Van Diest, East Helena	Governor	7/1/2004
Qualifications (if required): licensed electrician		
<b>Teachers' Retirement Board</b> (Administration)		
Mr. Tim Ryan, Great Falls	Governor	7/1/2004
Qualifications (if required): public member		
<b>Tourism Advisory Council</b> (Commerce)		
Ms. Maureen Averill, Bigfork	Governor	7/1/2004
Qualifications (if required): representing Glacier Country		
Ms. Debbie Donovan, Larslan	Governor	7/1/2004
Qualifications (if required): representing Missouri River Country		
Ms. Kathy Brown, Helena	Governor	7/1/2004
Qualifications (if required): representing Gold West Country		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2004 through SEPTEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Tourism Advisory Council</b> (Commerce) cont.		
Mr. Homer Staves, Billings	Governor	7/1/2004
Qualifications (if required): representative of Custer Country		
Ms. Sharon Rau, Sidney	Governor	7/1/2004
Qualifications (if required): representing Missouri River Country		
<b>Wheat and Barley Committee</b> (Agriculture)		
Ms. Janice Mattson, Chester	Governor	8/20/2004
Qualifications (if required): Democrat representing District III		
Mr. Donald L. Fast, Glasgow	Governor	8/20/2004
Qualifications (if required): Republican representing District II		