

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION

Agenda #III.B.1.

Agenda Item Summary: The Department of Environmental Quality (Department) requests that the Board of Environmental Review (Board) initiate rulemaking to amend air quality rule provisions in Administrative Rules of Montana (ARM) Title 17, chapter 8, subchapter 8 to remove the averaging period for the significant monitoring concentration (SMC) for particulate matter with a diameter of less than 2.5 microns (PM-2.5).

List of Affected Rules: This rulemaking would amend ARM 17.8.818.

Affected Parties Summary: This rulemaking will not affect any regulated sources. It is a ministerial change that eliminates the need for interpretation of the rule.

Scope of Proposed Proceeding: The Department requests that the Board initiate rulemaking without a hearing to consider the proposed amendment to the above-stated rule.

Background: On October 20, 2010, the U.S. Environmental Protection Agency (EPA) published a final rule establishing a New Source Review - Prevention of Significant Deterioration (NSR-PSD) SMC for PM-2.5 (75 Fed. Reg. 64864). The SMC has been used to exempt sources from a requirement in the Clean Air Act (CAA), 42 U.S.C. § 7475(e)(2), that, to help determine existing ambient air quality, they collect monitoring data for up to one year before submitting a permit application.

The Board adopted this federal preconstruction review requirement into ARM Title 17, chapter 8, subchapter 8, on September 23, 2011.

The federal regulations concerning the PM-2.5 SMC were challenged in a federal lawsuit as not complying with the CAA, and a federal appeals court vacated (overturned) portions of the regulations in 2013. See *Sierra Club v. EPA*, 705 F.3d 458, 403 U.S. App. D.C. 318 (2013). EPA responded by amending its regulations in 2013 to reduce the SMC for PM-2.5 to 0 ug/m³, from 4 ug/m³ averaged over 24 hours, indicating that there is no air quality impact level below which a reviewing authority has the discretion to exempt a source from the PM-2.5 monitoring requirements (78 Fed. Reg. 73698, December 9, 2013).

The Department requested the Board to amend ARM 17.8.818(7)(a)(iii) to make it consistent with the amended federal regulations, but inadvertently failed to include in that request the removal of the averaging period for the PM-2.5 SMC. On September 26, 2014, the Board amended ARM 17.8.818(7)(a)(iii) in an attempt to make it consistent with the EPA's 2013 amendments, but did not remove the averaging period. The Department submitted this amended rule as a revision to the Montana State Implementation Plan (SIP) on April 10, 2015.

EPA has requested Montana amend ARM 17.8.818(7)(a)(iii) to remove the averaging period and to submit a proposed revision with that change to the SIP.

The Department is recommending that the Board initiate rulemaking to remove the phrase "24-hour average" from ARM 17.8.818(7)(a)(iii). This would ensure Montana's ongoing NSR-PSD program primacy and authority.

Hearing Information: The Department recommends that the Board propose to amend the rule without a public hearing.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached Draft Notice of Proposed Amendment (No Public Hearing Contemplated);
2. Modify the Notice and initiate rulemaking; or
3. Determine that the amendment of the rule is not appropriate and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board initiate rulemaking as described in the Draft Notice of Proposed Amendment (No Public Hearing Contemplated).

Enclosures:

1. Draft Notice of Proposed Amendment (No Public Hearing Contemplated).

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
17.8.818, pertaining to the averaging)	AMENDMENT
period for the PM-2.5 significant)	(AIR QUALITY)
monitoring concentration)	
)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On _____, the Board of Environmental Review proposes to amend the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact _____, Administrative Rules Coordinator, no later than 5:00 p.m., _____, to advise us of the nature of the accommodation that you need. Please contact _____ at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or email _____@mt.gov.

3. The rule proposed to be amended provides as follows with stricken matter interlined:

17.8.818 REVIEW OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS--SOURCE APPLICABILITY AND EXEMPTIONS (1) through (6) remain the same.

(7) The department may exempt a proposed major stationary source or major modification from the requirements of ARM 17.8.822, with respect to monitoring for a particular pollutant, if:

- (a) through (ii) remain the same.
- (iii) PM-2.5: 0 µg/m³, ~~24-hour average~~;
- (iv) through (c) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

REASON: The federal Clean Air Act (CAA) at § 165(e)(2), 42 U.S.C. § 7475(e)(2), requires a proposed major emitting facility to conduct monitoring for, among other emissions, particulate matter with a diameter of less than 2.5 microns (PM_{2.5}) for up to one year before submitting an application for an air quality preconstruction permit. The preconstruction permit is part of the New Source Review-Prevention of Significant Deterioration (NSR-PSD) program, which is

MAR Notice No. 17-____

designed to protect the air quality of areas cleaner than the national standards.

On October 20, 2010, the U.S. Environmental Protection Agency (EPA) adopted regulations setting the significant monitoring concentration (SMC) for particulate matter with a diameter of less than 2.5 microns (PM_{2.5}). The SMC was set at 4 ug/m³ averaged over 24 hours. See 40 C.F.R. §§ 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c), adopted in 75 Fed. Reg. 64864. An SMC is used to exempt sources from preconstruction monitoring when modeled impacts from the proposed facility, or the existing air quality level in the area of the proposed source, is less than the SMC.

The board adopted ARM 17.8.818(7), which adopted the same SMC for PM_{2.5} as the federal regulation, effective October 14, 2011. See 2011 MAR p. 2457. Based on a court decision vacating the PM_{2.5} SMC as not allowed by the Clean Air Act (*Sierra Club v. EPA*, 705 F.3d 458, 403 U.S. App. D.C. 318 (2013)), EPA amended its regulations to reduce the SMC to 0 mug/m³ and eliminate the 24-hour averaging period. 78 Fed. Reg. 73698, December 9, 2013.

Because EPA amended its regulations, the department requested the board to amend its rule. However, the department inadvertently failed to recommend that the board remove the averaging period for the PM_{2.5} SMC from the rule. The board amended the rule effective October 10, 2014, without removing the averaging period. See 2014 MAR p. 2457. The department submitted this amended rule to EPA as a revision to the Montana State Implementation Plan (SIP) on April 10, 2015.

EPA has requested Montana to amend ARM 17.8.818(7)(a)(iii) to remove the averaging period for the PM_{2.5} SMC and to submit a revision with that change to the SIP for EPA's review. If Montana does not remove the averaging period from the rule, its rule could be considered less stringent than EPA's regulation. If a Montana rule is less stringent than an EPA regulation, EPA could take steps to withdraw its approval of Montana's regulatory program, and that could result in EPA becoming the primary administrator of air quality regulations in Montana.

This proposed rulemaking would remove the averaging period for PM_{2.5}, making the board's rules consistent with and as stringent as the EPA regulation, and ensure Montana's ongoing NSR-PSD program's primacy and authority.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to _____ at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-_____; fax (406) 444-4386; or e-mail _____@mt.gov, no later than _____, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to _____ at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-_____; fax (406) 444-4386; or e-mail _____@mt.gov, no later than _____, 2016.

6. If the board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25, based on the more than 250 persons who potentially could wish to appeal air quality permits and therefore could be affected by this rulemaking.

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, e-mail, 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 supply; 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. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to _____, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to _____ at _____@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the proposed new rules will not significantly and directly impact small businesses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

JOHN F. NORTH
Rule Reviewer

BY: _____
JOAN MILES, CHAIRMAN

Certified to the Secretary of State, _____.

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE ADOPTION

Agenda #III.C.1.

Agenda Item Summary: Adoption of modified Department Circular DEQ-2, Design Standards for Public Sewage Systems

List of Affected Rules: ARM 17.30.1001, 17.36.345, 17.36.914, 17.38.101, and 17.50.819, all of which incorporate DEQ-2 by reference

Affected Parties Summary: The parties primarily affected by this proposal are the public wastewater supply and subdivision plan review engineers, who use DEQ-2 for guidance. In addition, any engineers and/or wastewater personnel using DEQ-2 to prepare plans for submittal may be affected.

Background: In December of 2015, the department updated wastewater treatment operator certification classification by combining four classes into two classes. This was accomplished by amending ARM17.40.202, which establishes the certification classifications. However, DEQ-2 contains references to the four class system. It therefore must be modified. Rather than modify it to refer to the new 2-class system, the Department proposes that DEQ-2 be modified by removing the references to the 4-class system and substituting a general reference to ARM 17.40.202. With this general reference, the DEQ-2 would not need to be modified in the future of AMR 17.40.202 is modified.

To avoid conflict between the departmental rules and DEQ-2, both now and after any future rule changes, detailed certification class descriptions should be removed from DEQ-2 and replaced with general reference to ARM. This ARM will always contain the most current wastewater classification information.

Hearing Information: Ben Reed conducted a public hearing, concerning the proposal to update DEQ-2 and then incorporate by reference to the updated version, on 14 January 2016. The Presiding Officer's Report is attached to this executive summary.

Board Options: The Board may:

1. Adopt the proposed amendments as set forth in the attached Notice of Public Hearing on Proposed Amendment;
2. Decide not to adopt the amendments.

DEQ Recommendation: The Department recommends that the Board adopt the presiding officer's report, the HB 521 Stringency and SB 311 Takings Analyses, and amendments as provided in the attached notice of amendment.

Enclosures:

1. Notice of Public Hearing on Proposed Amendment;
2. Presiding Officer's Report;
3. HB521 Stringency and SB311 Takings Analyses;
4. Public Hearing Testimony; and
5. Draft Notice of Amendment.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.30.1001, 17.36.345, 17.36.914,)	PROPOSED AMENDMENT
17.38.101, and 17.50.819 pertaining to)	
definitions, adoption by reference,)	(WATER QUALITY)
wastewater treatment systems:)	(SUBDIVISIONS/ON-SITE
technical requirements, plans for public)	SUBSURFACE WASTEWATER
water supply or public sewage system,)	TREATMENT)
plans for public water supply or)	(PUBLIC WATER AND SEWAGE
wastewater system, and incorporation by))	SYSTEM REQUIREMENTS)
reference and availability of referenced)	(SOLID WASTE MANAGEMENT)
documents)	

TO: All Concerned Persons

1. On January 14, 2016, at 1:00 p.m., the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board and 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 Elois Johnson, Paralegal, no later than 5:00 p.m., January 5, 2016, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.30.1001 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter:

(1) through (16) remain the same.

(17) "Unrestricted reclaimed wastewater" means wastewater that is treated to the standards for Class A-1 or Class B-1 reclaimed wastewater, as set forth in Appendix B of Department Circular DEQ-2, entitled "Montana Department of Environmental Quality Design Standards for Public Sewage Systems" (~~May 2012~~ 2016 edition).

(a) The board adopts and incorporates by reference Department Circular DEQ-2, entitled "Department of Environmental Quality Design Standards for Public Sewage Systems" (~~May 2012~~ 2016 edition). Copies are available from the Department of Environmental Quality, Technical and Financial Assistance Bureau, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-301, 75-5-401, MCA

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

- (a) remains the same.
- (b) Department Circular DEQ-2, "Design Standards for Public Sewage Systems," ~~2012~~ 2016 edition;
- (c) through (2) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

17.36.914 WASTEWATER TREATMENT SYSTEMS - TECHNICAL REQUIREMENTS (1) remains the same.

(2) Department Circular DEQ-4, 2013 edition, which sets forth standards for subsurface sewage treatment systems, and Department Circular DEQ-2, ~~2012~~ 2016 edition, which sets forth design standards for public sewage systems, are adopted and incorporated by reference for purposes of this subchapter. All references to these documents in this subchapter refer to the editions set out above. 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

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR PUBLIC SEWAGE SYSTEM (1) through (19)(b) remain the same.

(20) For purposes of this chapter, the board adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

- (a) remains the same.
- (b) Department of Environmental Quality Circular DEQ-2, ~~2012~~ 2016 edition, which sets forth the requirements for the design and preparation of plans and specifications for sewage works;
- (c) through (21) remain the same.

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

17.50.819 INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED DOCUMENTS (1) The department adopts and incorporates by reference:

- (a) Department Circular DEQ-2, Design Standards for Public Sewage Systems (~~2012~~ 2016 edition), which sets forth design standards for public sewage

systems;

(b) through (3) remain the same.

AUTH: 75-10-1202, MCA

IMP: 75-10-1202, MCA

REASON: The department has modified the wastewater operator certification classification. Before the amendments became effective, there were four classes in Department Circular DEQ-2 (DEQ-2). The department rule amendments combine the four classes into two classes.

The 2012 edition of DEQ-2 contains a reference to the previous four-tiered classification. Therefore, it is necessary to update the Circular. The proposed amendment to DEQ-2 is necessary to direct interested parties to ARM 17.40.202.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., January 21, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Ben Reed, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board and department maintain 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, e-mail, 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 supply; 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. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

8. With regard to the requirements of 2-4-111, MCA, the board and department have determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

BY: /s/ Joan Miles
JOAN MILES
Chairman

DEPARTMENT OF ENVIRONMENTAL
QUALITY

BY: /s/ Tom Livers
TOM LIVERS
Director

Certified to the Secretary of State, December 14, 2015.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of)
ARM 17.30.1001, 17.36.345,)
17.36.914, 17.38.101, and 17.50.819)
pertaining to definitions, adoption by)
reference, wastewater treatment)
systems: technical requirements, plans)
for public water supply or public)
sewage system, plans for public water)
supply or wastewater system, and)
incorporation by reference and)
availability of referenced documents)

HEARING EXAMINER REPORT

On January 14, 2016, the undersigned presided over and conducted the public hearing held in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to take public comment on the above-captioned proposed amendment of ARM 17.30.1001, 17.36.345, 17.36.914, 17.38.101, and 17.50.819 pertaining to definitions, adoption by reference, wastewater treatment systems: technical requirements, plans for public water supply or public sewage system, plans for public water supply or wastewater system, and incorporation by reference and availability of referenced documents.

1. The Notice of Public Hearing on Proposed Amendment (Water Quality) (Subdivisions/On-Site Subsurface Wastewater Treatment) (Public Water And Sewage System Requirements) (Solid Waste Management), MAR Notice No. 17-379 was published on December 24, 2015. A copy of the Notice of Public Hearing on Proposed Amendment is attached to this report. (Attachments are provided in the same order as they are referenced in this report.)

2. The hearing began at 1:00 p.m., and was digitally recorded.

3. The undersigned announced that persons at the hearing would be given an opportunity to submit their data, views, or arguments concerning the proposed action, either orally or in writing. Details of where to submit written views or arguments were provided. At the hearing, the undersigned identified the MAR notice and read the Notice of Function of Administrative Rule Review Committee as required by Mont. Code Ann. § 2-4-302(7)(a). The rulemaking interested persons list and the opportunity to have names placed on that list were addressed. The Presiding Officer explained the order of presentation.

SUMMARY OF HEARING

4. Tammy Filliater, Rule Coordinator for the Public Water And Subdivision Bureau of the Montana Department of Environmental Quality (Department) gave a statement pertaining to the rationale behind the rule revisions. As part of a series of changes to operator certification rules, which became effective Friday, December 11, 2015, wastewater treatment classes and corresponding certifications have changed. Previously, we had four classes. Now, there are four classes for operators certified prior to January 1, 2016 and two classes for operators certified on or after January 1, 2016. Due to these changes, the Board is proposing to open DEQ-2 and to make a minor change in the material. The wording for the four wastewater classes that existed in 2015 will be removed, and interested parties will be directed to ARM 17.40.202, which contains the most current wastewater treatment system classification information. The Board then proposes adopting the updated version for water quality (ARM 17.30.1001), subdivisions (ARMs 17.36.345 and 17.36.914), public water (ARM 17.38.101), and solid waste (ARM 17.50.819). The written statement is hereto attached.

5. No other parties commented at the hearing.

SUMMARY OF WRITTEN MATERIALS

6. The Department also submitted a memorandum from John F. North, Chief Legal Counsel for the Department, with HB 521 and HB 311 reviews of the proposed amendments and a Private Property Assessment Act Checklist. Mr. North's memorandum is attached to this report.

7. The period to submit comments ended at 5 p.m. on January 21, 2016. No further comments were received.

HEARING EXAMINER COMMENTS

8. The Board and the Department have jurisdiction to adopt, amend, or repeal the amendment pursuant to Mont. Code Ann. §§ 76-4-104 and 75-6-103.

9. House Bill 521 (1995) generally provides that the Board may not adopt a rule that is more stringent than comparable federal regulations or guidelines, unless the Board makes written findings after public hearing and comment. The proposed amendments are not more stringent than a comparable federal regulation or guideline. Therefore written findings are not necessary.

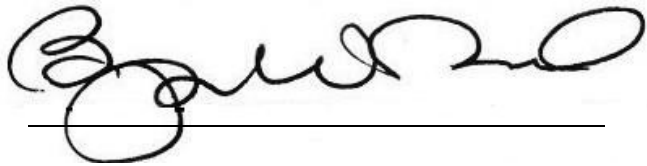
10. House Bill 311 (1995), the Private Property Assessment Act, codified as Mont. Code Ann. § 2-10-101 through -105, provides that a state agency must complete a review and impact assessment prior to taking an action with taking or damaging implications. The proposed amendments affect real property. A Private Property Assessment Act Checklist was prepared in this matter. The proposed amendments do not have taking or damaging implications. Therefore, no further HB 311 assessment is necessary.

11. The procedures required by the Montana Administrative Procedure Act, including public notice, hearing, and comment, have been followed.

12. The Board and Department may adopt the proposed rule amendment, reject it or adopt the rule amendment with revisions not exceeding the scope of the public notice.

13. Under Mont. Code Ann. § 2-4-305(7), for the rulemaking process to be valid, the Board must publish a notice of adoption within six months of the date the Board published the notice of proposed rulemaking in the Montana Administrative Register, or by June 24, 2016.

Dated this 4th day of February, 2016.

A handwritten signature in black ink, appearing to read "Benjamin Reed", written over a horizontal line.

Benjamin Reed
Hearing Examiner



MEMO

TO: Board of Environmental Review and Tom Livers, Director

FROM: John F. North, Chief Legal Counsel *J.F.N.*
Department of Environmental Quality

DATE: January 19, 2015

SUBJECT: HB 521 Stringency and SB 311 Takings Analyses for MAR Notice No. 17-379

HB 521, which is codified at 75-5-203, 75-6-116, 75-10-107, and 76-4-135, MCA, requiree that the Board and Department to make certain findings before it may adopt rules that are more stringent than comparable federal regulations or guidance that address the same circumstances.

In MAR Notice No. 17-379, the Board and Department are proposing to amend Circular DEQ-2. The new version of that circular simply modifies references to changes that have been made to Department rules regulating water and wastewater treatment plant operators. This is not a substantive change in the circular. Because this notice does not proposed adoption of substantive requirements, the rulemaking would not adopt rules that are more stringent than comparable federal regulations or guidance that address the same circumstance. Therefore, no HB 521 findings are necessary before adoption of the proposed rule repeals.

SB 311 is codified as Title 2, Chapter 10, MCA. That chapter requires an agency to conduct a takings impact assessment for actions, including adoption of rules, with taking or damaging implications. It directs that the Attorney General provide a checklist for agencies to use in determining whether actions have taking or damaging implications. Attached is a checklist for these rule amendments. It indicates that adoption of these rule amendments does not have taking or damaging implications.

Attachment

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST: MAR Notice No. 17-379

DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS
UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?

Yes	No	
<u>X</u>	_____	1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
_____	<u>X</u>	2. Does the action result in either a permanent or indefinite physical occupation of private property?
_____	<u>X</u>	3. Does the action deprive the owner of all economically viable uses of the property?
_____	<u>X</u>	4. Does the action deny a fundamental attribute of ownership?
_____	<u>X</u>	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO, skip questions 5a and 5b and continue with question 6.]
_____	<u>X</u>	5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
_____	_____	5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
_____	<u>X</u>	6. Does the action have a severe impact on the value of the property?
_____	<u>X</u>	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is NO, do not answer questions 7a

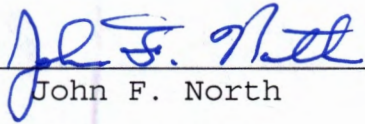
through 7c.]

_____ 7a. Is the impact of government action
_____ direct, peculiar, and significant?

_____ 7b. Has government action resulted in the
_____ property becoming practically inaccessible,
waterlogged, or flooded?

_____ 7c. Has government action diminished
_____ property values by more than 30% and
necessitated the physical taking of adjacent
property or property across a public way
from the property in question?

Taking or damaging implication exist if YES is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if NO is checked in response to questions 5a or 5b.



John F. North

January 19, 2016

Public Hearing Testimony
14 January 2016

Good morning. My name is Tammy Filiater and I am the Rule Coordinator for the public water and subdivision bureau of the Montana DEQ.

In October of 2015, the department proposed a series of changes to operator certification rules. These rule changes were supported by both the Operator Certification Advisory Committee and the Public Water Supply Focus Group. A public hearing was held on November 4, and the comment period ended on November 16th. No formal comments were submitted pertaining to this rule package. The proposed rules became effective Friday, December 11, 2015.

As part of this rule package, wastewater treatment classes and corresponding certifications have changed. Previously, we had four classes. Now, we have four classes for operators certified prior to January 1, 2016 and two classes for operators certified on or after January 1, 2016. Due to these changes, the board is proposing to open DEQ-2 and to make a minor change in the material. That is, remove the wording for the four wastewater classes we had in 2015, and add wording to point an interested party to ARM 17.40.202, which contains the most current wastewater treatment system classification information. Then, the board proposes adopting the updated version for water quality (ARM 17.30.1001), subdivisions (ARMs 17.36.345 and 17.36.914), public water (ARM 17.38.101), and solid waste (ARM 17.50.819).

Thank you.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.30.1001, 17.36.345, 17.36.914,)
17.38.101, and 17.50.819 pertaining to)
definitions, adoption by reference,)
wastewater treatment systems: technical)
requirements, plans for public water)
supply or public sewage system, plans)
for public water supply or wastewater)
system, and incorporation by reference)
and availability of referenced documents)
)

NOTICE OF AMENDMENT

(WATER QUALITY)
(SUBDIVISIONS/ON-SITE
SUBSURFACE WASTEWATER
TREATMENT)
(PUBLIC WATER AND SEWAGE
SYSTEM REQUIREMENTS)
(SOLID WASTE MANAGEMENT)

TO: All Concerned Persons

1. On December 24, 2015, the Board of Environmental Review published MAR Notice No. 17-379 regarding a notice of proposed amendment of the above-stated rules at pages 2188-2191, 2015 Montana Administrative Register, issue number 24.

2. The board has amended 17.30.1001, 17.36.345, 17.36.914, 17.38.101, and 17.50.819 exactly as proposed.

3. No formal comments were submitted and the department recommends the board adopt the amendments as proposed.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

By: /s/ Joan Miles
JOAN MILES
Chairman

Certified to the Secretary of State, March __, 2016.