

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING
ARM 17.56.101, 17.56.201,)	ON PROPOSED AMENDMENT
17.56.202, 17.56.301, 17.56.302,)	AND REPEAL
17.56.304, 17.56.305, 17.56.309,)	
17.56.312, 17.56.401, 17.56.402,)	(UNDERGROUND STORAGE
17.56.502, 17.56.503, 17.56.505,)	TANKS)
17.56.506, 17.56.601, 17.56.603)	
17.56.604, 17.56.605, 7.56.607,)	
17.56.701, 17.56.702, 17.56.703,)	
17.56.705, 17.56.901, 17.56.902,)	
17.56.1301, 17.56.1303, 17.56.1304,)	
17.56.1305, 17.56.1306, 17.56.1308,)	
17.56.1309, 17.56.1401, 17.56.1402,)	
17.56.1403, 17.56.1404, 17.56.1405,)	
17.56.1406, 17.56.1407, 17.56.1408,)	
17.56.1409, 17.56.1410, 17.56.1421,)	
17.56.1422, 17.56.1502, 17.56.1503,)	
pertaining to underground storage)	
tanks petroleum and chemical)	
substances and the repeal of ARM)	
17.56.1002, 17.56.1003, 17.56.1004,)	
17.56.1005, pertaining to delegation to)	
local governments)	

TO: All Concerned Persons

1. On August 11, 2016, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and repeal of 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 Denise Hartman, Administrative Rules Coordinator, no later than 5:00 p.m., August 5, 2016, to advise us of the nature of the accommodation that you need. Please contact Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov.

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

17.56.101 DEFINITIONS For the purposes of this chapter and unless

otherwise provided, the following terms have the meanings given to them in this rule and must be used in conjunction with those definitions in 75-11-203, 75-11-302, and 75-11-503, MCA.

(1) through (49) remain the same.

(50) "Petroleum storage tank" or "PST" means a tank that contains or contained petroleum or petroleum products and that is:

(a) through (c) remain the same.

(d) aboveground pipes associated with tanks under ~~(49)~~ (50)(b) and (c), except that pipelines regulated under the following laws are excluded:

(i) and (ii) remain the same.

(iii) state law comparable to the provisions of law referred to in ~~(49)~~ (50)(d)(i) and (ii), if the facility is intrastate.

(51) through (78) remain the same.

AUTH: 75-11-204, 75-11-319, 75-11-505, MCA

IMP: 75-11-203, 75-11-302, 75-11-319, 75-11-505, MCA

REASON: The department is proposing to amend ARM 17.56.101(50)(d) in order to correct the citation in that subsection.

17.56.201 PERFORMANCE STANDARDS FOR NEW UST SYSTEMS

(1) remains the same.

(2) The department adopts and incorporates by reference the version in effect on ~~July 1, 2006~~ January 1, 2016, of the following standards, specifications, and publications:

(a) remains the same.

(b) Underwriters Laboratories of Canada Standard ULC-S615, "Standard for ~~Reinforced Plastic Underground Tanks for Petroleum Products~~ Fibre Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids," which sets forth requirements for the manufacture and installation of horizontal reinforced plastic underground tanks for petroleum products, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

(c) American Society of Testing and Materials Standard D4021, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks," which sets forth design standards for Fiber Reinforced Polyester (FRP) UST tanks, a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017;

(d) Steel Tank Institute, "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks," which sets forth design and installation standards of cathodically protected steel underground storage tanks, a copy of which may be obtained from Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

(e) remains the same.

(f) Underwriters Laboratories of Canada Standard ULC-S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," which sets forth the requirements that cover single-wall and double-wall cylindrical steel tanks of the

horizontal, nonpressure type that are used for the underground storage of flammable liquids and combustible liquids, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

(g) Underwriters Laboratories of Canada Standard ULC-S603.1, "~~Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids~~ External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids," which sets forth the requirements for external corrosion protection systems on carbon steel underground storage tanks, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

(h) Underwriters Laboratories of Canada Standard ULC-S631, "Standard for Isolating Bushing for Steel Underground Tanks Protected with External Corrosion Protection Systems," which sets forth requirements for low profile nylon isolating bushings with internal and external threads and component thread sealant, which are intended for use in the external corrosion protection of underground steel tanks, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

(i) National Association of Corrosion Engineers Standard RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth cathodic protection standards for buried or submerged metallic liquid storage systems, a copy of which may be obtained from NACE, International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200;

(j) and (k) remain the same.

(l) Underwriters Laboratories Subject 971, "~~UL Listed Non-Metal Pipe Standard for Nonmetallic Underground Piping For Flammable Liquids~~," which sets forth design standards for fiberglass reinforced plastic pipe, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(m) Underwriters Laboratories Standard 567, "~~Pipe Connectors for Flammable and Combustible and LP Gas~~ Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas," which sets forth manufacture and installation standards for pipe connectors, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(n) through (t) remain the same.

(u) American National Standards Institute Standard B31.3, "~~Petroleum Refinery Piping Process Piping~~," which sets forth proper installation and design standards for piping of an UST system, a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017; and

(v) American National Standards Institute Standard B31.4, "~~Liquid Petroleum Transportation Piping System~~ Pipeline Transportation Systems for Liquids and Slurries," which sets forth proper installation and design standards for piping of an UST system, a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017;

(w) Underwriters Laboratory 1856, "Underground Fuel Tank Internal Retrofit Systems," which sets forth requirements for nonmetallic retrofit systems intended for

field installation inside steel or fiberglass underground fuel tanks, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709; and

(x) American Petroleum Institute 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations," which describes recommended practices for the storing, handling, and fire protection of ethanol and gasoline-ethanol blends from E1 to E15 and from E65 to E100 (used for E85) at distribution terminals and filling stations, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: Industry codes and standards are developed in order to ensure that UST systems are properly designed, constructed, installed, and maintained. The UST rules incorporate UST performance standards and practices adopted by nationally recognized organizations to ensure methods of UST system management are protective of human health and the environment. UST systems must be designed, constructed, and protected from corrosion in accordance with these codes and practices.

The department is proposing to amend ARM 17.56.201(2) in order to adopt and incorporate by reference the latest versions of the standards, specifications, and publications listed in (2)(a) through (v) and to add the standards in (2)(w) and (x), which provide requirements for retrofitting nonmetallic systems and standards for storing and handling ethanol fuel blends.

It is necessary to incorporate the most current standards and procedures to require compliance with the most recent technological advancements in the UST industry.

17.56.202 UPGRADING OF EXISTING UST SYSTEMS (1) through (4) remain the same.

(5) The department adopts and incorporates by reference the version in effect on ~~July 1, 2006~~ January 1, 2016, of the following publications and standards:

(a) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks," which sets forth repair and lining of standards for UST systems, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(b) through (d) remain the same.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to amend ARM 17.56.202(5) in order to adopt and incorporate by reference the latest version of the standards and publications listed in (5)(a) through (d) in order to reflect changes and technological

advancements in the UST industry. It is necessary to incorporate the most current standards and procedures to reflect the most recent changes and technological advancements in the UST industry and to ensure the regulated community uses and complies with up-to-date standards for upgrading existing UST systems.

17.56.301 SPILL AND OVERFILL CONTROL (1) and (2) remain the same.

(3) The department adopts and incorporates by reference the version in effect on ~~July 1, 2006~~ January 1, 2016, of the following standards and publications:

(a) through (c) remain the same.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to amend ARM 17.56.301(3) in order to adopt and incorporate by reference the latest version of the standards and publications listed in (3)(a) through (c) to reflect changes and technological advancements in the UST industry. Furthermore, the department is proposing to incorporate by reference the latest version of the standards and publications in order to ensure that the regulated community uses and complies with the latest standards and publications for spill and overfill control.

17.56.302 OPERATION AND MAINTENANCE OF CORROSION PROTECTION (1) remains the same.

(2) The department adopts and incorporates by reference the version in effect on ~~July 1, 2006~~ January 1, 2016, of ~~the~~ National Association of Corrosion Engineers Standard (NACE) RP0285, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth cathodic protection system standards for prevention of corrosion on buried or submerged metallic UST systems, a copy of which may be obtained from NACE, International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to amend ARM 17.56.302(2) to adopt and incorporate by reference the latest version of the National Association of Corrosion Engineers Standards RP0285, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," to reflect changes and technological advancements in the UST industry and ensure that the regulated community uses and complies with the most up-to-date cathodic protection procedures.

17.56.304 REPAIRS (1) through (3) remain the same.

(4) The department adopts and incorporates by reference the version in effect on ~~July 1, 2006~~ January 1, 2016, of the following standards or specifications:

(a) through (e) remain the same.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to amend ARM 17.56.304(4) in order to adopt and incorporate by reference the latest version of the standards or specifications listed in (4)(a) through (e) to reflect changes and technological advancements in the UST industry and ensure that the regulated community uses and complies with the most up-to-date standards and specifications.

17.56.305 REPORTING AND RECORDKEEPING (1) Owners and operators of UST systems shall cooperate fully with inspections, monitoring, and testing conducted by the department ~~or the implementing agency~~, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to section 9005 of Subtitle I of RCRA, as amended or pursuant to other state laws or rules, including the following:

(a) owners and operators shall submit the following information to the department:

(i) notification for all UST systems ~~which includes certification of installation for new UST systems;~~

(ii) through (b)(iv) remain the same.

(c) owners and operators shall keep the records required either:

(i) at the UST site and immediately available for inspection by the department ~~or the implementing agency;~~

(ii) at a readily available alternative site and be provided for inspection by the department ~~or the implementing agency~~ upon request; or

(iii) remains the same.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to eliminate references to "the implementing agency." An implementing agency is an office or program of a local governmental unit (LGU) designated by the department to fulfill certain UST program responsibilities. As described in its statement of reasons for proposed repeal of ARM 17.56.1002 through 17.56.1005, the department is proposing to repeal the LGU program. Therefore, upon the effective date of these rule amendments, there will no longer be an implementing agency authorized to perform UST responsibilities such as inspection, monitoring, and testing of UST systems on behalf of the department. The department is proposing to strike language from ARM 17.56.305(1)(a)(i) because licensed installers are required to submit the certification of installation for new UST systems under ARM 17.56.1410. Therefore, it is unnecessary to repeat the requirement in ARM 17.56.305.

17.56.309 REQUIREMENTS FOR COMPLIANCE INSPECTIONS (1) The owner or operator of an underground storage tank system shall have all active underground storage tank systems inspected by a licensed compliance inspector, licensed pursuant to ARM 17.56.1402(3), at least every three years for compliance with the operation and maintenance requirements of this chapter. The inspections

must:

(a) remains the same.

(b) include examination, assessment, and documentation of compliance with all tank operation and maintenance requirements set forth in rules adopted under 75-11-509 75-11-505, MCA, and or in rules adopted or permits issued under 75-11-509, MCA adopted thereunder. ~~The aforementioned "operation and maintenance requirements" are those requirements in ARM Title 17, chapter 56, subchapters 2, 3, and 4 that address the following categories:~~

~~(i) release prevention and detection;~~

~~(ii) spill and overfill prevention;~~

~~(iii) corrosion protection; and~~

~~(iv) testing, monitoring, and recordkeeping related to (1)(a)(i) through (iii).~~

(2) The owner or operator of an underground storage tank system must have all inactive underground storage tank systems inspected by a compliance inspector or an oversight inspector, licensed pursuant to ARM 17.56.1402(3) ~~and or~~ (4), at least every three years for compliance with the requirements of ARM 17.56.701.

The inspections must be completed:

(a) at least 90 days before the expiration date of the operating permit issued pursuant to ARM 17.56.308; or

(b) if no operating permit has been issued for the inactive underground storage tank, at least 90 days before the three-year compliance inspection is due.

(3) through (5) remain the same.

(6) No later than 15 days after any inspection conducted pursuant to this rule, the owner or operator, or the compliance inspector, shall provide to the department the results of the compliance inspection ~~on a form~~ in a manner approved by the department. ~~The form inspection report~~ must be signed by the licensed compliance inspector and the underground storage tank system owner or operator.

(7) remains the same.

(8) The owner or operator shall correct all violations noted in a compliance inspection report ~~either:~~

(a) within 90 days of receipt of the inspection report by the owner or operator, ~~or;~~

(b) at least 14 days prior to the expiration of the facility's operating permit, whichever occurs first. ~~For violations that have moderate or minor gravity, as defined in ARM 17.4.303; or~~

(c) within another timeframe established by the department ~~may establish another time period in which the violations must be corrected.~~

(9) The owner or operator or compliance inspector shall submit to the department a follow-up inspection report ~~either:~~

~~(a) within seven days after completion of the corrective actions required under (8), or;~~

~~(b) at least 14 days before the expiration of the facility's operating permit, whichever occurs first; or~~

~~(b) (c) within another timeframe determined by the department.~~

AUTH: 75-11-505, 75-11-509, MCA

IMP: 75-11-509, MCA

REASON: The department is proposing to modify the citations in ARM 17.56.309(1)(b) in order to eliminate unnecessary language and clarify the intent of the rule, which is to require inspections that ensure compliance with operation and maintenance requirements set forth in ARM Title 17, chapter 56, subchapters 2, 3, and 4. The department is modifying ARM 17.56.309(1)(b) to include inspection for compliance with all tank operation and maintenance requirements set forth in rules adopted under 75-11-505, MCA or in rules or permits issued under 75-11-509, MCA. Additionally, the department is proposing to eliminate ARM 17.56.309(b)(i) through (iv) in order to broaden the scope of compliance inspections. This is necessary because compliance inspectors currently examine areas outside the items listed in ARM 17.56.309(1)(b)(i) through (iv), such as financial responsibility. Furthermore, the department is proposing to make the scope of compliance inspections flexible in order to accommodate recent revisions and updates to federal UST requirements to implement additional inspection requirements such as product and tank compatibility requirements, overfill prevention device inspections, additional release detection equipment function testing, and spill bucket testing once every three years. The department's State Program Approval (SPA) is up for renewal in 2018, and the department's UST rules must be revised to implement the 2015 federal UST regulations before the department submits its SPA renewal application by October 13, 2018. These proposed amendments are a necessary step toward developing all revisions necessary for the department's SPA renewal application.

The department is proposing amendments to (2) that are necessary to require the owner or operator of inactive USTs to have tanks inspected by a compliance inspector, licensed in accordance with ARM 17.56.1402(3), or by an oversight inspector, licensed in accordance with ARM 17.56.1402(4), at least every three years to ensure the tanks are in compliance with the requirements for inactive and out-of-service tanks at ARM 17.56.701. The proposed changes also clarify the timing of the required inactive tank inspections. The inspection must be completed at least 90 days before the expiration date of the operating permit issued pursuant to ARM 17.56.308 or, if no operating permit is issued for the inactive tank, at least 90 days before the next three-year compliance inspection is due.

The department is proposing to amend language in ARM 17.56.309(6) to allow inspections to be submitted on a paper form or electronically and to allow the department to receive test results, photographs, and emails to document corrected deficiencies submitted by a licensee, owner, and/or operator.

The department is proposing to amend language in ARM 17.56.309(8) in order to allow greater flexibility and lessen the burden for the regulated community in correcting violations noted in a compliance inspection within a reasonable timeframe acceptable to the department. For example, the department may adjust the timeframe to correct a violation in cases when the department has sufficient information to determine that extending the deadline would not pose a threat to human health or the environment.

The department is proposing to incorporate additional language in ARM 17.56.309(9) in order to make requirements more flexible and less burdensome for the regulated community by allowing a compliance inspector, as well as an owner or

operator, to submit a follow-up inspection report within a reasonable timeframe that is acceptable to the department.

17.56.312 DELIVERY PROHIBITION (1) through (3) remain the same.

(4) Tanks issued a certificate in (2)(c) will be posted on the department's "Do Not Fill" web site at: <http://deq.mt.gov/Land/ust/nonpem/permittedtanks>.

AUTH: 75-11-505, 75-11-509, MCA

IMP: 75-11-509, MCA

REASON: The department is amending ARM 17.56.312 by adding (4), which provides that tanks identified as "ineligible for delivery," and issued a certificate under (2)(c), will be posted on the department's "Do Not Fill" web site as prohibited from receiving fuel delivery. Because operating permits are issued and tracked electronically, this change is necessary to authorize the department to track tank delivery prohibitions electronically.

17.56.401 GENERAL REQUIREMENTS FOR ALL UST SYSTEMS

(1) remains the same.

(2) When a release detection method operated in accordance with the performance standards in ARM 17.56.407 and 17.56.408 indicates a release may have occurred, owners and operators shall notify the department ~~and the implementing agency~~ in accordance with subchapter 5.

(3) through (5) remain the same.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing changes to eliminate the reference to "the implementing agency." For the reasons set forth in the statement of reasons supporting the proposed amendment of ARM 17.56.305(1), upon the effective date of these rule amendments, there will no longer be an implementing agency authorized to perform UST responsibilities such as accepting reports of suspected or confirmed releases from USTs on behalf of the department.

17.56.402 REQUIREMENTS FOR PETROLEUM UST SYSTEMS

(1) through (3) remain the same.

(4) The exempt piping referenced in ~~(2)~~ (3) must be annually leak tested using:

(a) through (5) remain the same.

AUTH: 75-11-302, 75-11-505, MCA

IMP: 75-11-302, 75-11-505, MCA

REASON: The department is proposing to amend ARM 17.56.402(4) to correct the internal reference from (2), which refers to leak testing requirements, to (3), which refers to operation and maintenance exemptions for terminal piping. The

proposed amendment is necessary to set forth annual leak testing requirements for terminal piping.

17.56.502 REPORTING OF SUSPECTED RELEASES (1) Owners and operators, 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) 324-4777 within 24 hours of discovery of the existence of any of the following conditions:

(a) through (2) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: See reason for amendment to ARM 17.56.506.

17.56.503 INVESTIGATION DUE TO OFF-SITE IMPACTS (1) When required by the department based upon a suspected release, an owner and operator must follow the procedures in ARM 17.56.504 to determine if the system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that have been observed by the department or ~~the implementing agency~~ or brought to its attention by another person.

AUTH: 75-10-405, 75-11-319, MCA

IMP: 75-10-405, 75-11-309, MCA

REASON: See reason for amendment to ARM 17.56.506.

17.56.505 REPORTING AND CLEANUP OF SPILLS AND OVERFILLS

(1) Owners and operators must contain and immediately clean up a spill or overflow, immediately report the spill or overflow to the department ~~and the implementing agency~~ pursuant to (3) or by another method that ensures that a person within the ~~Remediation Division~~ of the department receives notice within 24 hours of the release, and must begin corrective action in accordance with subchapter 6 in the following cases:

(a) and (b) remain the same.

(2) Owners and operators must contain and immediately clean up a spill or overflow of petroleum that is less than 25 gallons and a spill or overflow of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, owners and operators must immediately notify the department ~~and the implementing agency~~.

(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) 324-4777. Messages left on answering machines, received by facsimile, e-mail, 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.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: See reason for amendment to ARM 17.56.506.

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 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 to the 24-hour ~~d~~Disaster and ~~e~~Emergency ~~s~~Services duty officer available at ~~telephone number~~ (406) 324-4777 within 24 hours of confirming the release. Messages left on answering machines, received by facsimile, e-mail ~~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) through (iii) remain the same.

History: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: The department is proposing amendments to ARM 17.56.502, 17.56.503, 17.56.505, and 17.56.506 that are necessary to update reporting requirements for suspected and confirmed petroleum releases. Releases must be reported to the department or to the 24-hour Disaster and Emergency Services duty officer's telephone number. These proposed amendments eliminate the requirement to report releases to the Remediation Division. These amendments are necessary because most releases are reported to the department's leak line or to the 24-hour Disaster and Emergency Services number, which is acceptable for purposes of

meeting 24-hour release reporting requirements. The proposed amendments are also necessary to eliminate references to the "implementing agency," for the reasons set forth in the statement of reasons supporting the proposed amendment of ARM 17.56.305(1). Upon the effective date of these rule amendments, there will no longer be an implementing agency authorized to perform UST responsibilities such as accepting reports of suspected and confirmed releases from USTs on behalf of the department.

17.56.601 GENERAL (1) remains the same.

(2) If corrective action, initial response and abatement, initial site history, remedial investigation, preparation of remedial investigation and cleanup plans, or cleanup, or any of them are conducted by:

(a) remains the same.

(b) the owner or operator of the PST or UST system, whether with or without a response action contractor, this subchapter governs only to the extent it is not inconsistent with any order issued by a court, the department ~~or the implementing agency~~, or any corrective action plan approved by the department.

AUTH: 75-10-405, 75-11-319, MCA

IMP: 75-10-405, 75-11-309, MCA

REASON: See reason for amendment of ARM 17.56.605.

17.56.603 INITIAL SITE HISTORY (1) Unless directed to do otherwise by the department, owners and operators must assemble and provide to the department information about a site where a release has been confirmed which must include, but is not necessarily limited to the following:

(a) through (d)(xii) remain the same.

(e) a description of all leaks, spills, overfills or other releases from the PST or UST systems located on the site:

(i) remains the same.

(ii) date release was reported to the department ~~and to the implementing agency~~;

(iii) through (2) remain the same.

AUTH: 75-10-405, 75-11-319, MCA

IMP: 75-10-405, 75-11-309, MCA

REASON: See reason for amendment of ARM 17.56.605.

17.56.604 REMEDIAL INVESTIGATION (1) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of free and dissolved product contamination in the surface water and in ground water, owners and operators must conduct a remedial investigation of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(a) through (c) remain the same.

(d) the department ~~or the implementing agency~~ requests a remedial investigation, based on the known or potential effects of contaminated soil or ground water on nearby surface water, ground water, and human health.

(2) through (4) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: See reason for amendment of ARM 17.56.605.

17.56.605 CLEANUP PLAN (1) through (5)(f) remain the same.

(6) Within 30 days of department approval of the cleanup plan or as directed by the department, owners and operators must implement the plan, including any modifications made by the department to the plan. Owners and operators must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the department. During implementation of the cleanup plan, a status letter shall be submitted quarterly to the department ~~and to the implementing agency~~. The cleanup plan must contain a plan and schedule for compliance monitoring to evaluate the effectiveness of cleanup activities.

Compliance monitoring must continue for a period of at least two years after completion of cleanup activities specified in the cleanup plan, or another reasonable time period approved by the department. Results of compliance monitoring will be evaluated by the department on a site-specific basis and compared to cleanup goals that should be outlined in the cleanup plan. Final completion of cleanup activities and compliance monitoring must be approved by the department.

(7) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the cleanup plan is approved provided that they:

(a) notify the department ~~and the implementing agency~~ of their intention to begin cleanup;

(b) through (8) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASONS: The department is proposing amendments to ARM 17.56.601, and 17.56.603 through 17.56.605 to eliminate references to the "implementing agency." For the reasons set forth in the statement of reasons supporting the proposed amendment of ARM 17.56.305(1), upon the effective date of these rule amendments, there will no longer be an implementing agency authorized to perform UST responsibilities such as issuing corrective action orders, accepting release reports, requesting remedial investigations, and accepting reports and notifications of corrective action plans designed to address releases from USTs on behalf of the department.

17.56.607 RELEASE CATEGORIZATION (1) through (9)(g) remain the same.

(10) The department may categorize a release as resolved with a petroleum mixing zone and send a letter to the owner or operator in accordance with (11), if the department has determined that conditions at the site ensure present and long-term protection of human health, safety, and the environment and that residual petroleum in soil and ground water will continue to be remediated through natural attenuation processes without additional intervention, active cleanup, or monitoring. The following requirements must also be met before a release may be categorized as resolved with a petroleum mixing zone:

(a) through (h) remain the same.

(i) at the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum constituent does not exceed a water quality standard adopted by the Board of Environmental Review pursuant to 75-5-301, MCA. The downgradient boundary of a petroleum mixing zone must be determined by documented investigations conducted in accordance with ARM 17.56.604-;

(j) a petroleum mixing zone must remain within the facility property boundary unless a recorded easement, a restrictive covenant, or another institutional control approved by the department on an adjoining property allows the petroleum mixing zone to extend off the facility property. For purposes of this rule, the term "facility property" means a single parcel or contiguous parcels on which one or more petroleum storage tanks are or were located, provided that contiguous parcels must be under single ownership at the time the petroleum mixing zone is established;

(k) through (12) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: The department is proposing amendments to ARM 17.56.607(10)(i) to make a formatting correction and to ARM 17.56.607(10)(j) in order to implement amendments made through Senate Bill 49 (2015 Legislative Session) to 75-11-508(3), MCA, by the 64th Legislature expanding the department's authority, which previously only allowed a petroleum mixing zone to extend outside the facility property boundaries when supported by a recorded easement.

17.56.701 INACTIVE AND OUT-OF-SERVICE UST SYSTEMS (1) An UST system is inactive when the owner or operator notifies the department, ~~in writing,~~ that the UST is no longer in use for dispensing, depositing, or storing regulated substances or the department determines inactive status based on available information. The owner or operator shall continue operation and maintenance of corrosion protection on an out-of-service UST in accordance with ARM 17.56.302, and shall continue operation and maintenance of any release detection in accordance with subchapter 4. Subchapters 5 and 6 must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system.

(2) through (4) remain the same.

AUTH: 75-11-505, 75-11-509, MCA
IMP: 75-11-505, 75-11-509, MCA

REASON: The department is proposing to amend ARM 17.56.701(1) in order to allow different means (e-mail, telephone, compliance inspection, etc.) by which the department may receive notification of the inactive status of UST systems to provide more flexibility and make the notification process less burdensome for the regulated community. The proposed amendments also allow the department to determine inactive status when the department is not notified that a tank is inactive, but makes the status determination based upon available information. This amendment will allow the department to identify UST systems that may present a risk to human health and the environment because the tank is not emptied properly. The proposed changes are necessary to ensure inactive UST systems are empty, incapable of use, and meet the requirements in ARM 17.56.701(2).

17.56.702 PERMANENT CLOSURE AND CHANGES IN SERVICE (1) At least 30 days before beginning either permanent closure or a change in service under (2) and (3), the owner or operator shall notify the department ~~and the implementing agency, in writing,~~ of their intent to permanently close or make the change in service, unless such action is in response to corrective action already noticed to the department under subchapter 6. The required assessment of the excavation zone under ARM 17.56.703 must be performed after notifying the department ~~and the implementing agency,~~ but before completion of the permanent closure or a change in service.

(2) through (4) remain the same.

(5) The department adopts and incorporates by reference the version in effect on ~~July 1, 2006~~ January 1, 2016, of the following standards, specifications, and publications:

(a) American Petroleum Institute Recommended Practice 1604, "~~Removal and Disposal of Used Underground Petroleum Storage Tanks~~ Closure of Underground Petroleum Storage Tanks," which sets forth closure practices for UST systems, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

~~(b) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks," which sets forth cleaning standards for UST tanks, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;~~

~~(c) (b)~~ American Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks," which sets forth entrance standards for UST tanks, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and

~~(d) (c)~~ The National Institute for Occupational Safety and Health publication No. 80-106, "Criteria for a Recommended Standard: Working in Confined Space," which sets forth standards for working inside an UST tank, a copy of which may be obtained from Superintendent of Documents, Government Printing Office,

Washington, DC 20402, (202) 783-3238.;

(d) American Petroleum Institute Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks," which sets forth cleaning standards for UST tanks, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and

(e) National Fire Protection Association (NFPA) Standard 326, "Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair," which sets forth procedures to safeguard tanks or containers that contain or have contained flammable and combustible liquids or other hazardous substances before entry, cleaning, repair, or other activities can be performed, a copy of which may be obtained at: <http://www.nfpa.org/codes-and-standards> or from the NFPA at 11 Tracy Drive, Avon, MA 02322, 1 (800) 344-3555.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The proposed amendments to ARM 17.56.702(1) eliminate references to the "implementing agency." For the reasons provided for proposed amendments to ARM 17.56.305(1), upon the effective date of these proposed amendments, there will no longer be an implementing agency authorized to perform UST responsibilities such as receiving notice of permanent closure or change in service of UST systems on behalf of the department. Additionally, the requirement to notify the department of permanent closure or change in service of an UST "in writing" has been eliminated because the department now accepts other means of notification such as e-mail, telephone, and through compliance inspection.

Industry codes and standards are developed in order to ensure that UST systems are properly closed and removed when taken out of service. The UST rules incorporate UST performance standards and practices adopted by nationally recognized organizations to ensure methods of UST system management, including inspection, emptying, cleaning, and closure, are protective of human health and the environment. UST systems must be permanently closed in accordance with these codes and practices.

Therefore, the department is proposing modifications to ARM 17.56.702(5) that are necessary to adopt and incorporate by reference the latest version of the standards, specifications, and publications listed (5)(a) through (e) to reflect changes and technological advancements in the UST industry. The department is proposing to adopt and incorporate by reference the latest version of American Petroleum Institute Recommended Practice 2016, Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks to ensure that the regulated community uses and complies with the up-to-date information on topics such as cleaning operations for tanks removed from service or returned to service. The department is proposing to incorporate by reference NFPA 326 standard in order to safeguard tanks before entry, cleaning, repair, or other activities.

17.56.703 ASSESSING THE SITE AT CLOSURE OR CHANGE IN SERVICE (1) Before permanent closure or a change in service is completed, the

owner or operator shall measure for the presence of a release where contamination is most likely to be present at the UST site. When measuring for the presence of a release, the owner or operator:

(a) and (b) remain the same.

(c) in selecting sample types, sample locations, and measurement methods, shall consider the method of closure, the nature of the stored substance, type of backfill, depth to ground water, and other factors appropriate for identifying the presence of a release. The department ~~and the implementing agency~~ should be consulted to assist in determining sample types, sample locations, and measurement methods. The Montana Quality Assurance Plan for Investigation of Underground Storage Tank Releases should be used as a guide for the collection, preservation, and analysis of field samples; and

(d) remains the same.

(2) If sampling indicates contaminated soils, contaminated ground water, or if free product as a liquid or vapor is discovered under (1), or by any other manner, the owner or operator shall begin corrective action in accordance with subchapter 6. A release must be reported to the department ~~and to the implementing agency~~ by the owner or operator within 24 hours.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The proposed amendments to ARM 17.56.703 are necessary to eliminate references to the "implementing agency." For the reasons provided for proposed amendments to ARM 17.56.305(1), upon the effective date of these proposed amendments, there will no longer be an implementing agency authorized to perform UST responsibilities such as making sampling location and methodology recommendations related to UST tank site assessment upon tank closure and receiving release reports on behalf of the department.

17.56.705 CLOSURE RECORDS (1) remains the same.

~~(2) The owner or operator shall submit a completed tank closure report to the department within 30 days of closure on a form designated by the department.~~

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to delete ARM 17.56.705(2) because ARM 17.56.1410(1)(c) requires submittal of a tank closure report by the licensed remover, making the requirement in ARM 17.56.705 unnecessary and duplicative.

17.56.901 INTERIM NOTIFICATION REQUIREMENTS ~~(1) On or before May 8, 1986, each owner of an underground storage tank currently in use shall submit, in the form prescribed in (9), a notice of the existence of such tank to the department.~~

~~(2) On or before May 8, 1986, each owner of an underground storage tank taken out of operation after January 1, 1974 (unless the owner knows that such tank~~

has been removed from the ground) shall submit, in the form prescribed in (9), a notice of the existence of such tank to the department.

~~(3) Any owner who brings an underground storage tank into use after May 8, 1986, shall, within 30 days of bringing such tank into use, submit, in the form prescribed in (9), a notice of the existence of such tank to the department.~~

~~(4) Owners required to submit notices to the department under (1) through (3) shall provide the required notice for each underground storage tank they own. Owners may provide notice of several tanks using one notification form, but owners who own tanks located at more than one place of operation shall file a separate notification form for each separate place of operation.~~

~~(5) Notices required to be submitted under (1) through (3) must provide all of the information indicated on the prescribed form described in (9) for each tank for which notice must be given.~~

~~(6) Any person who deposits regulated substances from December 9, 1985 through May 9, 1987, in an underground storage tank shall make reasonable efforts to notify the owner or operator of such tank of the owner's obligations under (1) through (3).~~

~~(7) Beginning 30 days after the department issues new tank performance standards pursuant to 75-10-405, MCA, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner's notification obligations under (1) through (3).~~

~~(8) Sections (1) through (3) do not apply to tanks for which notice was given pursuant to section 103(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.~~

~~(9) The form which must be used for notice submitted to the department under this rule is department form, "Notification for Underground Storage Tanks, DEQ form 1 (May, 2010)," or "Notification for Underground Storage Tanks, DEQ form 2 (May, 2010)."~~

~~(10) (1) The department adopts and incorporates by reference the UST notification and registration forms "Notification for Underground Storage Tanks, DEQ form 1 (May, 2010)" and "Notification for Underground Storage Tanks, DEQ form 2 (May, 2010)," Owner Change or Amended Owner Notification and "Complete" available on the department's web site, which asks for information including, but not limited to, ownership, location, age, material of construction, capacity, use, and internal and external construction. Copies of these forms may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.~~

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: It is necessary to delete ARM 17.56.901(1) through (9) because the provisions are superseded by ARM 17.56.902 and are no longer consistent with federal requirements at 40 CFR 280.22 (UST Notification Requirements). The department is also proposing to incorporate the updated titles of the notification forms to reflect the current forms available on the department's web site at <http://deq.mt.gov/UST/forms.mcp>.

17.56.902 NOTIFICATION REQUIREMENTS (1) through (3) remain the same.

(4) Owners and operators of new or modified UST systems shall provide ~~in~~ the following with the notification form set forth in ARM 17.56.901:

(a) remains the same.

(b) the following information related to the tank system:

(i) through (vii) remain the same.

(viii) any other information required ~~in~~ on the notification form that is necessary to ensure tanks can be adequately identified for regulatory purposes.

(5) and (6) remain the same.

(7) Owners and operators of existing or new UST systems shall notify the department on a form approved by the department when any of the information submitted on the notification form has changed, such as upgrading or repairing new or existing tanks or pipes, or change of owner, or contact person, or meeting the requirements specified in ARM 17.56.202 or subchapter 8.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing amendments to ARM 17.56.902(4) that are necessary to correctly identify the required notification form owners or operators of USTs must provide and to clarify information required by the department in the notification form. Finally, the department is proposing to amend language in ARM 17.56.902(7) to ensure the department receives notification of changes to previously notified UST systems on a department-approved form and not through informal communication to the department so the department can keep track of any changes to regulated tank facilities to better protect human health and the environment. The department is also proposing to amend language in ARM 17.56.902(4)(b)(viii) to correct grammatical errors.

17.56.1301 DEFINITIONS For the purposes of subchapters 13 and 14 and unless otherwise provided, the following terms have the meanings given to them in this rule and must be used in conjunction with the definitions in subchapter 1 of this chapter and those in 75-11-203 and 75-11-503, MCA:

(1) "Annual period" means a calendar year beginning on March 1 and ending on the last day of February of the following year, for the purpose of calculating when fees are due to the department.

~~(4)~~ (2) "Day" means a calendar day.

(2) through (9) remain the same, but are renumbered (3) through (10).

(11) "Triennial period" means a period of three calendar years beginning on March 1 and ending on the last day of February three years later for the purpose of calculating continuing education units earned by a licensee of the department.

AUTH: 75-11-204, 75-11-505, MCA

IMP: 75-11-204, 75-11-209, 75-11-210, 75-11-212, 75-11-509, MCA

REASON: The department is proposing to add the definition "annual period"

to ARM 17.56.1301(1) in order to have one expiration date for annual fees for licensees. This amendment is necessary to ease the administrative burden by keeping one consistent deadline.

The department is proposing to add the definition of "triennial period" at ARM 17.56.1301(11) in order to make tracking continuing education units (CEUs) less burdensome. With this proposed amendment, the date is consistent and the department can more easily provide timely training so that licenses can meet CEU requirements.

17.56.1303 INSTALLATION AND CLOSURE PERMIT REQUIREMENT-- APPLICATION (1) through (2)(b) remain the same.

(3) If the installation or closure is to be conducted by:

(a) a licensed installer or remover, the licensed installer or remover shall sign the permit application;

(b) an owner or operator with an on-site installation ~~or closure~~ inspector, the owner or operator must sign the permit application.

(4) The department shall notify an applicant if it determines that an application is ~~incomplete and provide an explanation of~~ deficient. The department shall notify the applicant what information is needed required for the application to be considered complete. The department shall hold ~~incomplete~~ deficient applications pending the receipt of ~~additional~~ the required information. The department shall issue the permit within 30 days of the department's receipt of the complete permit application. If the applicant fails to submit the required information within six months of receiving the department's deficiency notice, the deficient permit application expires.

(5) ~~The application must be accompanied by the permit application review fee required by ARM 17.56.1304 and any applicable inspection fee required by ARM 17.56.1309~~ must be received by the department within five business days of the applicant's submittal of the permit application to the department. If the permit applicant accumulates more than two unpaid permit application review and/or inspection fees, the department shall suspend further permit reviews until all past due fees are paid in full.

(6) ~~For good cause, the department, in its discretion, may waive the 30-day requirement in (2) if the applicant makes a sufficient showing of unforeseen and unforeseeable circumstances and if the applicant does not qualify for an emergency permit under ARM 17.56.1306.~~

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209, 75-11-212, MCA

REASON: The proposed amendments add licensed remover as signatory to permit applications in ARM 17.56.1303(3)(a) because "remover" has been added in subchapter 14 as a license category. Additionally, the department proposes to include "removers" as licensees because they also must follow specific requirements and are subject to the same level of accountability as "installers" when submitting permit applications.

The proposed amendment deletes "closure" inspectors from ARM 17.56.1303(3)(b) because "closure" inspector has been removed from subchapter 14 as a license category. All licensed department inspectors have the authority to inspect both installations and closures. Therefore, it is no longer necessary to differentiate between closure inspector and installation inspector. Also, closure inspectors are associated with the Local Government Unit (LGU) program. For the reasons set forth for the repeal of ARM 17.56.1002 through 17.56.1005, the department is proposing to repeal the LGU program due to duplication and overlap with the third-party UST compliance inspection program.

The amended language in ARM 17.56.1303(4) is proposed because applications can be either incomplete, incorrect, or both. The proposed amendments also set forth the process for reviewing a permit application and for issuance of a permit within 30 days of receipt of the complete permit application. Additionally, the amendments allow for expiration of deficient permit applications when deficiencies are not cured within six months. These amendments are necessary to ensure timely submittal of all information necessary for the department to review a permit application and issue a permit.

It is necessary to delete "The application must be accompanied by" in ARM 17.56.1303(5) in order to make the process more flexible and less burdensome for the regulated community by not requiring that the application be submitted to the department at the same time as the applicable permit application review fees. Sometimes an application is electronically delivered and the fee is sent by regular mail, thus causing the fee to be received by the department a few days after the application. The department is developing a new database that will allow electronic fee payment, but the option to submit an electronic permit application and remit permit fees by check should be retained.

In addition, the department proposes amendments necessary to update business processes in order to make the application and review fee payment process more efficient for the UST program. Revenue from permit fees has allowed the department to assign staff to meet the statutory and administrative functions of the Underground Storage Tank Installer & Inspector Licensing and Permitting Act and the Montana Underground Storage Tank Act. Section 75-11-509(9), MCA, sets forth procedures whereby the department may determine whether to issue or not renew a permit for a tank for significant noncompliance with the Montana Underground Storage Tank Act, or with rules, permits, or orders issued pursuant to the Act. The new language in (5) provides that, if a permittee fails to timely submit applicable permit application review fees, and has two or more unpaid permit fees, the department may suspend further permit approvals until fees are paid in full following the procedures set forth in 75-11-509(9), MCA. The proposed amendment in ARM 17.56.1303(6) is proposed to allow the department more flexibility in waiving the requirement to file a permit application 30 days prior to a major installation. With this amendment, the department will no longer require a showing of unforeseeable circumstance to waive the 30-day requirement, but may use its discretion to determine good cause for such a waiver.

17.56.1304 PERMIT APPLICATION REVIEW FEES (1) remains the same.
(2) ~~If a permit application is determined by the department to be incomplete,~~

~~the department shall notify the applicant of the deficiencies. An incomplete permit application expires when an applicant fails to respond to the department's notice of deficiencies within six months of receiving the notice from the department. A new permit application, accompanied by the proper permit application review fee, must be submitted before an expired permit application may be processed by the department. A permit application is incomplete deficient until the permit application review fee is paid to the department.~~

(3) through (6) remain the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209, 75-11-212, MCA

REASON: The department is proposing to remove the first two sentences of ARM 17.56.1304(2) because they are duplicative of the proposed amendment to ARM 17.56.1303(4) and (5) related to complete permit applications. Additionally, for the reasons stated in support of the proposed amendments to ARM 17.56.1303, the term "deficient" replaces the term "incomplete" to describe the status of the permit prior to payment of the permit application review fees.

17.56.1305 MAJOR INSTALLATION, MINOR INSTALLATIONS, AND CLOSURE PERMIT ISSUANCE, TERMS, CONDITIONS (1) through (2)(c) remain the same.

(3) A permit issued to an applicant under this rule must state:

(a) remains the same.

(b) the address or location of the site ~~at which~~ of the planned installation or closure ~~may be conducted;~~

(c) and (d) remain the same.

(e) whether the installation or closure will be inspected by the department ~~or a local inspector and, if so, the name of the inspector;~~ and

(f) any special permit conditions imposed by the department that are necessary to ensure the permit applicant's requested installation or removal activities are in compliance with (2).

(4) remains the same.

(5) ~~If the installation or closure is conducted by a licensed installer, the licensed installer~~ The licensee or the department installer or remover inspector must sign and ~~return a copy of the permit~~ deliver the permit and all other required documentation specified by permit conditions to the department within 30 days of the installation or closure. ~~If the installation or closure is conducted by the owner or operator with an on-site installation or closure inspector, the owner or operator must sign and return a copy of the permit together with any compliance checklist or other documents included with the permit to the department within 30 days of the installation or closure. The signee must certify that the installation or closure was conducted in accordance with applicable statutes and rules and any conditions of the permit.~~

(6) remains the same.

(7) If the department deems it necessary to protect public health or the environment, the department may require any installation to be inspected by a

department inspector ~~or a local government licensed installation or closure inspector~~. Whenever this occurs, the fee must be paid by the owner, operator, installer, or any other person who made the inspection necessary.

(8) remains the same.

~~(9) Upon issuance of a permit, the department shall forward a copy of the permit to any local inspector conducting an inspection of the installation or closure for which the permit was issued.~~

(10) through (12) remain the same, but are renumbered (9) through (11).

AUTH: 75-11-204, 75-11-505, MCA

IMP: 75-11-204, 75-11-209, 75-11-212, 75-11-505, MCA

REASON: The department is proposing to delete language from ARM 17.56.1305(3)(e) that it is associated with the Local Government Unit (LGU) program because the department is proposing to eliminate the LGU program for the reasons set forth for the repeal of ARM 17.56.1002 through 17.56.1005. Additionally, the department proposes grammatical changes to the rule, which do not change the meaning, but improve readability.

The department is proposing to add the word "permit" to clarify the intent of ARM 17.56.1305(3)(f) and add language to clarify the department's ability to add testing or equipment requirements as permit conditions designed to protect human health and the environment when determined necessary.

The department is proposing to delete language from ARM 17.56.1305(5) in order to update business processes and responsibilities for the regulated community. It is necessary to eliminate the term "closure inspectors" and processes that are associated with the LGU program. The department is also proposing to delete language from ARM 17.56.1305(7) and to delete ARM 17.56.1305(9) in its entirety because these provisions pertain to the LGU program.

17.56.1306 EMERGENCY PERMIT APPLICATION AND ISSUANCE

(1) In the event of an emergency requiring immediate installation or closure of an underground storage tank system, the applicant may contact the department, provide the information required by ARM 17.56.1303 and explain the nature of the emergency and the consequences of nonissuance. An emergency permit may be issued orally by the department and it will be valid for a maximum of ten days. Whenever an emergency permit is issued, the applicant shall pay the appropriate fees as provided in ARM 17.56.1304, and submit a completed permit application ~~form~~ to the department within ten days of issuance of the emergency permit.

(2) If the department determines that an emergency exists under (1) and (3) and that the requirements of ARM 17.56.1303(2) have been satisfied, it must issue the permit in the manner provided by this rule and subject to any permit conditions imposed pursuant to this subchapter.

(3) remains the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209, 75-11-212, MCA

REASON: The department is proposing amendments to ARM 17.56.1306(1) and (2) that are necessary to clarify the intent of the rule. The word "form" in ARM 17.56.1306(1) is unnecessary because the department no longer refers to a permit application "form," but simply to a permit application. This is because written forms are being replaced with electronic applications. Furthermore, adding the word "permit" before "conditions" in (2) requires that any conditions on the installation or closure set forth in an emergency permit must be followed to protect human health and the environment.

17.56.1308 INSPECTION IN LIEU OF LICENSED INSTALLER (1) An owner or operator intending to install or close an underground storage tank system without the services of a licensed installer in accordance with 75-11-213, MCA, must have the installation or closure inspected by a licensed department ~~or local government installation or closure~~ inspector.

(2) remains the same.

(3) A licensed department ~~or local government installation or closure~~ inspector need not be present when concrete or pavement is being removed from over an underground storage tank system in preparation for a closure or repair so long as the tank and its associated piping are not disturbed by the activity.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209, 75-11-212, 75-11-213, MCA

REASON: Deletion of language in ARM 17.56.1308(1) and (3) that pertains to the Local Government Unit (LGU) program is proposed because the department is repealing the LGU program to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309. A licensed department inspector will conduct inspections of installations or closures that are not conducted by a licensed installer.

17.56.1309 INSTALLATION AND CLOSURE INSPECTION FEES (1) An inspection fee deposit of \$90 for the use of a ~~local government or a licensed department installation or closure~~ inspector shall be submitted to the department for each installation or closure not conducted by a licensed installer. The owner or operator shall submit the inspection fee deposit with the permit application in accordance with ARM 17.56.1308 and the fee must be paid in the form of a check or money order made payable to the Montana Department of Environmental Quality.

(2) through (2)(b) remain the same.

(3) Within five days after completion of the inspection, the inspector shall ~~send to the department a report on a form provided by the department. The inspector's report must state~~ the total time required for the inspection, including the inspector's travel time to and from the inspection site, reported to the nearest one-half hour. Upon receipt of the report, the department shall calculate the total inspection fee owing to the department based upon the following formula for closures and installation inspections:

<u>Type of Fee</u>	
Minimum fee (fee deposit)	\$90
Per hour fee for each hour over 2 hours	\$45

(4) remains the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209, 75-11-212, 75-11-213, MCA

REASON: Deletion of language from ARM 17.56.1309 that pertains to the Local Government Unit (LGU) program is proposed because the department is repealing the LGU program to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309. The department is also proposing to amend language in ARM 17.56.1309(3) in order to clarify business processes. For example, the department does not use a report "form" and will accept other means of accounting for travel time and for time required to complete the inspection, such as an invoice.

17.56.1401 GENERAL LICENSE REQUIREMENTS; DEFINITIONS

(1) and (2) remain the same.

(3) ~~Installation or closure inspectors~~ Installers and removers shall ensure that the installation or closure of underground storage tank systems is performed according to Title 75, chapter 11, part 2, MCA, the rules adopted thereunder, and any permit conditions.

(4) remains the same.

(5) The requirements of this subchapter do not prohibit the employment by a licensed installer of any assistants, helpers, or apprentices who have not been issued their own installer license to work at any installation or closure site so long as the licensed installer is physically present at the installation or closure throughout the entirety of the project and personally exercises supervisory control over those unlicensed persons.

(6) and (7) remain the same.

AUTH: 75-11-204, 75-11-505, MCA

IMP: 75-11-204, 75-11-209, 75-11-210, 75-11-212, 75-11-214, 75-11-509, MCA

REASON: The proposed amendment to ARM 17.56.1401(3) is necessary to delete the reference to closure inspectors, as closure inspectors are associated with the Local Government Unit (LGU) program. The department is proposing to eliminate the LGU program with these rule amendments to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309. Licensed installers or removers are qualified to oversee tank installations or removal and these are the terms currently used by the department to describe qualified licensees rather than "installation inspector." The proposed amendments are necessary to modify this terminology.

The department is proposing to add language to ARM 17.56.1309(5) in order to clarify the role of the licensed installer for installations and removals and to ensure there is oversight by a qualified licensee during the entire tank installation or closure project. Continuous oversight is necessary to ensure proper installation or closure.

17.56.1402 ELIGIBILITY FOR LICENSE (1) A person may not be granted an installer or remover license by the department unless that person:

(a) through (e) remain the same.

(2) A person may not be granted an installation inspector's license unless that person:

(a) remains the same.

~~(b) is a department employee or an employee or independent contractor of a local governmental unit designated for the purpose of this subchapter as an implementing agency in the manner provided in ARM 17.56.1004.~~

(3) through (3)(b) remain the same.

(4) A person may not be granted an oversight inspector's license unless that person:

(a) remains the same.

~~(b) is a department employee or an employee or independent contractor of a local governmental unit designated for the purpose of this subchapter as an implementing agency in the manner provided in ARM 17.56.1004, unless otherwise approved by the department.~~

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211, 75-11-214, 75-11-505, 75-11-509,
MCA

REASON: The proposed amendment to ARM 17.56.1402(1) adds "remover" as a license category. The department proposes to include "removers" as a license category because removers must also follow specific requirements and be held to the same level of accountability as "installers" in order to obtain their license. Having licensing requirements for "removers," as well as "installers," provides clear licensing requirements for both categories and protects human health and the environment.

The department is proposing to delete language from ARM 17.56.1402(2)(b) and 17.56.1402(4)(b) that pertains to the Local Government Unit (LGU) program because the department is repealing the LGU program to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309.

17.56.1403 LICENSE APPLICATION CATEGORIES (1) There are five license categories of licenses:

(a) installers, which includes those licensees who install or close underground storage tank systems;

(b) removers, which includes those licensees who only close underground storage tank systems;

~~(b)~~ (c) installation inspectors, which includes those licensees who inspect underground storage tank installations or underground storage tank closures;

- ~~(c) closure inspectors, who inspect underground storage tank closures;~~
- ~~(d) compliance inspectors, which includes those licensees who inspect operating underground storage tank facilities for compliance with underground storage tank regulations; and~~
- ~~(e) oversight inspectors, which includes those licensees who conduct oversight inspections to verify accuracy of inspection reports submitted by compliance inspectors.~~

~~(2) An applicant for an installer license may apply to restrict that license to any one or more of the following categories:~~

- ~~(a) lining;~~
- ~~(b) corrosion protection;~~
- ~~(c) external leak detection; or~~
- ~~(d) closure.~~

~~(3) (2) An application for a license under required by this subchapter must be made on the appropriate form provided by the department. ~~On the form the applicant must provide and include~~ all the information required by the department.~~

~~(4) (3) The application must be subscribed and verified upon oath or affirmation before a notary public and must state include an affirmation that the information provided in the application is true correct.~~

~~(5) remains the same, but is renumbered (4).~~

~~(6) (5) References for an applicant seeking an installer license must show that the applicant actively participated in at least three underground storage tank system installations and two closures that were completed in accordance with applicable statutes and rules in the last three years, unless the applicant requests to have his or her license restricted. If the request is to restrict the license to tank lining, cathodic protection system installation; external leak detection device installation, or closure, the applicant shall so state on the application, and the references need only address the applicant's requested area of restricted professional work. ~~The following application and reference requirements also apply:~~~~

~~(a) (6) References for an applicant seeking a remover license restricted to conducting tank system closures must establish that the applicant has actively participated in at least three closures or installations in the last three years.~~

~~(b) References for an applicant seeking a license restricted to conducting cathodic protection system installations must establish that the applicant actively participated in at least two cathodic protection system installations in the last three years.~~

~~(c) References for an applicant conducting external leak detection device installations must establish that the applicant participated in at least two external release detection device installations in the past three years. An applicant holding a current monitoring well constructor's license may provide a copy of that license in lieu of the required references.~~

~~(d) References for an applicant seeking a license restricted to conducting tank system linings must establish that the applicant actively participated in at least two tank linings in the last three years.~~

~~(7) An application for an installation or closure inspector license must, in addition to the other requirements of this rule, be accompanied by at least three references attesting to the applicant's experience in inspections and underground~~

~~storage tank regulations relating to installation and closure. The references must be written on forms provided by the department.~~

(8) (7) An application for a compliance or oversight inspector license must, in addition to the other requirements of this rule, be accompanied by at least three references attesting to the applicant's experience in underground storage tank regulations, operation, maintenance, and inspections. The references must be written on a forms provided by the department.

(9) remains the same, but is renumbered (8).

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-509, MCA

REASON: The proposed amendments to ARM 17.56.1403(1) are necessary to update the five license categories. The department is proposing to replace the term "APPLICATION" with "CATEGORIES" in the title of the rule because "CATEGORIES" more accurately depicts the subject of ARM 17.56.1403, which is to explain the licensing categories and requirements for each category. The department is proposing to correct grammar and update license categories covered under ARM 17.56.1403 in order to clearly define each available license. The department is proposing to eliminate "lining," "corrosion protection," and "external leak detection" as license categories because department "installers" are able to perform each and all of these specialized UST upgrades pursuant to 75-11-203(6), MCA. The department expects a higher standard of knowledge and skill when a person is licensed as an "installer" compared to a person holding a license that is restricted to one UST modification. Additionally, streamlining license categories eliminates confusion for the regulated community because it simplifies categories by eliminating categories that are no longer in use. The department is proposing to delete ARM 17.56.1403(2) because three of the previously available license categories, "lining," "corrosion protection," and "external leak detection," are now obsolete due to technological advancements in the industry and "closure" is now a separate license called "remover."

The department is proposing to amend language in ARM 17.56.1403(3), renumbered (2), in order to make a minor editorial revision for clarity that is not intended to change the meaning of the rule. The department is proposing to amend language in ARM 17.56.1403(4), renumbered (3), to require an affirmation by a license applicant, replacing the previous requirement of verification under oath before a notary public. This amendment is necessary to make the application process more efficient, less burdensome for the regulated community, and update language. The department's proposed amendment to ARM 17.56.1403(6), renumbered (5), is necessary to delete references to "restricted" licenses because restricted licenses are proposed to be eliminated through amendments proposed herein. The department is proposing new ARM 17.56.1403(6) in order to add "remover" as a separate license category and eliminate "restricted" licenses for the reasons stated above.

The proposed deletion of ARM 17.56.1403(7) is necessary to eliminate references to closure inspectors because that license category pertains to the LGU

program and the department is repealing that program to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309.

The department is proposing to amend (8), renumbered (7), to eliminate the requirement for oversight inspectors to provide references. Oversight inspectors are department employees who have already undergone scrutiny prior to being hired by the department. The department is also proposing to make a minor grammatical amendment in (8) that does not change the meaning of the rule. In addition, the department is proposing to update numbering of ARM 17.56.1403 that is necessitated by these proposed amendments.

17.56.1404 LICENSE FEES (1) remains the same.

(2) Licensing fees are as follows:

(a) and (b) remain the same.

~~(c) actual cost of production and distribution of study guides~~

~~(d) reexamination fee.....\$ 35~~

~~(e) (c) duplicate license fee.....\$ 10~~

~~(3) "Actual cost of production and distribution" includes reproduction costs, bindery charges, purchase and shipment of copyrighted material, and the cost of postage, packing, and shipping guides to requesters. The department shall annually review and re-calculate the actual production and distribution costs for the various study guide materials. The department shall make the most recent data and calculations used available for public inspection at the UST program office.~~

~~(4) (3) Department and local government installation, closure, and oversight inspectors are exempt from the licensing fees described in this rule.~~

(5) remains the same, but is renumbered (4).

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211, 75-11-509, MCA

REASON: The proposed deletion of ARM 17.56.1404(2)(c) and deletion of the definition of "actual cost of production and distribution" in ARM 17.56.1404(3) are proposed because the department no longer produces and distributes study guides. Instead, a list of required study materials for each license category (installer, compliance inspector, and remover) is provided on the department's web site.

Deletion of ARM 17.56.1404(2)(d) is proposed because exams are retaken electronically at no extra expense to the department and no charge is passed to the applicant.

It is necessary that the department delete language from ARM 17.56.1404(4), renumbered (3), that pertains to the Local Government Unit (LGU) program, because the department is repealing the LGU program to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309.

17.56.1405 LICENSE EXAMINATION AND RE-EXAMINATION (1) To become licensed, an applicant for a license must successfully complete a written examination. The department shall offer the examination a minimum of two times per year at such time(s) and place(s) as the department determines. ~~The department shall give public notice of the time and place of the examination by~~

~~submitting a news release to the daily newspapers of general circulation within the state of Montana by appointment to the applicant and the examination must be conducted at a time and place fixed by the department.~~

(2) To take the examination, the applicant must register with the department for the examination at least ~~20~~ 5 days before an examination is scheduled by submitting a completed license application to the department and paying the license application and examination fee provided in ARM 17.56.1404.

~~(3) An applicant may obtain an examination study guide from the department by paying the study guide fee as provided in ARM 17.56.1404. The study guide must contain such material as the department determines will assist individuals in preparing for the licensing examination.~~

(4) remains the same, but is renumbered (3).

~~(5) An applicant for an installer license who:~~

~~(a) holds a current monitoring well constructor's license which has been issued by the Board of Water Well Contractors pursuant to the requirements of ARM Title 36, chapter 21; and~~

~~(b) requests that the installer license be restricted to the installation of external leak detection devices, must pass, in lieu of the examination required of other applicants, a department-approved test designed for licensed monitoring well constructors concerning underground storage tank law and regulations, safety, and leak detection monitoring well installation.~~

~~(6) (4) To qualify for licensing, an applicant for a compliance and oversight inspector license must have completed an inspector training course approved by the department that includes training in the operation and maintenance of release detection, corrosion protection, spill and overflow equipment; and regulatory compliance; and field testing of inspection abilities. Applicants possessing an installer license issued in accordance with the rules of this subchapter do not need to complete an inspector training course. The All applicants, including those possessing an installer license, must also successfully complete a field practical examination.~~

(7) remains the same, but is renumbered (5).

~~(8) (6) A score of 80 percent or higher on the written examination and on the compliance and oversight inspector field practical examination constitutes a passing grade. The department shall notify applicants of their examination score within 30 days of the date ~~when~~ the department calculates or receives the test score results.~~

~~(9) Department and local implementing program installation or closure inspectors licensed as of January 1, 2000, are not required to complete the installation or closure inspector licensing examination.~~

~~(10) (7) An applicant who fails the examination may retake the examination only twice at any subsequently scheduled examination date by registering in the same manner as for the original examination, and by paying the reexamination fee provided in ARM 17.56.1404.~~

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211, 75-11-509, MCA

REASON: The department is proposing amendments to ARM 17.56.1405(1) in order to update its business processes and make the application and examination processes more convenient for the regulated community. Pursuant to the proposed amendments, the regulated community will contact the department to schedule testing at a date and time that is mutually agreeable. Tests are taken in person and are proctored by a designated staff person of the department. The department will no longer limit scheduled exams to two dates per year in order to allow more flexibility and make it less burdensome for the regulated community to schedule and take necessary licensing exams.

In order to make scheduling exams more convenient for the regulated community, the department is proposing amendments to ARM 17.56.1405(2) that require registration 5 days, rather than 20 days, prior to a scheduled exam.

The department is proposing to delete ARM 17.56.1405(3). This change is necessary because the department is no longer producing or distributing study guides. Instead, applicants are able to obtain these materials on their own. The department provides a list of required study materials for each license category (installer, compliance inspector, and remover) on the department's web site.

The department is proposing to delete ARM 17.56.1405(5). This amendment change is necessary because "external leak devices" has been eliminated as a restricted license per the proposed amendment to ARM 17.56.1403(2). External leak detection devices are obsolete technology and are not permitted as a new modification to an existing UST system.

The proposed amendments to ARM 17.56.1405(6), renumbered (4), also ensure that all applicants for compliance and oversight inspector licenses successfully complete a field practical examination. This is necessary to ensure department licensed inspectors are familiar with proper operation and maintenance of UST systems.

The department is also proposing amendments to ARM 17.56.1405(6), renumbered (4), to allow someone with an installer license, issued in accordance with the rules of this subchapter, to qualify as a compliance inspector without having to complete an inspector training course. An applicant that has an installer license is already familiar with the function, operation, and maintenance of UST equipment, as well as compliance requirements due to their existing work experience as a licensed UST installer.

It is necessary that the department delete ARM 17.56.1405(9) because it pertains to the Local Government Unit (LGU) program. The department is repealing the LGU program to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309.

The department is proposing to delete language in ARM 17.56.1405(10), renumbered (7), to make the process for test scheduling more efficient and less burdensome for the regulated community. All testing is now done electronically, providing flexibility and the ability for retesting at one's convenience.

17.56.1406 LICENSE ISSUANCE, TERM, RESTRICTIONS (1) The department shall issue a license upon the applicant's satisfaction of the applicable provisions of this subchapter and Title 75, chapter 11, part 2, MCA. The license must set forth the name of the licensee, a license identification number, the type of

license issued, and the dates of ~~issuance and~~ expiration of the license, and any restrictions.

(2) A license issued under this subchapter ~~expires on the third anniversary of its issuance~~ is valid for one calendar year beginning on March 1 of the year the license is issued and ending on the last day of February of the following year. A license under this subchapter expires at the end of the annual period, unless annual registration fees are paid within the annual period. In addition, the licensee must earn the required department-approved continuing education units within the triennial period.

(3) through (5) remain the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211, 75-11-509, MCA

REASON: The department is proposing necessary amendments to the language in ARM 17.56.1406(1) to clarify the intent of the rule and remove extraneous language. The proposed amendments in ARM 17.56.1406(2) are necessary to clarify the requirements for licensees to avoid license expiration for nonpayment of fees within the annual period and to set forth the additional requirement that licensees earn continuing education units within the triennial period. The proposed amendments are also necessary to incorporate the proposed "annual period" and "triennial period" definitions set forth in proposed amendments to ARM 17.56.1301.

17.56.1407 LICENSE RENEWAL (1) A licensee who does not requesting a change from the type category of license currently held may renew the license within the annual period if the licensee completes a renewal application form provided by the department, pays the license renewal application fee required by ARM 17.56.1404, and, before the conclusion of each triennial period, provides sufficient proof that the applicant ~~has satisfactorily completed~~ the continuing education requirements have been satisfactorily completed as required by (3), or (4), ~~or~~ (5).

(2) remains the same.

(3) Licensed installers ~~whose licenses are restricted to closures and licensed closure inspectors~~ removers must complete at least one department-approved refresher training course administered by the department for a total of four credit hours of continuing education within the triennial period ~~three years prior to the date the current license expires. One course must be a department-sponsored refresher training course.~~

(4) ~~A licensed installer whose license is restricted to the installation of external leak detection devices need not take formal continuing education courses to demonstrate continuing competency in monitoring well installation if the installer:~~

~~(a) is currently a licensed water well constructor;~~

~~(b) submits to the department a copy of the current water well constructor license; and~~

~~(c) provides evidence of at least three successful installations performed within the three years prior to the date the current installer license expires.~~

~~(5)~~ (4) All licensees not subject to (3) ~~or~~ (4) must complete at least two

department-approved ~~or sponsored~~ continuing education courses for a total of 16 credit hours of continuing education within the triennial period ~~three years prior to the date the current license expires~~. One course must be a department-sponsored administered refresher training course.

(6) remains the same, but is renumbered (5).

~~(7)~~ (6) An installer A licensee, whose license has expired or who wants to change license categories, ~~for any reason~~ is subject to the same licensing requirements as a new applicant, including payment of the license application and examination fees and the satisfactory completion of the written licensing examination.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211, 75-11-509, MCA

REASON: The department is proposing to add language in ARM 17.56.1407(1) that is necessary to set forth requirements for annual license renewal. The department requires a license renewal application fee on an annual basis and requires continuing education requirements to be met every three years. Therefore, the department is proposing to add the language "within the annual period" to clarify that license renewal application fees are due every year. Adding "at the conclusion of each triennial period" ensures that licensees satisfactorily complete their continuing education requirements every three years.

The department is proposing necessary modifications to language in ARM 17.56.1407(3) to clarify the intent of the rule and update business processes. The department is proposing to delete "installers whose licenses are restricted to closures" and "licensed closure inspectors" because these license categories pertain to the Local Government Unit (LGU) program, which the department proposes to repeal in order to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309. The department is proposing to: 1) require one refresher course administered by the department during the triennial period in order to ensure that the course content is pertinent; and 2) make the license renewal requirements in ARM 17.56.1407 consistent with the general license requirements in ARM 17.56.1401(1) in order to provide consistent annual renewal periods for licensing and triennial periods in which licensees must fulfill training requirements.

The department is proposing to delete ARM 17.56.1407(4), which pertains to restricted licenses, because these proposed rule amendments eliminate the restricted license categories.

The department is proposing to amend ARM 17.56.1407(5), renumbered (4), in order to better explain and simplify the process of renewing licenses. Furthermore, the department is proposing to match the language proposed in ARM 17.56.1406 in order to help the regulated community know when they need to complete their continuing education units.

The proposed amendments in ARM 17.56.1407(7), renumbered (6), are necessary to clarify the requirements that all licensees are treated as new applicants when their license expires and all licensees changing license categories are treated as new applicants for the new license category. This change is intended to ensure

that license applicants receive and maintain proper training and are qualified for licensing to better protect human health and the environment.

17.56.1408 APPROVAL OF CONTINUING EDUCATION COURSES ~~(1) An entity offering a continuing education course intended to fulfill the requirements of ARM 17.56.1407, or an installer planning to take the course, must submit a detailed description of the course to the department for approval of the course at least 15 days before the beginning of the course.~~

~~(2) (1) The department shall approve the a continuing education course if it finds that it:~~

~~(a) remains the same.~~

~~(b) offers instruction on current technology or methods for the subject(s) in~~

~~(2) (a) and that technology or those methods will satisfy applicable department rules.~~

(2) The amount of continuing education credits earned by the licensee for a course is determined by the department and must be based on the department's evaluation of the course syllabus submitted by the licensee to the department.

(3) Within five days of the department receiving documentation that a licensee has successfully completed a continuing education credit course, the department shall notify the licensee whether the course is approved and the number of credits earned.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, MCA

REASON: The department is proposing to delete ARM 17.56.1408(1) to simplify the process of receiving department-approved continuing education course credits. There are many opportunities for licensees to obtain continuing education credits. The UST program has evolved and many manufacturers of UST equipment offer their own continuing education courses. The department is proposing to add language in ARM 17.56.1408(2), renumbered (1), in order to ensure that all department-approved continuing education courses are pertinent to their license category.

The department is proposing ARM 17.56.1408(2) and (3) in order to modify the process of obtaining department approval of continuing education courses for credit so that the department can determine whether courses are relevant and appropriate to ensure licensees are qualified to carry out their job duties and better protect human health and the environment. Furthermore, the department is proposing to be more flexible and allow five days instead of 15 in order to make the course review and approval process less burdensome for the regulated community.

17.56.1409 DUPLICATE LICENSES (1) The department shall issue a duplicate license to replace a lost, damaged, or destroyed license upon receipt of sufficient evidence indicating the loss, damage, or destruction and upon payment of the duplicate licensing fee provided in ARM 17.56.1404. The duplicate license must be designated as a duplicate and contain the same information ~~and restrictions~~ as the original license. A duplicate license is subject to the same rules and requirements as an original license.

AUTH: 75-11-204, MCA
IMP: 75-11-204, 75-11-210, 75-11-509, MCA

REASON: It is necessary to delete "and restrictions" from ARM 17.56.1409(1) because, under these proposed rule amendments, restricted licenses are eliminated in ARM 17.56.1403(2).

17.56.1410 LICENSEE RECORDKEEPING (1) Within 30 days of completion of an underground storage tank system installation or closure, a licensed installer shall submit to the department and to the owner or operator:

(a) one copy of the installation or closure permit signed by the installer or remover certifying that the work was completed according to the applicable state statutes, rules, and any permit conditions;

(b) for installations, ~~one copy of~~ the certificate of compliance signed by the installer; and

(c) for closures, ~~one copy of each closure form signed by the licensed installer and owner and one copy of the laboratory results for the site assessment a~~ completed tank closure report submitted in accordance with ARM 17.56.705.

(2) If the installation or closure is conducted by the owner or operator with an on-site installation ~~or closure~~ inspector, the documents specified in (1) must be signed by the installation ~~or closure~~ inspector and underground storage tank system owner or operator ~~and a copy returned to the department by the owner or operator.~~

AUTH: 75-11-204, MCA
IMP: 75-11-204, 75-11-210, 75-11-211, MCA

REASON: The department is proposing amendments to the language in ARM 17.56.1410(1)(a), (b), and (c) in order to include the proposed "remover" license category, to delete unnecessary wording, to require submittal of a tank closure report, and to ensure the department receives necessary information for confirmation that all procedures are followed during tank installation or closure.

The department is proposing to delete "closure inspector" in ARM 17.56.1410(2) in order to make these proposed rule amendments consistent with the proposed license categories in ARM 17.56.1403. Additionally, the department proposes to eliminate unnecessarily duplicative language under ARM 17.56.1410(1)(c) and (2) requiring submittal of installation or closure forms to the department.

17.56.1421 DISCIPLINARY AND OTHER LICENSING ACTION
GENERALLY (1) The department may restrict, condition, modify, suspend, revoke, or refuse to renew any license, previously issued under this subchapter upon ~~its~~ finding ~~that there is~~ substantial evidence that the licensee has committed any of the following:

(a) through (c) remain the same.

(d) a violation of any statute or rule of the department governing the licensing of underground tank system installers, removers, or compliance ~~or inspectors,~~

including any of the rules of professional conduct provided in this subchapter;

(e) a violation of the terms of any department-issued license, permit, order, or stipulation issued or agreed to by the department relating to the installation, modification, repair, closure, or inspection of an underground storage tank system or installer's or inspector's license;

(f) ~~had a violation that resulted in the similar license suspended~~ suspension or revoked revocation of a similar license in this state, another state, or U.S. territory; or

(g) ~~fails~~ failure to pay the license fees required by ARM 17.56.1404.

(2) through (6) remain the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-211, 75-11-509, MCA

REASON: The proposed amendments to ARM 17.56.1421(1) list all categories of license, provided under proposed amendment to ARM 17.56.1403, in order to ensure all licensees may be subject to disciplinary action. The department is also proposing to add language in ARM 17.56.1421(1)(d), (e), (f), and (g) to improve readability to the rule, but the amendments do not change the meaning of the rule.

17.56.1422 PROHIBITION OF UNPROFESSIONAL LICENSEE CONDUCT

(1) Any of the following acts of a person licensed under this subchapter constitute unprofessional conduct, are prohibited, and may result in the department conditioning, restricting, suspending, or revoking a license issued under this subchapter:

(a) through (c) remain the same.

(d) failure to cooperate with the department by:

(i) remains the same.

(ii) not responding to a subpoena issued by the department or any court, whether or not the recipient of the subpoena is the respondent named in any proceeding; ~~or~~

(iii) ~~failing~~ failure to submit the signed permit ~~and the installation or closure checklist;~~ the certification of compliance, or to meet any other permit special condition imposed under ARM 17.56.1305(3)(f) for installations; or

(iv) failure to submit the tank closure report, the signed permit, or the laboratory results for the site assessment for closures.

(e) through (j) remain the same.

(k) failure to display his or her license upon request of any client, prospective client, ~~or any representative of the department,~~ or ~~local~~ licensed inspector;

(l) through (n) remain the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-211, MCA

REASON: The department is proposing additional language in ARM 17.56.1422(1)(d)(iii) and the addition of 17.56.1422(1)(d)(iv) to enumerate all specific

items that would trigger department action against a licensee for unprofessional conduct. Prohibition of the enumerated acts protects human health and the environment and ensures professional conduct by department licensees. This additional language is needed in order to set forth specific actions that constitute unprofessional conduct and that are prohibited and may result in the department conditioning, restricting, suspending, or revoking a license issued under this subchapter.

The department is proposing amendments to ARM 17.56.1422(1)(k) to establish that representatives of the department or a licensed inspector are entitled to demand to see a licensee's license consistent with these proposed rule amendments in order to ensure UST systems are installed, removed, and inspected by properly licensed professionals.

The department is proposing to delete "local" from ARM 17.56.1422(1)(k) because the term is affiliated with the Local Government Unit (LGU) program. The LGU program was used to perform UST inspections on behalf of the department. These inspections are no longer necessary due to the adoption of the third-party UST compliance inspection program in ARM 17.56.309.

17.56.1502 OPERATOR TRAINING (1) ~~By August 8, 2010, t~~The owner or operator of an UST system that has a valid operating permit or that is required to have an operating permit under ARM 17.56.308 shall have trained Class A, B, and C operators for the system. The operators must be trained in accordance with ARM 17.56.1503. Each Class A, B, or C operator shall be responsible for his or her applicable operation, maintenance, and emergency response activities, even when the operator is not present at the facility.

(2) ~~After August 8, 2010, a~~ trained Class A or B operator of an UST system may be replaced by an untrained operator if, within 30 days after assuming operation responsibilities, the new operator receives training in accordance with ARM 17.56.1503. Class C operators must be trained before assuming their responsibilities.

(3) remains the same.

(4) If the department determines that an UST system does not meet EPA's significant operational compliance (SOC) requirements for release prevention and release detection measures, the appropriate operators, as determined by the department, must be retrained. Retraining must include the subjects in which the UST system was found to be not in significant compliance. Retraining must occur within 90 days a reasonable timeframe set forth in a department-approved corrective action plan after the department's determination that an UST system does not meet EPA's SOC requirements for release prevention and release detection measures, ~~or within a longer time frame established by the department in writing, on a case-by-case basis.~~ For purposes of this chapter, the department adopts and incorporates by reference the EPA SOC requirements dated March 2005. Copies of the documents incorporated by reference may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to strike language from ARM 17.56.1502(1) and (2) that is no longer applicable since the date of August 8, 2010, has already occurred. The department is proposing to strike language in ARM 17.56.1502(4) to allow more flexible compliance timeframes for operators subject to retraining requirements. When a Corrective Action Plan is issued, the goal is to provide a single corrective action due date in order to avoid confusion for owners and operators and to allow flexibility to adapt each Corrective Action Plan allowing the owner or operator to meet the requirements within a reasonable timeframe. The department is proposing to allow the department to exercise the ability to establish a "reasonable timeframe" for retraining when a SOC violation exists as set forth under the EPA's "Grant Guidelines to States for Implementing the Operator Training Provision of the Energy Policy Act of 2005." U.S. EPA, Office of Underground Storage Tanks (EPA-510-R-07-005). The document may be obtained by contacting DEQ, P.O. Box 200901, Helena, MT 59620.

17.56.1503 OPERATOR TRAINING: AUTHORIZED PROVIDERS; AND REQUIRED SUBJECTS (1) through (5) remain the same.

(6) Class C operators who:

(a) choose department-~~sponsored~~ approved training shall pass a department-administered test with at least an 80 percent score; or

(b) ~~are trained~~ choose training by a trained Class A or B operator, shall successfully complete a practical demonstration or other evaluation procedure determined to be acceptable by the department ~~and pre-approved by the department in writing.~~

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing necessary amendments to change "sponsored" to "approved" in ARM 17.56.1504(6)(a) in order to more accurately reflect the department's action after reviewing and accepting the adequacy of a training course. The department is also proposing to amend language in ARM 17.56.1503(6) to eliminate the unnecessary requirement for pre-approved Class C training and to improve readability of the rule. Under the EPA's Grant Guidelines to States for Implementing the Operator Training Provision of the Energy Policy Act of 2005, the state may accept training conducted by a trained Class A or Class B operator for Class C operators. The department is proposing to eliminate department pre-approval of testing or other evaluation procedures to lessen the burden for the regulated community and more closely align the department's requirements with those of the Energy Policy Act.

4. The rules proposed to be repealed are as follows:

Subchapter 10
Tank Fees and ~~Delegation to Local Governments~~

17.56.1002 GRANTS TO LOCAL GOVERNMENTAL UNITS (AUTH: 75-11-505, MCA; IMP: 75-11-505, MCA)

17.56.1003 DESIGNATION OF LOCAL UST PROGRAMS (AUTH: 75-11-505, MCA; IMP: 75-11-505, MCA)

17.56.1004 IMPLEMENTING AGENCY PROGRAM SERVICES AND REIMBURSEMENT (AUTH: 75-11-505, MCA; IMP: 75-11-505, MCA)

17.56.1005 REVOCATION AND SURRENDER OF DESIGNATION (AUTH: 75-11-505, MCA; IMP: 75-11-505, MCA)

REASON: The department is proposing to repeal ARM 17.56.1002 through 17.56.1005 because these rules pertain to the Local Government Unit (LGU) program. The LGU program was used to perform UST inspections and perform other UST program obligations on behalf of the department. The LGU program is no longer necessary due to the adoption of the third-party UST compliance inspection program in ARM 17.56.309. The department values its relationships with local governments and will continue to work with local governments on tank issues.

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 Denise Hartman, Administrative Rules Coordinator, 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 dhartman2@mt.gov, no later than 5:00 p.m. August 19, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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, 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 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. 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 Denise Hartman, Administrative Rules Coordinator, 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 Denise Hartman at dhartman2@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

7. Kirsten Bowers, attorney for the department, has been designated to preside over and conduct the hearing.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and were fulfilled through a letter addressed to the Honorable Jim Keane, dated January 8, 2016.

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

Reviewed by: DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North BY: /s/ Tom Livers
JOHN F. NORTH TOM LIVERS
Rule Reviewer Director

Certified to the Secretary of State, July 11, 2016.