

ENVIRONMENTAL QUALITY

CHAPTER 8

AIR QUALITY

Subchapter 1

General Provisions

Rule	17.8.101	Definitions
	17.8.102	Incorporation by Reference--Publication Dates and Availability of Reference Documents
	17.8.103	Incorporation by Reference
		Rule 17.8.104 reserved
	17.8.105	Testing Requirements
	17.8.106	Source Testing Protocol
		Rules 17.8.107 through 17.8.109 reserved
	17.8.110	Malfunctions
	17.8.111	Circumvention
		Rules 17.8.112 through 17.8.119 reserved
	17.8.120	Variance Procedures--Initial Application
	17.8.121	Variance Procedures--Renewal Application
		Rules 17.8.122 through 17.8.129 reserved

ENVIRONMENTAL QUALITY

- Rule 17.8.130 Enforcement Procedures--Notice of Violation--Order to Take Corrective Action
- 17.8.131 Enforcement Procedures--Appeal to Board
- 17.8.132 Credible Evidence
- Rules 17.8.133 through 17.8.139 reserved
- 17.8.140 Rehearing Procedures--Form and Filing of Petition
- 17.8.141 Rehearing Procedures--Filing Requirements
- 17.8.142 Rehearing Procedures--Board Review
- Rules 17.8.143 through 17.8.149 reserved
- 17.8.150 Definitions
- 17.8.151 Board Action
- 17.8.152 Reporting

Subchapter 1

General Provisions

17.8.101 DEFINITIONS As used in this chapter, unless indicated otherwise in a specific subchapter, the following definitions apply:

- (1) "Administrator" means the administrator of the U.S. Environmental Protection Agency or the administrator's designee.
- (2) "Air pollutants" has the meaning provided in 75-2-103(3), MCA.
- (3) "Air quality operating permit" means any permit or group of permits issued, renewed, revised, amended, or modified pursuant to subchapter 12 of this chapter.
- (4) "Montana air quality permit" means a permit issued, altered or modified pursuant to subchapters 7, 8, 9, or 10 of this chapter.
- (5) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:
 - (a) the applicable standards as set forth in ARM 17.8.340 or 17.8.341;
 - (b) the applicable emissions limitation contained in the Montana state implementation plan, including those with a future compliance date; or
 - (c) the emissions rate specified as a federally enforceable permit condition.
- (6) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.
- (7) "Ambient air monitoring" means measurement of any air pollutant, odor, meteorological or atmospheric characteristic, or any physical or biological condition resulting from the effects of air pollutants or meteorological atmospheric conditions provided the measurement is performed in an area constituting ambient air.
- (8) "Board" means the Board of Environmental Review as provided for in 2-15-3502, MCA.
- (9) "Boiler or industrial furnace" means any source or emitting unit that is subject to the provisions of 75-10-405(2)(f) and 75-10-406, MCA, and rules promulgated thereunder defining the class of activities subject to regulation under those sections, found at ARM Title 17, chapter 53, subchapter 10.
- (10) "Commercial hazardous waste incinerator" has the meaning provided in 75-2-103(6), MCA.

(11) "Commercial medical waste incinerator" means any incinerator that incinerates medical waste, except that "commercial medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite.

(12) "Control equipment" means any device or contrivance which prevents, removes, controls or abates emissions.

(13) "Department" means the Department of Environmental Quality as provided for in 2-15-3501, MCA.

(14) "Emission" has the meaning provided in 75-2-103(8), MCA.

(15) "Emission standard" means an allowable rate of emissions or level of opacity, or a requirement that certain equipment, work practices or operating conditions be employed to assure continuous emission control. An emission standard may be contained in a rule or regulation, consent decree, judicial or administrative order, or permit condition.

(16) "EPA" means the U.S. Environmental Protection Agency.

(17) "FCAA" means the Federal Clean Air Act, 42 USC 7401, et seq.

(18) "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana State Implementation Plan, and any permit requirement established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the Montana State Implementation Plan and expressly requires adherence to any permit issued under such program.

(19) "Fuel burning equipment" means any furnace, boiler, apparatus, stack, or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer.

(20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21) "Hazardous air pollutant (HAP)" means any air pollutant listed as a hazardous air pollutant pursuant to section 112(b)(1) of the FCAA.

(22) "Hazardous waste" has the meaning provided in 75-2-103(10), MCA.

(23) "Hazardous waste incinerator" means any incinerator that incinerates hazardous waste.

(24) "Incinerator" has the meaning provided in 75-2-103(11), MCA.

(25) "Medical waste" has the meaning provided in 75-2-103(12), MCA.

(26) "Montana state implementation plan" means the state implementation plan adopted by EPA for the state of Montana pursuant to the FCAA, found at 40 CFR Part 52, subpart BB.

(27) "Multiple chamber incinerator" means any incinerator consisting of three or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned.

(28) "Odor" means that property of an emission which stimulates the sense of smell.

(29) "Opacity" means the degree, expressed in percent, to which emissions reduce the transmission of light and obscure the view of an object in the background. Where the presence of uncombined water is the only reason for failure of an emission to meet an applicable opacity limitation contained in this chapter, that limitation shall not apply. For the purpose of this chapter, opacity determination shall follow all requirements, procedures, specifications, and guidelines contained in 40 CFR Part 60, Appendix A, method 9, or by an in-stack transmissometer which complies with all requirements, procedures, specifications and guidelines contained in 40 CFR Part 60, Appendix B, performance specification 1.

(30) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a source or alteration, or the authorized agent of the owner, or the person who is legally responsible for the overall operation of the source or alteration.

(31) "Particulate matter" means any material, except water in uncombined form, that is or has been airborne, and exists as a liquid or a solid at standard conditions. For the purposes of this definition, standard conditions are defined in the applicable test method.

(32) "Person" has the meaning provided in 75-2-103(13), MCA.

(33) "PM" means all applicable definitions of particulate matter that specify an aerodynamic size class.

(34) "PM-2.5" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix L, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated in accordance with 40 CFR Part 53.

(35) "PM-10" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix J, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated in accordance with 40 CFR Part 53.

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES AND AVAILABILITY OF REFERENCE DOCUMENTS

(1) Unless expressly provided otherwise in this chapter, where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, 2016, edition of the Code of Federal Regulations (CFR), as it is published on the web site of the U.S. Government Printing Office at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2016&go=Go>;

(b) adopted a section of the United States Code (USC) by reference, the reference is to the 2015 edition of the USC as it is published on the web site of the U.S. Government Printing Office at <https://www.gpo.gov/fdsys/browse/collectionUSCode.action?selectedYearFrom=2015&go=Go>;

(c) adopted a rule of the state of Montana from another chapter of the Administrative Rules of Montana (ARM), the reference is to the rule in effect on September 30, 2015.

(2) For purposes of this chapter, the following subparts of 40 CFR Part 60 are excluded from incorporation by reference:

(a) 40 CFR Part 60, subpart TTTT, Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units; and

(b) 40 CFR Part 60, subpart OOOOa, Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015.

(3) Copies of material incorporated by reference in this chapter are available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

(4) A copy of federal materials also may be obtained from:

(a) National Technical Information Service (NTIS), 5301 Shawnee Road, Alexandria, VA 22312; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: orders@ntis.gov; web: <http://www.ntis.gov>;

(b) National Service Center for Environmental Publications (NCSEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone (800) 490-9198; fax: (301) 604-3408; e-mail: nscep@lmsolas.com; web: <https://www.epa.gov/nscep>;

(c) U.S. Government Printing Office, 732 North Capital Street, NW, Washington, DC 20401-001; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: orders@gpo.gov; web: <https://www.gpo.gov>; and

(d) the EPA regional office libraries listed at <https://www.epa.gov/libraries/libraries>. (History: 75-2-111, MCA; IMP, Title 75, chapter 2, MCA; NEW, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1997 MAR p. 1581, Eff. 9/9/97; AMD, 1998 MAR p. 1725, Eff. 6/26/98; AMD, 1999 MAR p. 2250, Eff. 10/8/99; AMD, 2000 MAR p. 2696, Eff. 10/6/00; AMD, 2001 MAR p. 1468, Eff. 8/10/01; AMD, 2002 MAR p. 1747, Eff. 6/28/02; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2004 MAR p. 724, Eff. 4/9/04; AMD, 2005 MAR p. 959, Eff. 6/17/05; AMD, 2006 MAR p. 1956, Eff. 8/11/06; AMD, 2007 MAR p. 1663, Eff. 10/26/07; AMD, 2008 MAR p. 2267, Eff. 10/24/08; AMD, 2009 MAR p. 411, Eff. 4/17/09; AMD, 2009 MAR p. 1784, Eff. 10/16/09; AMD, 2011 MAR p. 143, Eff. 2/11/11; AMD, 2012 MAR p. 2603, Eff. 12/21/12; AMD, 2014 MAR p. 1256, Eff. 6/13/14; AMD, 2015 MAR p. 817, Eff. 6/26/15; AMD, 2016 MAR p. 1848, Eff. 10/15/16; AMD, 2018 MAR p. 438, Eff. 2/24/18.)

17.8.103 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

- (a) 40 CFR Part 50, Appendix B, pertaining to the reference method for the determination of suspended particulate matter in the atmosphere (high-volume method);
- (b) 40 CFR Part 50, Appendix J, pertaining to reference methods for the determination of particulate matter as PM-10 in the atmosphere;
- (c) 40 CFR Part 51, Appendix M, pertaining to recommended test methods for state implementation plans;
- (d) 40 CFR Part 51, Appendix P, pertaining to EPA minimum emission monitoring requirements;
- (e) 40 CFR Part 53, pertaining to ambient air monitoring reference methods and equivalent methods;
- (f) 40 CFR Part 60, Appendix A, pertaining to EPA emission source reference test methods for stationary sources;
- (g) 40 CFR Part 60, Appendix B, pertaining to EPA performance specification and test procedures for continuous emission monitoring systems;
- (h) 40 CFR Part 61, Appendix B, pertaining to EPA emission source reference test methods for sources subject to national emission standards for hazardous air pollutants;
- (i) 40 CFR Part 63, pertaining to emission standards for hazardous air pollutant source categories;
- (j) ARM Title 17, chapter 53, subchapter 5, pertaining to the identification and listing of hazardous waste;

(k) ARM Title 17, chapter 53, subchapter 10, pertaining to standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities;

(l) section 75-10-403(8), MCA, pertaining to the statutory definition of "hazardous waste";

(m) section 112(b)(1) of the Federal Clean Air Act (FCAA), as codified in 42 USC 7412(b)(1), pertaining to substances designated as hazardous air pollutants; and

(n) the Montana Source Test Protocol and Procedures Manual (July 1994 ed.), a department manual pertaining to sampling and data collection, recording, analysis, and transmittal requirements.

(2) Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4). (History: 75-2-111, MCA; IMP, Title 75, chapter 2, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1994 MAR p. 2828, Eff. 10/28/94; AMD, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1997 MAR p. 1581, Eff. 9/9/97; AMD, 1999 MAR p. 2250, Eff. 10/8/99; AMD, 2000 MAR p. 2696, Eff. 10/6/00; AMD, 2001 MAR p. 1468, Eff. 8/10/01; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2004 MAR p. 724, Eff. 4/9/04; AMD, 2005 MAR p. 959, Eff. 6/17/05; AMD, 2006 MAR p. 1956, Eff. 8/11/06; AMD, 2007 MAR p. 1663, Eff. 10/26/07; AMD, 2015 MAR p. 370, Eff. 4/17/15; AMD, 2015 MAR p. 817, Eff. 6/26/15; AMD, 2016 MAR p. 1848, Eff. 10/15/16; AMD, 2018 MAR p. 438, Eff. 2/24/18.)

Rule 17.8.104 reserved

17.8.105 TESTING REQUIREMENTS (1) Any person or persons responsible for the emission of any air contaminant into the outdoor atmosphere shall upon written request of the department provide the facilities and necessary equipment including instruments and sensing devices and shall conduct tests, emission or ambient, for such periods of time as may be necessary using methods approved by the department. Such emission or ambient tests shall include, but not be limited to, a determination of the nature, extent, and quantity of air contaminants which are emitted as a result of such operation at all sampling points designated by the department. These data shall be maintained for a period of not less than one year and shall be available for review by the department. Such testing and sampling facilities may be either permanent or temporary at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction or safe practice.

(2) All sources subject to the requirements of 40 CFR Part 51, Appendix P, incorporated by reference in ARM 17.8.103, must install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions. All subject sources must have installed all necessary equipment and shall have begun monitoring and recording emissions data in accordance with Appendix P by January 31, 1988. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; Eff. 12/31/72; AMD, 1987 MAR p. 159, Eff. 2/14/87; AMD, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.106 SOURCE TESTING PROTOCOL (1) The requirements of this rule apply to any emission source testing conducted by the department, any source, or any other entity as required by any rule in this chapter, or any permit or order issued pursuant to this chapter, or the provisions of the Clean Air Act of Montana, 75-2-101, et seq., MCA.

(2) All emission source testing, sampling and data collection, recording, analysis, and transmittal must be performed as specified in the Montana Source Test Protocol and Procedures Manual, unless alternate equivalent requirements are determined by the department and the source to be appropriate, and prior written approval has been obtained from the department. If the use of an alternative test method requires approval by the administrator, that approval must also be obtained.

(3) Unless otherwise specified in the Montana Source Test Protocol and Procedures Manual or elsewhere in this chapter, all emission source testing must be performed as specified in any applicable sampling method contained in: 40 CFR Part 60, Appendix A; 40 CFR Part 60, Appendix B; 40 CFR Part 61, Appendix B; 40 CFR Part 51, Appendix M; 40 CFR Part 51, Appendix P; and 40 CFR Part 63. Such emission source testing must also be performed in compliance with the requirements of the EPA Handbook for Air Pollution Measurement Systems. Alternative equivalent requirements may be used if the department and the source have determined that such alternative equivalent requirements are appropriate, and prior written approval has been obtained from the department. If approval by the administrator of an alternative test method is required, that approval must also be obtained.

(4) Failure to comply with this rule shall constitute a violation of this rule, and may result in the partial or complete rejection by the department of the appropriate emission source testing data. The partial or complete rejection by the department of the appropriate emission source testing data may subsequently result in a determination by the department that a permit application is incomplete, that insufficient data is available to determine compliance with an emission limitation or standard and additional testing is necessary to demonstrate compliance, or that insufficient data is available to determine the correct fee required under subchapter 5 and additional testing is necessary.

(5) Any changes to the Montana Source Test Protocol and Procedures Manual shall follow the appropriate rulemaking procedures. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 2767, Eff. 10/8/99; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2004 MAR p. 724, Eff. 4/9/04.)

Rules 17.8.107 through 17.8.109 reserved

17.8.110 MALFUNCTIONS (1) "Malfunction" means any sudden and unavoidable failure to operate in a normal manner by air pollution control equipment, process equipment, or a process that affects emissions. A failure caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown is not a malfunction.

(2) The department must be notified promptly by telephone whenever a malfunction occurs that is expected to create emissions in excess of any applicable emission limitation, or to continue for a period greater than four hours. If telephone notification is not immediately possible, notification at the beginning of the next working day is acceptable. The notification must include the following information:

(a) identification of the emission points and equipment causing the excess emissions;

(b) magnitude, nature, and cause of the excess emissions;

(c) to the extent known, time and duration of the excess emissions;

(d) description of the corrective actions taken or expected to be taken to remedy the malfunction and to limit the excess emissions;

(e) information sufficient to assure the department that the failure to operate in a normal manner by the air pollution control equipment, process equipment, or processes was not caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown; and

(f) readings from any continuous emission monitor on the emission point and readings from any ambient monitors near the emission point.

(3) Upon receipt of notification pursuant to (2), the department shall promptly investigate and determine whether a malfunction has occurred.

(4) If a malfunction occurs and creates emissions in excess of any applicable emission limitation, the department may elect to take no enforcement action if:

(a) the owner or operator of the source provided the notification required by (2);

(b) the malfunction did not interfere with the attainment and maintenance of any state or federal ambient air quality standard; and

(c) the owner or operator of the source immediately took appropriate corrective measures.

(5) Within one week after a malfunction has been corrected, the owner or operator must submit a written report to the department that includes:

(a) a statement that the malfunction has been corrected, the date of correction, and proof of compliance with all applicable air quality standards contained in this chapter or a statement that the source is planning to install or has installed temporary replacement equipment in accordance with the requirements of (7);

(b) a statement of the specific cause of the malfunction;

(c) a description of any preventive measures taken and/or to be taken; and

(d) a statement affirming that the failure to operate in a normal manner by the air pollution control equipment, process equipment, or processes was not caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown.

(6) The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate that a malfunction occurred.

(7) Malfunctioning process or emission control equipment may be temporarily replaced without obtaining a Montana air quality permit under the requirements of ARM Title 17, chapter 8, subchapter 7, if:

(a) the department has been notified of the malfunction in compliance with the requirements of (2); and

(b) continued operation or non-operation of the malfunctioning equipment would:

(i) create a health or safety hazard for the public;

(ii) cause a violation of any applicable air quality rule;

(iii) damage other process or control equipment; or

(iv) cause a source to lay-off or suspend a substantial portion of its work force for an extended period.

(8) If construction, installation, or use of temporary replacement equipment under (7) constitutes a major modification and subjects a major stationary source to the requirements of ARM Title 17, chapter 8, subchapters 8, 9, or 10, the source must comply with the requirements of the applicable subchapter prior to construction, installation, or use of the temporary replacement equipment.

(9) Any source that constructs, installs, or uses temporary replacement equipment under (7) shall comply with the following conditions:

(a) Prior to operation of the temporary replacement equipment, the source shall notify the department in writing of its intent to construct, install, or use temporary replacement equipment.

(b) Prior to operation of the temporary replacement equipment, the source shall demonstrate to the department that the estimated actual emissions from the temporary replacement equipment, operating at its maximum expected operating rate, are no greater than the potential to emit of the malfunctioning process or control equipment prior to the malfunction.

(c) The source shall record, and report to the department at its request, operating information sufficient to demonstrate that the temporary replacement equipment operated within the maximum expected operating rate.

(d) The temporary replacement equipment and the malfunctioning process or emission control equipment may not be operated simultaneously, except during a brief shakedown period or as otherwise approved in writing by the department.

(e) The temporary replacement equipment must be removed or rendered inoperable within 180 days after initial startup of the temporary replacement equipment, or within 30 days after startup of the repaired malfunctioning process or emission control equipment, whichever is earlier, unless the source has submitted to the department an application for a Montana air quality permit for the temporary replacement equipment or the department has approved a plan for removing the temporary replacement equipment or rendering the temporary replacement equipment inoperable by a specific date. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1982 MAR p. 1201, Eff. 6/18/82; AMD, 1995 MAR p. 2411, Eff. 11/10/95; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 645, Eff. 4/11/03.)

17.8.111 CIRCUMVENTION (1) No person shall cause or permit the installation or use of any device or any means which, without resulting in reduction in the total amount of air contaminant emitted, conceals or dilutes an emission of air contaminant which would otherwise violate an air pollution control regulation.

(2) No equipment that may produce emissions shall be operated or maintained in such a manner that a public nuisance is created. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; Eff. 12/31/72; AMD, 1985 MAR p. 1326, Eff. 9/13/85; TRANS, from DHES, 1996 MAR p. 2285.)

Rules 17.8.112 through 17.8.119 reserved

17.8.120 VARIANCE PROCEDURES--INITIAL APPLICATION (1) Initial application for exemption may be in the form of a letter, and must be submitted to the board with copies sent to the department and the parties. The application must contain or be accompanied by information and data to show that:

- (a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and
- (b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the public.

(2) Upon filing of the application, public hearing thereon will be scheduled. No hearing will be held until the requirements of the Montana Environmental Policy Act have been fulfilled. Time for hearing will also take into consideration due notice requirements set forth herein.

(3) Notice of hearing is to be served upon the applicant and the general public not later than 30 days prior to the hearing. Notice of hearing is also to be given to the local air pollution control officer having jurisdiction, to all known interested persons and to any person or group upon request.

(a) Notice may be served upon applicant by mail.

(b) Notice is to be published at least once in a newspaper of general circulation published in the geographical area wherein the plant or equipment of applicant is located.

(c) The contents of the public notice shall include at least the following:

- (i) name and address of the applicant;
- (ii) time, location and nature of the hearing;
- (iii) brief description of applicant's activities, matters asserted, or operations which result in the emissions described in the application;
- (iv) a brief description of the purpose of the hearing, including a reference to the particular statute and rules involved;
- (v) address and phone number of the premises at which interested persons may obtain further information, inspect, copy or obtain a copy of the application;
- (vi) the legal authority and jurisdiction under which the hearing is to be held.

(4) Hearings held pursuant to this subchapter are for the purpose of determining whether the application for exemption should be granted. In making its determination, the board shall resolve issues raised by parties, and shall consider comments submitted by the general public.

(a) Members of the general public may submit comments concerning the application for exemption. Comments must be submitted in writing to the board within 20 days after date of publication of public notice pursuant to (3) of this rule. If written comments are timely filed, a commenter may orally present those comments to the board at the hearing.

(b) Any person may submit a request to be a party within 20 days after date of publication of public notice pursuant to (3). Requests to be a party under this section shall be directed to the board and shall state:

- (i) name and address of the person making the request;
- (ii) identify the interest of the requester and any person or group requester represents;
- (iii) include an agreement by requester and any person represented by requester to be subject to examination and cross-examination, and in case of a corporation, to make an employee available for examination and cross-examination at his own expense upon request of the presiding officer, on his own motion or by motion of any party;
- (iv) any request to be made a party shall state the position of the requester on the issues to be considered at the hearing.

(c) Except as provided in (4)(d), conduct of the hearing must be in accordance with "contested case" procedures of the Montana Administrative Procedure Act (MAPA) and the model rules of the Attorney General promulgated in pursuance thereto.

(d) MAPA contested case procedures do not apply to that portion of the hearing conducted for the purpose of receiving comments from the general public. The board may use such public comment procedures as it finds are appropriate under the circumstances of a particular case. (History: 75-2-111, MCA; IMP, 75-2-212, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1997 MAR p. 1189, Eff. 7/8/97.)

17.8.121 VARIANCE PROCEDURES--RENEWAL APPLICATION

(1) No renewal of exemption shall be granted except on application, submitted on a form designated "application for renewal" form obtained from the department.

(2) Public notice of the renewal application shall be given at the applicant's expense immediately prior to the submission of the application, in the following manner:

(a) By publication and notice at least once in a newspaper of general circulation published within the geographical area wherein the plant or equipment is located.

(b) The notice shall state, in effect, that application is being made to the board to renew an exemption permit to allow the continued operation of equipment or plant at a specified address, which equipment or plant emits air contaminants not otherwise allowed by rules of the department. The notice shall also state the name and business address of the applicant.

(c) A copy of the notice, certified as to the manner of publication, shall be filed with the department concurrent with the publication.

- (3) If complaint is made to the department on the application for renewal:
- (a) Public hearing shall be held on due notice served upon the holder of the exemption complained of, upon the complainants, and upon the general public.
 - (b) Manner of service and publication of notice shall be the same as provided in ARM 17.8.120(3).
 - (c) The nature and conduct of the hearing shall be the same as provided for in ARM 17.8.120(4).
 - (d) The form of the complaint shall include, but is not limited to, the name and address of the complainant, the name and address of the holder of the exemption complained of, and a sufficient statement of the complainant to allow the department to give notice of the issues involved at the hearing. (History: 75-2-111, MCA; IMP, 75-2-212, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; TRANS, from DHES, 1996 MAR p. 2285.)

Rules 17.8.122 through 17.8.129 reserved

17.8.130 ENFORCEMENT PROCEDURES--NOTICE OF VIOLATION--ORDER TO TAKE CORRECTIVE ACTION (1) A written notice of violation may

contain, but is not limited to:

- (a) the name of the alleged violator;
- (b) the last known address of the alleged violator;
- (c) the number of the permit, if any, issued under 75-2-204 and 75-2-211,

MCA;

- (d) a summary of the complaint made by the department including:
 - (i) the specific provisions of the statute, rule or permit alleged to be violated;

and

- (ii) the specific facts alleged to constitute a violation; and
- (e) any order to take corrective action, order to pay an administrative penalty, or both; and

(f) if the department has issued an order to take corrective action, a statement in conspicuous type stating that the alleged violator will be found in default and the order will become final and enforceable unless, not later than 30 days after the notice is received, the person named requests, in writing, a hearing before the board.

(2) Notice of violation shall be served personally upon the alleged violator, and acknowledgement of service obtained from the alleged violator or affidavit of service will be completed by the person making the service and made part of the file. (History: 75-2-111, MCA; IMP, 75-2-401, MCA; Eff. 12/31/72; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2004 MAR p. 724, Eff. 4/9/04.)

17.8.131 ENFORCEMENT PROCEDURES--APPEAL TO BOARD (1) If the alleged violator desires to petition the board for hearings, the form of the petition shall be in substantially the following form:

(a) The name, address and telephone number of the petitioner, or other person authorized to receive service of notices.

(b) The type of business or activity involved, and the address of such business.

(c) A brief summary of the accusations made by the department in its notice of violation, and the date of such notice.

(d) A statement that petitioner denies the allegations in full or in part, and that he seeks a hearing to protest the issuance of any corrective order.

(e) The petitioner shall sign the petition, or it shall be signed by some person on his behalf, and the authority of such other person so signing must appear.

(2) If hearing is held, rules of practice as provided in contested cases shall apply. (History: 75-2-111, MCA; IMP, 75-2-401, MCA; Eff. 12/31/72; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.132 CREDIBLE EVIDENCE (1) For the purpose of submitting a compliance certification required pursuant to this chapter, or establishing whether or not a person has violated or is in violation of any standard or limitation adopted pursuant to this chapter or Title 75, chapter 2, MCA, nothing in these rules shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with such standard or limitation if the appropriate performance or compliance test procedures or methods had been performed. However, when compliance or noncompliance is demonstrated by a test or procedure provided by permit or other applicable requirement, the owner or operator shall then be presumed to be in compliance or noncompliance unless that presumption is overcome by other relevant credible evidence. (History: 75-2-111, 75-2-201, 75-2-203, 75-2-217, MCA; IMP, 75-2-203, 75-2-217, MCA; NEW, 2000 MAR p. 3363, Eff. 12/8/00.)

Rules 17.8.133 through 17.8.139 reserved

17.8.140 REHEARING PROCEDURES--FORM AND FILING OF PETITION

(1) The petition shall contain the following information:

(a) The name, address and telephone number of the aggrieved party or other party authorized to receive service of notices.

(b) The file or docket number assigned by the board to the original hearing from which rehearing is requested, and any additional identifying title assigned to the original hearing.

(c) A brief summary of the issues involved in the original hearing.

(d) A statement of which subsection under the statute the petitioner asserts is the jurisdictional basis for the grant of a rehearing.

(e) A summary argument stating why petitioner is entitled to a rehearing under the subsection cited as his jurisdictional basis. (History: 75-2-111, MCA; IMP, 75-2-411, MCA; Eff. 12/31/72; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.141 REHEARING PROCEDURES--FILING REQUIREMENTS (1) The aggrieved party shall file his petition for a rehearing within 20 days following his receipt of the board's written decision adverse to his interest. (History: 75-2-111, MCA; IMP, 75-2-411, MCA; Eff. 12/31/72; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.142 REHEARING PROCEDURES--BOARD REVIEW (1) The board must act within a reasonable time to grant or deny petitioner's request for rehearing, but in no event shall such time exceed 30 days following receipt of said petition.

(2) Procedure shall be in accordance with the rules of procedure for adversary or contested cases if the original hearing concerned enforcement, emergency procedures or where adjudicated facts were at issue; if the original hearing concerned variance procedure, substantive rulemaking or the establishment of local air pollution control programs, rules of procedure for appellate type hearings will be used. (History: 75-2-111, MCA; IMP, 75-2-411, MCA; Eff. 12/31/72; TRANS, from DHES, 1996 MAR p. 2285.)

Rules 17.8.143 through 17.8.149 reserved

17.8.150 DEFINITIONS For purposes of this subchapter, the following terms have the following meanings:

(1) "Board" means the Board of Environmental Review provided for in 2-15-3502, MCA.

(2) "Potential conflict of interest" means:

(a) any income from a regulated person; or

(b) any interest or relationship that would preclude the individual having the interest or relationship from being considered one who represents the public interest.

(3) "Regulated person" means:

(a) a person, other than a department or agency of a state, local, or regional government, who is subject to a permit or an enforcement order that implements the federal Clean Air Act; or

(b) any trade or business association of which a person described in (3)(a) is a member.

(4) "Represent the public interest" means that the person does not:

(a) own a controlling interest in or have five percent or more of his or her capital invested in a regulated person;

(b) serve as attorney for, act as consultant for, or serve as an officer or director of a regulated person; or

(c) hold any other official or contractual relationship with a regulated person.

(5) "Significant portion of income" means ten percent or more of gross personal income for a calendar year, including retirement benefits, consultant fees, and stock dividends, except that it shall mean 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement. For purposes of this section, income derived from mutual-fund payments, or from other diversified investments as to which the recipient does not know the identity of the primary sources of income, shall be considered part of the recipient's gross personal income but shall not be treated as income derived from persons subject to permits or enforcement orders under the Clean Air Act. (History: 75-2-111, MCA; IMP, 75-2-111, MCA; NEW, 2015 MAR p. 1903, Eff. 10/30/15.)

17.8.151 BOARD ACTION (1) The board may not take action on any contested case matter that arises under the Clean Air Act of Montana unless a majority of members of the board at the time of the action:

(a) represent the public interest; and

(b) do not derive a significant portion of income from regulated persons.

(History: 75-2-111, MCA; IMP, 75-2-111, MCA; NEW, 2015 MAR p. 1903, Eff. 10/30/15.)

17.8.152 REPORTING (1) At the first meeting each calendar year and prior to the first meeting following a change in the board's membership, each board member who represents the public interest and does not derive a significant portion of income from regulated persons shall file with the board secretary a written certification of this status.

(2) If, subsequent to making a certification under (1), a board member no longer represents the public interest or has begun to derive a significant portion of income from regulated persons, the member shall file with the board a written withdrawal of certification.

(3) Whenever the board is prohibited by ARM 17.8.151 from taking action, the chairman shall notify the Governor of this fact in writing and shall in the notice list the members of the board who do not represent the public interest or who derive a significant portion of income from regulated persons.

(4) Each board member who has a potential conflict of interest shall file with the board a written disclosure of the interest that creates the potential conflict. (History: 75-2-111, MCA; IMP, 75-2-111, MCA; NEW, 2015 MAR p. 1903, Eff. 10/30/15.)