

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.55.109 pertaining to incorporation by)
reference)
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NOTICE OF PROPOSED
AMENDMENT

(CECRA)

NO PUBLIC HEARING
CONTEMPLATED

TO: All Concerned Persons

1. On April 28, 2014, the Department of Environmental Quality proposes to amend the above-stated rule.

2. The department 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 Elois Johnson, Paralegal, no later than 5:00 p.m., March 24, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.55.109 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference:

(a) through (c) remain the same.

(d) U.S. Environmental Protection Agency, Regional Screening Levels for Chemical Contaminants at Superfund Sites (November ~~2014~~ 2013), except when:

(i) through (iii) remain the same.

(e) Montana Department of Environmental Quality, Remediation Division, Action Level for Arsenic Table 4-4, Background Concentrations of Inorganic Constituents in Montana Surface Soil (~~April 2005~~ September 2013); and

(f) through (5) remain the same.

AUTH: 75-10-702, 75-10-704, MCA

IMP: 75-10-702, 75-10-704, 75-10-711, MCA

REASON: It is necessary to update the regional screening level reference to allow the department to use the most recent version of the document. The regional screening levels are used to screen potential risk at a wide variety of sites. They are being used by various states and EPA and provide screening values that provide the same levels of protection for non-petroleum compounds as are provided by the risk-based guidance for petroleum previously adopted by the department. The regional

screening levels are based on ingestion, inhalation, and dermal contact and include residential and industrial exposure. These regional screening levels also provide soil screening levels that address migration to ground water. The department is proposing to incorporate the most recent version of the regional screening levels to ensure updates, based on new toxicity data or other factors, are adequately considered. EPA updated the regional screening levels in November 2013 and the primary updates are summarized below.

EPA presented tables with target hazard quotients of 1.0 and 0.1. Because ARM 17.55.109(1)(d)(i) already requires this adjustment, addition of the table with a target hazard quotient of 0.1 does not result in a rule change. Twenty-one chemicals have new toxicity values due to updates in EPA's provisional peer-reviewed toxicity values paper and updates by the Agency for Toxic Substances and Disease Registry (ATSDR) and the California Environmental Protection Agency. The reference doses for the numbered, dioxin-like polychlorinated biphenyls in the 2013 screening levels are based on the dioxin reference dose. The high aliphatic and high aromatic total petroleum hydrocarbons are classified as semi-volatile organic compounds and all the total petroleum hydrocarbons are given chemical-specific parameters. Chemical-specific parameter assignment is based on the representative compound identified in the provisional peer-reviewed toxicity values, when available. The medium aliphatic total petroleum hydrocarbon has a surrogate listed in the provisional peer-reviewed toxicity values paper, so n-nonane is assigned. Glyphosate soil organic carbon-water partitioning coefficient is updated. Thiocyanic acid is given the chemical abstract service (CAS) number 463-56-9. This number was previously assigned to thiocyanate. Vanadium and compounds are given the CAS number 7440-62-2; previously they did not have a CAS number. This results in the database matching a reference concentration from ATSDR. The calculator, if operated in site-specific mode would now give the option to substitute the ceiling saturation concentration for the inhalation route screening level as well as giving the opportunity to substitute the theoretical concentration limit of 1E+05 mg/kg for the total screening level. Arsenic screening levels for ingestion of soil would be calculated with the relative bioavailability factor of 0.6.

Using the most current toxicity criteria is necessary to ensure that the department will be adequately protective of human health and the environment when compounds are involved that have been determined to be more toxic than previously understood. In addition, when compounds are determined to be less toxic than previously understood, using the most current screening levels allows the department and stakeholders to focus on sites with contaminant concentrations that may actually represent a risk.

The department also proposes to replace the 2005 arsenic background action level of 40 milligrams/kilogram (mg/kg) with Table 4-4 from the September 2013 report on Background Concentrations of Inorganic Constituents in Montana Surface Soil, which establishes Montana-specific background action levels for a number of inorganic compounds. This report presents the results of an investigation of background concentrations of inorganic constituents in Montana surface soils implemented by the department in 2012-2013. Generic background concentrations of inorganic soil constituents that may be applicable to sites in Montana was previously published by the department in 2007 and was based upon background

concentrations obtained from various statewide, regional, or national studies and investigations. The department recognized the need for more state-specific information on background concentrations of arsenic in soils and, in 2005, established a generic action level for arsenic in surface soil based on an assessment of background soil arsenic concentrations from across Montana. This generic action level was established in recognition that arsenic may occur naturally in Montana soils at levels above risk-based concentrations such as those found in the regional screening levels. In the 2005 paper, the department established arsenic background at 40 mg/kg, compared with the generic EPA regional screening level for residential soils of 0.61 mg/kg. However, the department recognized that a number of inorganic constituents may be present at background concentrations that exceed risk-based concentrations. Therefore, the department completed the September 2013 report, which was designed to provide a coherent set of data for inorganic parameters in surface soils across the state, with representative samples collected using consistent procedures, analyzed using consistent methods, and distributed geographically to provide complete statewide coverage. The analytical results for these samples were evaluated to determine statistically valid background surface soil concentrations that may be used throughout the state as background threshold values for screening contamination at facilities. Table 4-4 of the report summarizes the calculated background threshold values for aluminum, antimony, arsenic, barium, beryllium, cadmium, chromium (III), chromium (VI), cobalt, copper, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, vanadium, and zinc.

All of the documents incorporated by reference are available on the department's web site at: <http://deq.mt.gov/StateSuperfund/default.mcp.x>. In addition, these documents are available upon request from the Department of Environmental Quality, Remediation Division, P.O. Box 200901, Helena, MT 59620-0901.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than April 14, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than April 14, 2014.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a

hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be six based on 60 liable or potentially liable persons under 75-10-715, MCA, who have received notice letters at facilities DEQ is currently addressing.

7. 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 supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North

JOHN F. NORTH
Rule Reviewer

BY: /s/ Tracy Stone-Manning

TRACY STONE-MANNING, Director

Certified to the Secretary of State, March 3, 2014.