

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.56.607 pertaining to release)	PROPOSED AMENDMENT
categorization)	
)	(UNDERGROUND STORAGE
)	TANKS)

TO: All Concerned Persons

1. On August 27, 2014, at 1:30 p.m., the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., August 13, 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:

17.56.607 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 approved by the department allows the mixing zone to extend off the facility property. ~~A petroleum mixing zone may extend no further than 500 feet from the origin of the release.~~ 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;

~~(j) a petroleum mixing zone may not extend to within 500 feet of an existing drinking water well or surface water;~~

(k) a petroleum mixing zone may not extend either beyond 500 feet from the origin of the release or within 500 feet of an existing drinking water well or surface water unless the department determines, in writing and based on site-specific circumstances, that a shorter distance, specified in the determination, will ensure present and long-term protection of human health and safety and of the environment in the specific circumstances. In making this determination, the department shall consider the following factors:

(i) the specific contaminants and concentrations involved;

(ii) the nature, hydrogeologic characteristics, and quality of the aquifer(s) involved;

(iii) the nature and quality of any well or surface water potentially affected;

(iv) the degree of certainty that site-specific scientific data supports the determinations made pursuant to (c), (d), (g), and (h); and

(v) any other consideration determined by the department to be relevant in the particular circumstances.

(k) through (k)(iv) remain the same, but are renumbered (l) through (l)(iv).

~~(j)~~ (m) a notice is placed on the deed of all parcels of real property on which the facility is located that is the source of the release is resolved with a petroleum mixing zone ~~release is located~~. This deed notice must describe the nature and location of the residual contamination remaining in the soil and ground water at the facility and must describe all institutional controls, engineering controls, physical conditions, or other controls or conditions required to maintain the petroleum mixing zone.

(11) and (12) remain the same.

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

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

REASON: The proposed amendment is necessary to allow for closure of petroleum release sites where the available scientific data indicates that site-specific conditions are sufficiently protective of human health and safety and the environment to justify resolution of the release even though the petroleum mixing zone (PMZ) extends beyond 500 feet from its source or extends to within 500 feet of drinking water wells or surface water.

The department has a list of several petroleum release sites regulated under the Montana Underground Storage Tank Act, 75-11-501, et. seq., MCA, that could be resolved using a petroleum mixing zone, except that they do not meet the 500 foot criteria. The cost to continue to monitor these sites over a period of years is significant and may not be warranted where adequate protection for human health, safety and the environment can be provided at some sites without meeting the 500 foot criteria. Additionally, the inability to close these active petroleum releases with a

petroleum mixing zone hinders business development and makes it more difficult to sell the property due to liability issues and the stigma associated with environmental contamination, which makes it difficult to obtain loans or other sources of funding to purchase the property.

The department is proposing to amend (l) (renumbered (m)) to correct grammatical errors in the language. As corrected, the language clearly implements the department's intent when the language was initially adopted.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., September 4, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Becky Convery, attorney, has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; open-cut 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 (406) 444-4386; e-mailed to ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

8. With regard to the requirements of 2-4-111, MCA, the 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, July 28, 2014.