

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the repeal of ARM)	NOTICE OF PUBLIC HEARING ON
17.4.201, 17.30.645, 17.30.1386,)	PROPOSED REPEAL
17.30.1401, 17.30.1402, 17.30.1405,)	
17.30.1406, 17.30.1407, 17.30.1410,)	(PROCEDURAL RULES)
17.30.1411, 17.30.1412, 17.30.1413,)	(WATER QUALITY)
17.30.1414, 17.30.1419, 17.30.1420,)	(PUBLIC WATER SUPPLY AND
17.30.1421, 17.30.1425, 17.30.1426,)	SEWAGE SYSTEM
17.30.1602, 17.30.2001, 17.30.2003,)	REQUIREMENTS)
17.38.601, 17.38.602, 17.38.603, and)	
17.38.607 pertaining to water pollution)	
rules, radiological criteria, state and EPA)	
coordination, pretreatment, definitions,)	
enforcement actions for administrative)	
penalties, purpose, definitions, enforcement))	
procedures, and suspended penalties)	

TO: All Concerned Persons

1. On January 14, 2016, at 9:30 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed repeal of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., January 5, 2016, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rules proposed for repeal are as follows:

17.4.201 WATER POLLUTION RULES (AUTH: 2-4-201, 2-4-202, MCA; IMP: 75-5-307, MCA), located at page 17-91, Administrative Rules of Montana.

REASON: This rule merely repeats statutory requirements contained in 75-5-307(1), MCA. The statute is self-implementing and the rule is therefore unnecessary. Section 2-4-305(2), MCA, provides that rules may not unnecessarily repeat statutory language.

17.30.645 RADIOLOGICAL CRITERIA (AUTH: 75-5-201, 75-5-301, MCA; IMP: 75-5-301, MCA), located at page 17-2753, Administrative Rules of Montana.

REASON: This rule merely prohibits violation of radiological criteria in

Department Circular DEQ-7. Violation of any provision of DEQ-7 is "pollution," as defined in 75-5-301(30)(a), MCA. Causing pollution is prohibited by 75-5-605(1)(a), MCA, and the rule is therefore unnecessary. Section 2-4-305(2), MCA, provides that rules may not unnecessarily repeat statutory language.

17.30.1386 STATE AND EPA COORDINATION (AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA), located at page 17-3002, Administrative Rules of Montana.

REASON: This rule specifies reporting requirements from the Department of Environmental Quality (department) to the Environmental Protection Agency (EPA) regarding MPDES permitting. It was adopted in 1989 to comply with EPA requirements then in effect. Those requirements have since been modified. Current reporting requirements are contained in annual agreements entered into between EPA and the department. Therefore, this rule is unnecessary.

17.30.1401 APPLICABILITY (AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3025, Administrative Rules of Montana.

17.30.1402 DEFINITIONS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3025, Administrative Rules of Montana.

17.30.1405 LOCAL LAW (AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3029, Administrative Rules of Montana.

17.30.1406 NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3029, Administrative Rules of Montana.

17.30.1407 NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3031, Administrative Rules of Montana.

17.30.1410 REMOVAL CREDITS (AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3033, Administrative Rules of Montana.

17.30.1411 PRETREATMENT PROGRAMS: DEVELOPMENT BY POTW (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3033, Administrative Rules of Montana.

17.30.1412 POTW PRETREATMENT PROGRAMS AND AUTHORIZATION TO REVISE PRETREATMENT STANDARDS: SUBMISSION FOR APPROVAL (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3041, Administrative Rules of Montana.

17.30.1413 APPROVAL PROCEDURES FOR POTW PRETREATMENT PROGRAMS AND POTW GRANTING OF REMOVAL CREDITS (AUTH: 75-5-201,

75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3043, Administrative Rules of Montana.

17.30.1414 REPORTING REQUIREMENTS FOR POTW'S AND INDUSTRIAL USERS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3047, Administrative Rules of Montana.

17.30.1419 CONFIDENTIALITY OF INFORMATION (AUTH: 75-5-201, 75-5-105, MCA; IMP: 75-5-401, MCA), located at page 17-3059, Administrative Rules of Montana.

17.30.1420 NET/GROSS CALCULATION (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3059, Administrative Rules of Montana.

17.30.1421 UPSET PROVISION (AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3059, Administrative Rules of Montana.

17.30.1425 BYPASS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3063, Administrative Rules of Montana.

17.30.1426 MODIFICATION OF POTW PRETREATMENT PROGRAMS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3064, Administrative Rules of Montana.

REASON: Title 17, chapter 30, subchapter 14 was also adopted in December of 1989, in preparation for the Department of Health and Environmental Sciences (now the Department of Environmental Quality) receiving delegation of the federal pretreatment program. However, because of lack of funding, neither department accepted the delegation. Therefore, the pretreatment program for Montana is operated by EPA and these rules have never been implemented. The rules do not reflect current EPA requirements. Therefore, if the department were to seek delegation, it would be better to adopt new rules rather than to modify these rules. Retaining outdated rules for a program that the department does not administer causes confusion.

17.30.1602 EMERGENCY PROCEDURE (AUTH: 75-5-201, MCA; IMP: 75-5-621, MCA), located at page 17-3115, Administrative Rules of Montana.

REASON: This rule merely repeats statutory requirements contained in 75-5-621, MCA. The statute is self-implementing and the rule is therefore unnecessary. Section 2-4-305(2), MCA, provides that rules may not unnecessarily repeat statutory language.

17.30.2001 DEFINITIONS (AUTH: 75-5-201, MCA; IMP: 75-5-611, MCA), located at page 17-3171, Administrative Rules of Montana.

REASON: Class of violation definitions in ARM 17.30.2001(1) through (3) are outdated and are no longer necessary. Definitions in ARM 17.30.2001(4) through (7) are for commonly understood terms and are no longer necessary. Therefore, this rule is proposed to be repealed.

17.30.2003 ENFORCEMENT ACTIONS FOR ADMINISTRATIVE PENALTIES (AUTH: 75-5-201, MCA; IMP: 75-5-611, MCA), located at page 17-3175, Administrative Rules of Montana.

REASON: The board promulgated ARM 17.30.2001 through 17.30.2006 in April 1998 to establish administrative penalty calculation procedures for the Montana Water Quality Act. The board's predecessor, the Board of Health and Environmental Sciences, promulgated ARM 17.38.601 through 17.38.607 in February 1995 to establish administrative enforcement procedures and administrative penalties for the Public Water Supply Laws.

Legislation passed in 2005 established a standard set of penalty factors that must be considered in penalty calculations. See 75-5-1001, MCA. In May 2006, the board promulgated new rules to establish a penalty calculation process based on the statutory penalty factors in ARM 17.4.301 through 17.4.308. The new penalty calculations rules apply to penalties assessed under the Water Quality and Public Water Supply Acts. Upon promulgation of the new penalty rules, the majority of the old water quality and public water supply penalty calculation rules were repealed. However, the board did not repeal definitions and some procedural parts of the old rules in order to help guide the department's determination of the gravity factor under the new rules. After nine years of implementation of the new penalty rules, it is apparent that the remaining portions of the old water quality and public water supply penalty rules are no longer needed.

ARM 17.30.2001 is proposed for repeal because it contains definitions for terms used in rules that are proposed for repeal.

Most of ARM 17.30.2003(1) and (2) duplicate procedures described in 75-5-611 and 75-5-617, MCA. ARM 17.30.2003(3) describes a standard procedure regarding service of certified mail and is not needed. ARM 17.30.2003(4) states that a notice letter sent in accordance with 75-5-611(1), MCA, satisfies the requirement to send a notice letter as required in 75-5-617(2), MCA. Both sections of law require the department to send a notice letter. Because it is obviously most efficient to send only one notice letter, this declaration in rule is not needed.

ARM 17.30.2003(5) and (6) establish a procedure under which the department may not assess a penalty if the violator submits a letter that certifies that the activity was or is now in compliance or proposes a corrective action plan to return the activity to compliance. The department must respond to the letter within 30 days and determine if the violator's response was adequate. If inadequate or if adequate but not complied with, the department may issue an order that assesses a penalty. These provisions unduly limit the department's enforcement discretion.

ARM 17.30.2003(7) duplicates 75-5-611(2), MCA, and (8) merely references the standard penalty rules.

ARM 17.30.2003(9) is unnecessary if the previous sections are no longer in effect.

17.38.601 PURPOSE (AUTH: 75-6-103, MCA; IMP: 75-6-109, MCA), located at page 17-3667, Administrative Rules of Montana.

REASON: This rule describes the purpose of the PWS rules that establish administrative enforcement procedures and penalties. Because the board is repealing the remaining rules, the purpose statement is no longer applicable.

17.38.602 DEFINITIONS (AUTH: 75-6-103, MCA; IMP: 75-6-109, MCA), located at page 17-3667, Administrative Rules of Montana.

REASON: ARM 17.38.602 is proposed for repeal because it contains definitions for terms used in rules that are proposed for repeal.

17.38.603 ENFORCEMENT PROCEDURES (AUTH: 75-6-103, MCA; IMP: 75-6-109, MCA), located at page 17-3668, Administrative Rules of Montana.

REASON: Because the definitions for class of violation are proposed to be repealed, ARM 17.38.603(1) is no longer needed. ARM 17.38.603(2) unnecessarily lists requirements or conditions that may be included in orders. ARM 17.38.603(3) duplicates statutory language found in 75-6-110(3), MCA. Therefore, this rule is proposed to be repealed.

17.38.607 SUSPENDED PENALTIES (AUTH: 75-6-103, MCA; IMP, 75-6-109, MCA), located at page 17-3673, Administrative Rules of Montana.

REASON: This rule does not conform to existing statutes and is proposed to be repealed.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., January 21, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

6. The board 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; 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 the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the repeal of the above-referenced rules 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/ Joan Miles

JOAN MILES, CHAIRMAN

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