

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
17.50.1612, 17.50.1617, 17.50.1618,)	AMENDMENT
17.55.109, 17.56.507, and 17.56.608)	
pertaining to adoption by reference the)	(WASTE MANAGEMENT)
most current version of the Montana)	(REMEDIATION)
Risk-Based Corrective Action (RBCA))	(PETROLEUM TANKS)
guidance for Petroleum Releases)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On January 18, 2019, the Department of Environmental Quality (department) proposes to amend the above-stated rules.

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 Sandy Scherer, Legal Secretary, no later than 5:00 p.m., January 11, 2019, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

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

17.50.1612 ANALYTICAL METHODS (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) remains the same.

(b) Montana Risk-based Corrective Action Guidance for Petroleum Releases, (~~September 2016~~ May 2018) as the analytical methodology landfarms must utilize and Table 1 of the Montana Risk-based Corrective Action Guidance for Petroleum Release as the standards for compliance with remediation requirements outlined in ARM 17.50.1617. A copy of the Montana Risk-based Corrective Action Guidance for Petroleum Releases, (~~September 2016~~ May 2018) may be obtained at <http://deq.mt.gov/Land/lust> or by contacting MDEQ at P.O. Box 200901, Helena, MT 59620-0901 or 1 (406) 444-6435.

(2) remains the same.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: The department is proposing to amend ARM 17.55.109, 17.56.507, and 17.56.608 to adopt and incorporate by reference the most recent edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases. In the event these administrative rules are amended to adopt and incorporate by reference the Montana Risk-based Corrective Action Guidance for Petroleum Releases (May 2018), it is necessary to update the edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases cited elsewhere in the rules.

17.50.1617 LANDFARM FACILITY REMEDIATION STANDARDS

- (1) Contaminated soils are considered remediated when:
- (a) contaminant concentrations listed in Montana Risk-based Corrective Action Guidance for Petroleum Releases, Table 1 (~~September 2016~~ May 2018) are permanently reduced to the residential RSBL concentrations.
 - (2) and (3) remain the same.
 - (4) The owner or operator of a landfarm facility may not supply or use soils for any purpose exceeding the contaminant concentrations specified in Montana Risk-based Corrective Action Guidance for Petroleum Releases, Table 1 (~~September 2016~~ May 2018).
 - (5) remains the same.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: The department is proposing to amend ARM 17.55.109, 17.56.507, and 17.56.608 to adopt and incorporate by reference the most recent edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases. In the event these administrative rules are amended to adopt and incorporate by reference the Montana Risk-based Corrective Action Guidance for Petroleum Releases (May 2018), it is necessary to update the edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases cited elsewhere in the rules.

- 17.50.1618 CLOSURE PLAN (1) For purposes of closure of a landfarm facility, the owner or operator of a landfarm facility shall submit a closure plan that documents the following:
- (a) through (c)(ii) remain the same.
 - (iii) all contaminated soils were remediated to Table 1 residential RSBL concentrations in the Montana Risk-based Corrective Action Guidance for Petroleum Releases, (~~September 2016~~ May 2018) and are capable of supporting native vegetation;
 - (d) through (3) remain the same.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: The department is proposing to amend ARM 17.55.109, 17.56.507, and 17.56.608 to adopt and incorporate by reference the most recent edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases. In the event these administrative rules are amended to adopt and incorporate by reference the Montana Risk-based Corrective Action Guidance for Petroleum Releases (May 2018), it is necessary to update the edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases cited elsewhere in the rules. See the reason statement for ARM 17.50.1612 above.

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

(a) and (b) remain the same.

(c) Montana Tier 4 Risk-based Corrective Action Guidance for Petroleum Releases (~~September 2009~~ May 2018);

(d) U.S. Environmental Protection Agency, Regional Screening Levels for Chemical Contaminants at Superfund Sites (RSL) Tables (~~November 2013~~ 2018), except when:

(i) 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: In (1)(c), the department is proposing to adopt and incorporate by reference the most recent edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases. The department conducts periodic reviews of the Montana Risk-based Corrective Action Guidance for Petroleum Releases to determine if changes to methods and toxicity information warrant updating the guidance. In addition to editorial and other minor changes, the following updates were made in the May 2018 edition:

1. Updated toxicity values for benzo(a)pyrene and the other carcinogenic polycyclic aromatic hydrocarbons (PAHs) with toxicity relative to benzo(a) pyrene used to calculate direct contact risk-based screening levels (EPA 2017).
2. Updated groundwater risk-based screening levels to reflect updated Circular DEQ-7 human health standards (DEQ 2017).
3. Updated risk-based screening levels based on leaching to groundwater to protect 2017 DEQ-7 human health standards.
4. Clarifying language regarding Tier 2 procedures.
5. The 2018 Risk-based screening levels for soil and water were not updated to be protective of risks posed by a vapor intrusion (VI) pathway. In 2016, the department added some discussion related to vapor intrusion and included a description of its Air Phase Hydrocarbon (APH) Calculator. However, if volatile compounds are present in the vicinity of habitable structures, then the vapor intrusion pathway should be evaluated either qualitatively or quantitatively using the Montana Vapor Intrusion Guide (DEQ, 2011). In addition, the department completed a study and published a report called Typical Indoor Air Concentrations of Volatile Organic Compounds in Non-Smoking Montana Residences Not Impacted by VI

(DEQ, 2012). These vapor intrusion documents are guidance and are not considered regulation. The department has not adopted the EPA Petroleum Vapor Intrusion Guidance or the EPA Vapor Intrusion Screening Level Calculator.

A copy of the Montana Risk-based Corrective Action Guidance for Petroleum Releases (May 2018) may be obtained by contacting Aimee Reynolds at (406) 444-6435. A copy of the document also has been posted on the department's website at <http://deq.mt.gov/Land/lust>.

In addition, the department is proposing to amend (1)(c) to correct the title of the document being incorporated by reference. The term "Tier 1" was removed in the most recent update.

In (1)(d), the department is proposing to adopt and incorporate by reference the most recent edition of the Tables set forth in the U.S. Environmental Protection Agency, Regional Screening Levels (RSL) for Chemical Contaminants at Superfund Sites (November 2018) to provide the most current screening levels to protect human health and the environment. Superfund sites are addressed under the authority of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) OF 1980, which was amended by the 1986 Superfund Amendments and Reauthorization Act. RSLs provide a screening level calculation tool to assist risk assessors, remedial project managers, and others involved with risk assessment and decision-making at CERCLA sites in developing or refining screening levels.

A copy of the U.S. Environmental Protection Agency Regional Screening Level Tables for Chemical Contaminants at Superfund Sites (November 2018) may be obtained by contacting Aimee Reynolds at (406) 444-6435. A copy of the document has also been posted on EPA's website at <https://www.epa.gov/risk/regional-screening-levels-rsls>.

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

- (a) remains the same.
- (b) Montana Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) (~~September 2016~~ May 2018);
- (c) U.S. Environmental Protection Agency, Regional Screening Level (RSL) Tables (~~May 2016~~ November 2018); and
- (d) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: The department is proposing to adopt and incorporate by reference the most recent edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases, which was issued in May of 2018. The department is also proposing to adopt by reference the most recent edition of the Tables set forth in U.S. Environmental Protection Agency, Regional Screening Level (RSL), which was issued in November 2018. See the statement of reasonable necessity for ARM 17.55.109.

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

(a) and (b) remain the same.

(c) Montana Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) (~~September 2016~~ May 2018); and

(d) through (3) remain the same.

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

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

REASON: The department is proposing to adopt and incorporate by reference the most recent edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases, which was issued in May of 2018. See the statement of reasonable necessity for ARM 17.55.109.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to Sandy Scherer, Legal Secretary, 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 sscherer@mt.gov, no later than 5:00 p.m., January 11, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed amendment 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 to Sandy Scherer at the above address no later than 5:00 p.m., January 11, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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 one based on no persons being affected by the proposed amendment.

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; wind energy, 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 Sandy Scherer, Legal Secretary, 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 Sandy Scherer at sscherer@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 rules will not impact small businesses.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

BY: /s/ Shaun McGrath
SHAUN McGRATH
Director

Certified to the Secretary of State, December 11, 2018.