

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE TO HOLD VIRTUAL
17.8.501, 17.8.504, 17.8.505, and)	PUBLIC HEARING ON
17.8.510 pertaining to air quality)	PROPOSED AMENDMENT
operation fees)	
)	(AIR QUALITY)

TO: All Concerned Persons

1. On September 25, 2020, at 10:00 a.m., the Board of Environmental Review (board) will hold a virtual public hearing via Zoom, to consider the proposed amendment of the above-stated rules.

Due to the guidance issued by the Governor of the State of Montana on March 26, 2020, regarding the COVID-19 public health situation, the public hearing will be held virtually via the Zoom meeting platform and will be recorded. Persons wishing to attend the public hearing need to register in advance with Zoom. Registration with Zoom may be made at the following link: <https://mt.gov.zoom.us/j/93922857437?pwd=R1FiWjN6d1htRnlxZ2NMVk9MRi9xdz09>. After registering, you will receive a confirmation email containing information about joining the hearing. Please contact Sandy Scherer at the Department of Environmental Quality at (406) 444-2630 or sscherer@mt.gov should you encounter any difficulties.

2. The board 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 no later than 5:00 p.m., September 18, 2020, 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. GENERAL STATEMENT OF REASONABLE NECESSITY: Under 75-2-220, MCA, the Department of Environmental Quality (department) assesses air quality permit application, registration, and annual air quality operation fees that are sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting and registration requirements for the Clean Air Act of Montana. Under ARM 17.8.510, the department is required to report to the board annually concerning the structure and amount of air quality fees. The amount of revenue the department needs to generate through the collection of air quality fees depends primarily on the amount of the legislative appropriation, projected expenditures, and projected revenue.

On April 12, 2019, the board adopted new rules to require the department's Air Quality Bureau to implement a registration program for sand and gravel, asphalt, and concrete facilities. Previously, the Clean Air Act of Montana required the owner or operator of a source of air pollution that met certain criteria to obtain a permit prior to construction or operation. Section 75-2-234, MCA, authorizes the board to adopt

a registration system in lieu of permitting, for certain classes of sources of air contaminants.

The last time the board raised air quality operation fees for sand and gravel, asphalt, and concrete facilities was in 2009. The annual operation fee for each permitted facility increased from \$600 to \$800.

As the Air Quality Bureau transitions from a permitting program to a registration program, a new fee structure is required. The annual operating permit fee was \$800 per year per source, and without these proposed rule amendments, there would be no operating fee for registered sand and gravel, asphalt, and concrete facilities. The statute, 75-2-220(1), MCA, requires programs to pay fees to cover the costs of implementation and enforcement, which will be considered under 75-2-111(5), MCA, when the rule is amended. The amended rule is designed to be revenue neutral, to generate about the same amount of funding from the new registration program as from the old permit program. The cost of administering the program is about \$275,000/year. The department will annually assess whether the fee rates are adequate to fund the work of the program and plans to request to return to the board when needed to adjust the fees to cover the costs of the program.

According to 2-4-302, MCA, the department is required to provide information about the number of persons affected by a fee change and the cumulative amount of the change. In 2018, the Air Quality Bureau collected \$276,000 in operating fees from approximately 140 companies operating 345 permitted sand and gravel, asphalt, and concrete facilities. These facilities were also required to pay an air quality permit application fee of \$500 when obtaining a new or modified permit, but that application fee would no longer apply to such facilities under the proposed rulemaking.

If the rules are amended, there would be a monetary effect on approximately 140 companies that are required to register. A registered facility is no longer required to pay the application fee to obtain a permit. With the amendment of ARM 17.8.504(5), application fees for registered facilities apply only to registered oil and gas well facilities. Based on production information received from companies in 2019, under the proposed fee structure, 115 entities will incur a reduction in fees and 37 will experience an increase. Under the proposed fee structure, the total collected in operating fees from registered sand and gravel, asphalt, and concrete facilities will be \$280,000. This amount is intended to replace the amount collected from both permit operation fees and application fees in previous years. Under the proposed amendments, sand and gravel, asphalt, and concrete facilities would no longer pay any application fee, only an annual operation fee.

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

17.8.501 DEFINITIONS (1) through (7) remain the same.

(8) "Registered sand and gravel, asphalt, and concrete facility" means any facility registered in accordance with ARM Title 17, chapter 8, subchapter 18.

AUTH: 75-2-111, MCA

IMP: 75-2-211, MCA

REASON: Section (8) is necessary to define "registered sand and gravel, asphalt, and concrete facility." That phrase is used in the proposed rules, and is not defined elsewhere in ARM Title 17, chapter 8, subchapter 5. It would add more specificity to the types of facilities that are required to register in the proposed rule amendments.

17.8.504 AIR QUALITY PERMIT APPLICATION FEES (1) through (4) remain the same.

(5) Concurrent with submittal of a registration form, as specified in ARM 17.8.1701 through 17.8.1705, the owner or operator of an oil and gas facility shall submit a registration fee of \$500.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA

IMP: 75-2-211, 75-2-220, 75-2-234, MCA

REASON: Section (5) provides that each registered oil and gas facility must pay a \$500 registration fee when it submits a registration form pursuant to ARM Title 17, chapter 8, subchapter 17. There is no application fee or registration fee for the registration of sand and gravel, asphalt, and concrete facilities under ARM Title 17, chapter 8, subchapter 18.

17.8.505 AIR QUALITY OPERATION FEES (1) An annual air quality operation fee must be submitted to the department by the owner or operator of each facility:

(a) remains the same.

(b) for which an air quality operating permit has been issued by the department and remains in effect; ~~and~~

(c) that is a registered oil and gas facility; or with the department in accordance with ARM 17.8.1701 through 17.8.1705.

(d) that is a registered sand and gravel, asphalt, and concrete facility.

(2) remains the same.

(3) Air quality permit fee schedules ~~will~~ must require owners and operators of all facilities required to obtain a Montana air quality permit or an air quality operating permit to contribute to those department activities funded by air quality permit fees. The department shall attempt to identify all facilities subject to the annual air quality operating fee requirement and shall require payment from the owners or operators of all facilities.

(4) through (6) remain the same.

(7) Except as provided in (8), the air quality operation fee for:

(a) a facility facilities other than a portable facility facilities, registered sand and gravel, asphalt, and concrete facility, or registered oil and gas well facility facilities is:

~~(a)(i)~~ (i) an administrative fee of \$900; and

~~(b)(ii)~~ (ii) a tonnage fee of ~~an amount not to exceed~~ \$44.35 per ton of the actual, or the estimated actual, emissions by the facility during the previous calendar year of

PM-10, sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds.

~~(8)(b) The air quality operation fee for a portable facility facilities subject to ARM Title 17, chapter 8, subchapter 7 is \$800; and~~

(c) a registered sand and gravel, asphalt, and concrete facility is determined by multiplying total tons produced annually at:

(i) asphalt plants by \$0.05;

(ii) crushers/screeners by \$0.01; and

(iii) concrete batch plants by \$0.05.

(8) If the amount determined under (7)(c) is:

(a) less than \$500, the fee is \$500; or

(b) greater than \$13,000, the fee is \$13,000.

(9) through (13) remain the same.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA

IMP: 75-2-211, 75-2-220, 75-2-234, MCA

REASON: The proposed amendments to (1)(c) and (1)(d) are necessary to establish an operation fee for two types of registered facilities: (1) oil and gas facilities and (2) sand and gravel, asphalt, and concrete facilities.

The proposed amendments to (7)(a) are necessary to add registered sand and gravel, asphalt, and concrete facilities to the types of registered facilities that are exempt from the \$900 administrative fee and the \$44.35 per ton fee, which apply to permitted, and not registered, facilities. An amendment is necessary to remove a phrase ("an amount not to exceed") that was inadvertently left in the rule the last time it was amended. The proposed amendment to (7)(b) is necessary to establish that portable facilities required to have a permit in ARM Title 17, chapter 8, subchapter 7, which are all portable facilities other sand and gravel, asphalt, and concrete facilities, must pay an operation fee of \$800.

Sections (7)(c) and (8) are necessary to determine the registration fee for registered sand and gravel, asphalt, and concrete facilities as defined in ARM Title 17, chapter 8, subchapter 18. The proposed rule in (8) will establish a minimum and maximum fee to be paid by sand and gravel, asphalt, and concrete facilities. This funding structure is not an effort to increase revenue beyond historic levels, but rather to collect sufficient funds to continue to operate an effective air quality program. The amount a registered facility will pay is commensurate with the extent of work required by the department to register and provide compliance assistance to the facility. The proposed fee structure in ARM 17.8.505 will result in a more equitable system for the fee payers; smaller, lower production facilities will pay less than larger, higher production facilities.

17.8.510 ANNUAL REVIEW (1) No later than September 30 of each year, the department shall report to the board regarding ~~the air quality permit fees associated with air quality permits and facility registrations~~, which are anticipated for the next calendar year. This report shall include a description of the legislative appropriation to be recovered, the status of the specific appropriation account as of the end of the previous fiscal year, the emissions upon which such fees will be based, the fee structure to be implemented, and the status of any anticipated

rulemaking activity necessary to adopt the new fees.

AUTH: 75-2-111, MCA
IMP: 75-2-211, MCA

REASON: The proposed amendment to (1) would add fees for registered facilities to the items about which the department is required to report to the board annually. The rule requires the department report on air quality permit fees only. Under 75-2-111, MCA, the board is authorized to adopt a schedule of fees for permits, permit applications, and registrations. The annual report to the board required in ARM 17.8.510 ensures the department is satisfying the requirement to make the board aware of anticipated air quality permit and registration fee changes in the next calendar year.

5. 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 Sandy Scherer, 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 sscherer@mt.gov, no later than 5:00 p.m., September 25, 2020. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; solar and wind energy bonding, 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, 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 Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

7. Sarah Clerget, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

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 board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Angela Colamaria
ANGELA COLAMARIA
Rule Reviewer

BY: /s/ Christine Deveny
CHRISTINE DEVENY
Chair

Certified to the Secretary of State, August 18, 2020.