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BOARD REFERENCE GUIDE

Petroleum Tank Release Compensation Board

BOARD LAWS

BOARD RULES

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75-11-301. Intent, findings, and purposes. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this part. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) The legislature finds that the use of petroleum products stored in tanks contributes significantly to the economic well-being and quality of life of Montana citizens.

(3) The legislature finds that leaks, spills, and other releases of petroleum products from storage tanks endanger public health and safety, ground water quality, and other state resources.

(4) The legislature finds that current administrative and financial resources of the public and private sectors are inadequate to address problems caused by releases from petroleum storage tanks and need to be supplemented by a major program of release detection and corrective action.

(5) The legislature finds that proper funding for the program is through a petroleum storage tank cleanup fee paid by persons who use and receive the benefits of petroleum products. The legislature further finds that this general use fee, provided for in 75-11-314, is intended solely to support a program to pay for corrective action and damages caused by releases from petroleum storage tanks. The general use fee is collected from distributors for administrative convenience and is not intended as a method for collecting highway revenue pursuant to the provisions of Article VIII, section 6, of the Montana constitution.

(6) The purposes of this part are to:

(a) protect public health and safety and the environment by providing prompt detection and cleanup of petroleum tank releases;

(b) provide adequate financial resources and effective procedures through which tank owners and operators may undertake and be reimbursed for corrective action and payment to third parties for damages caused by releases from petroleum storage tanks;

(c) assist certain tank owners and operators in meeting financial assurance requirements under state and federal law governing releases from petroleum storage tanks; and

(d) provide tank owners with incentives to improve petroleum storage tank facilities in order to minimize the likelihood of accidental releases.

History: En. Sec. 1, Ch. 528, L. 1989; amd. Sec. 1, Ch. 763, L. 1991; amd. Sec. 1, Ch. 339, L. 1993; amd. Sec. 19, Ch. 361, L. 2003.

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75-11-302. Definitions. Except as provided in subsections (2), (14), and (25), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

(2) "Aviation gasoline" means aviation fuel as defined in 15-70-401. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Distributor" means a person who is licensed to sell gasoline or special fuel, as provided in 15-70-402, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with ethanol or blends heating oil with waste oil.

(9) "Eligible costs" means expenses reimbursable under 75-11-307.

(10) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(11) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(12) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(13) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(14) "Gasoline" means gasoline as defined in 15-70-401. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(15) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(16) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(17) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(18) (a) "Owner" means:

(i) a person that holds title to, controls, or possesses an interest in a petroleum storage tank; or

(ii) a person that owns the property on which a petroleum storage tank from which a release occurred was located.

(b) The term does not include a person that holds an interest in a storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(19) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(20) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as ethanol-blended gasoline, and that is not augmented or compounded by more than a de minimis amount of another substance.

(21) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-11-503;

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an aboveground storage tank with a capacity of less than 30,000 gallons; or

(d) aboveground or underground pipes associated with tanks under subsections (21)(b) and (21)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

(ii) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; and

(iii) state law comparable to the provisions of law referred to in subsections (21)(d)(i) and (21)(d)(ii), if the facility is intrastate.

(22) "Properly designed and installed double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet any applicable standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(23) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center.

History: En. Sec. 2, Ch. 528, L. 1989; amd. Sec. 1, Ch. 389, L. 1991; amd. Sec. 2, Ch. 763, L. 1991; amd. Sec. 1, Ch. 298, L. 1993; amd. Sec. 2, Ch. 339, L. 1993; amd. Sec. 212, Ch. 418, L. 1995; amd. Sec. 33, Ch. 112, L. 1997; amd. Sec. 1, Ch.

420, L. 1999; amd. Sec. 121, Ch. 114, L. 2003; amd. Sec. 19, Ch. 100, L. 2007; amd. Sec. 1, Ch. 396, L. 2009; amd. Sec. 38, Ch. 220, L. 2015.

Provided by Montana Legislative Services

75-11-303 through 75-11-306 reserved.

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75-11-307. Reimbursement for expenses caused by release. (1) Subject to the availability of money from the fund under subsection (6), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except that if the corrective action plan:

(i) addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; or

(ii) includes the establishment of a petroleum mixing zone, as defined in 75-11-503, the board may reimburse the cost of an easement established pursuant to 75-11-508; and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4);

(h) costs for which an owner or operator has received reimbursement or payment from an insurer or other third party, including a grantor;

(i) expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent of the owner or operator.

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(j) costs that the board has determined are not actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan, as provided for in 75-11-309, including costs included in a department-approved corrective action plan for the purpose of remediating the release in excess of department standards.

(3) An owner or operator may designate a person, including a grantor, as an agent to receive the reimbursement for eligible costs incurred by the person if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (6):

(a) for releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of $500,000, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000 for all other releases; and

(b) for all other releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of $1 million, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500 for all other releases.

(5) If an insurer or grantor pays or reimburses an owner or operator for costs that qualify as eligible costs under subsection (1), the costs paid or reimbursed by the insurer or grantor:

(a) are considered to have been paid by the owner or operator toward satisfaction of the 50% share requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or reimbursement before applying for reimbursement from the board;

(b) are not reimbursable from the fund unless the grantor is designated by the owner or operator as an agent to receive the reimbursement for eligible costs incurred by the grantor; and

(c) except for the amount considered to have been paid by the owner or operator pursuant to subsection (5)(a), are considered to have been reimbursed from the fund for purposes of determining when the board has paid the maximum amount payable from the fund under subsection (4)(a)(ii) or (4)(b)(ii).

(6) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board.

History: En. Sec. 3, Ch. 528, L. 1989; amd. Sec. 2, Ch. 389, L. 1991; amd. Sec. 3, Ch. 763, L. 1991; amd. Sec. 3, Ch. 339, L. 1993; amd. Sec. 2, Ch. 55, L. 1995; amd. Sec. 2, Ch. 115, L. 1997; amd. Sec. 1, Ch. 137, L. 2003; amd. Sec. 1, Ch. 245, L. 2003; amd. Sec. 2, Ch. 396, L. 2009; amd. Sec. 1, Ch. 189, L. 2011; amd. Sec. 1, Ch. 107, L. 2015; amd. Sec. 7, Ch. 296, L. 2015.

Provided by Montana Legislative Services

Montana Code Annotated 2015

75-11-308. Eligibility. (1) An owner or operator is eligible for reimbursement for the applicable percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum storage tank only if:

(a) the release was discovered on or after April 13, 1989;

(b) the release occurred from:

(i) an underground storage tank, as defined in 75-11-503, that was in compliance with 75-11-509 at the time that the release was discovered;

(ii) a petroleum storage tank, as defined in 75-11-302, that was in compliance with the applicable state and federal laws and rules that the board determines pertain to the prevention and mitigation of a petroleum release from a petroleum storage tank at the time that the release was discovered; or

(iii) an underground storage tank, as defined in 75-11-503, that the board determines was unknown to both the property owner and the department prior to its discovery if the owner applies to the department for a closure permit in accordance with 75-11-212 within 30 days of the date upon which the owner first had knowledge of the tank and closes the tank in accordance with the requirements of the permit before the permit expires; and

(c) the release was an accidental release.

(2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

(a) a tank located at a refinery or a terminal of a refiner;

(b) a tank located at an oil and gas production facility;

(c) a tank that is or was previously under the ownership or control of a railroad, except for a tank that was operated by a lessee of a railroad in the course of nonrailroad operations;

(d) a tank belonging to the federal government;

(e) a tank owned or operated by a person who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or

(f) a mobile storage tank used to transport petroleum or petroleum products from one location to another.

History: En. Sec. 4, Ch. 528, L. 1989; amd. Sec. 3, Ch. 389, L. 1991; amd. Sec. 4, Ch. 763, L. 1991; amd. Sec. 4, Ch. 339, L. 1993; amd. Sec. 2, Ch. 420, L. 1999; amd. Sec. 1, Ch. 112, L. 2001; amd. Sec. 2, Ch. 245, L. 2003; amd. Sec. 2, Ch. 356, L. 2005.

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75-11-309. Procedures for reimbursement of eligible costs -- corrective action plans. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases.

(c) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(d) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department, subject to 75-11-408(4)(b), may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(d) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(e) A corrective action plan prepared by the owner, operator, or department for any petroleum storage tank release may include the establishment of a petroleum mixing zone as defined in 75-11-503.

(f) The department shall notify the owner or operator of its approval of a corrective action plan and shall promptly submit a copy of the approved corrective action plan to the board. Upon review, the board may request that the corrective action plan be amended pursuant to 75-11-508 to include a petroleum mixing zone. If the department finds that the conditions for establishment of a petroleum mixing zone in 75-11-508 are satisfied, the corrective action plan must be amended to include a petroleum mixing zone.

(g) The owner or operator shall implement the corrective action plan or plans approved by the department until the release is resolved. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

(h) (i) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.

(iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.

(iv) If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board.

(i) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(j) In addition to the documentation in subsections (1)(h) and (1)(i), when the release is claimed to have originated from a properly designed and installed double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered; and

(ii) that the originating tank was part of a properly designed and installed double-walled tank system.

(2) If an owner or operator is issued an administrative order for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, all reimbursement of claims submitted after the date of the order must be suspended. Upon a written determination by the department that the owner or operator has returned to compliance with the requirements of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(3) The board shall review each claim received under subsections (1)(h) and (1)(i), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination by the board that the owner or operator has not complied with this section or rules adopted pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(4) (a) If an owner or operator disagrees with a board determination under subsection (3), the owner or operator may submit a written request for a hearing before the board.

(b) A written request for a hearing must be received by the board within 120 days after notice of the board's determination is served on the owner or operator by certified mail. The notice of determination must advise the owner or operator of the 120-day time limit for submitting a written request for a hearing to the board. Not less than 50 days or more than 60 days after the board serves the notice of determination, the board shall serve on the owner or operator a second notice by certified mail advising the owner or operator of the deadline for requesting a hearing. Service by certified mail is complete on the date shown on the certified mail receipt.

(c) If a written request is received within 120 days, the hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(d) If a written request is not received within 120 days, the determination of the board is final.

(5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee.

History: En. Sec. 5, Ch. 528, L. 1989; amd. Sec. 4, Ch. 389, L. 1991; amd. Sec. 5, Ch. 339, L. 1993; amd. Sec. 1, Ch. 355, L. 1993; amd. Sec. 34, Ch. 112, L. 1997; amd. Sec. 3, Ch. 245, L. 2003; amd. Sec. 3, Ch. 356, L. 2005; amd. Sec. 3, Ch. 396, L. 2009; amd. Sec. 2, Ch. 189, L. 2011; amd. Sec. 8, Ch. 296, L. 2015.

Provided by Montana Legislative Services

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75-11-310 through 75-11-311 reserved.

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75-11-312. Review of corrective action plans and claims. (1) To ensure that the fund provided for in 75-11-313 is being used in the most efficient manner, the board may implement a program of third-party review for corrective action plans and claims. The board may submit a corrective action plan or claim for review by a qualified third party of the board's choosing.

(2) If a third-party review suggests that a corrective action plan is inappropriate for the release, the board may remand the plan to the department for further review.

(3) If a third-party review suggests that submitted costs do not comply with the requirements of 75-11-309(3)(a), the board may deny the costs, subject to 75-11-309(4).

History: En. Sec. 4, Ch. 245, L. 2003; amd. Sec. 4, Ch. 356, L. 2005.

Provided by Montana Legislative Services

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75-11-313. Petroleum tank release cleanup fund. (1) There is a petroleum tank release cleanup fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by the board and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under subsections (3)(c) and (3)(d). Administrative costs under subsections (3)(a) and (3)(b) must be paid pursuant to a legislative appropriation.

(2) There is deposited in the fund:

(a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

(b) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any source, intended to be used for the purposes of this fund;

(c) money appropriated or advanced to the fund by the legislature;

(d) money loaned to the board by the board of investments; and

(e) all interest earned on money in the fund.

(3) As provided in 75-11-318, the fund may be used only:

(a) to administer this part, including payment of board expenses associated with administration;

(b) to pay the actual and necessary department expenses associated with administration;

(c) to reimburse owners and operators for eligible costs caused by a release from a petroleum storage tank and approved by the board; and

(d) for repayment of any advance and any loan made pursuant to 17-6-225, plus interest earned on the advance or loan.

(4) Whenever the board accepts a loan from the board of investments pursuant to 17-6-225, the receipts from the fees provided for in 75-11-314 in each fiscal year until the loan is repaid are pledged and dedicated for the repayment of the loan in an amount sufficient to meet the repayment obligation for that fiscal year.

History: En. Sec. 6, Ch. 528, L. 1989; amd. Sec. 1, Ch. 543, L. 1993; amd. Sec. 272, Ch. 42, L. 1997; amd. Sec. 3, Ch. 115, L. 1997; amd. Sec. 5, Ch. 245, L. 2003.

Provided by Montana Legislative Services

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Montana Code Annotated 2015

75-11-314. Petroleum storage tank cleanup fee -- collection -- penalties -- warrant for distraint -- statute of limitations. (1) Except as provided in subsection (4), each distributor shall pay to the department of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel, or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

(a) 0.75 cent for each gallon of gasoline;

(b) 0.75 cent for each gallon of aviation gasoline;

(c) 0.75 cent for each gallon of special fuel; or

(d) 0.75 cent for each gallon of heating oil.

(2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state must be included in the measure of a distributor's fee.

(3) Ethanol that is blended with gasoline to be sold as ethanol-blended gasoline is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds $10 million. Whenever the unobligated fund balance, less claims anticipated for board approval within the next 90 days, is less than $6 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds $10 million.

(5) The department of transportation shall collect the fee in the same manner as the gasoline tax and special fuel tax under Title 15, chapter 70, part 4. The provisions of 15-70-103, 15-70-111, 15-70-402, 15-70-410, 15-70-411, 15-70-416 through 15-70-418, 15-70-420, 15-70-421, 15-70-425(3), and 15-70-443 apply to the fee. The provisions of 15-70-403, 15-70-412, 15-70-425(1), and 15-70-426 do not apply to the fee.

History: En. Sec. 7, Ch. 528, L. 1989; amd. Sec. 2, Ch. 298, L. 1993; amd. Sec. 4, Ch. 37, L. 1999; amd. Sec. 20, Ch. 100, L. 2007; amd. Sec. 4, Ch. 396, L. 2009; amd. Sec. 39, Ch. 220, L. 2015.

Provided by Montana Legislative Services

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Montana Code Annotated 2015

75-11-315. Nonimpairment by state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it may not in any way impair the obligations of any loan agreement between the board and the board of investments by repealing the petroleum storage tank cleanup fee imposed by 75-11-314 or by reducing it below the amount necessary to make annual loan payments.

History: En. Sec. 5, Ch. 115, L. 1997.

Provided by Montana Legislative Services

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75-11-316 through 75-11-317 reserved.

Provided by Montana Legislative Services

Montana Code Annotated 2015

75-11-318. Powers and duties of board. (1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to owners and operators. The board may hire its own staff to assist in the implementation of this part.

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of 75-11-309(3), shall obligate money from the fund for approved costs, and shall act on requests for the guarantee of payments through the procedures and criteria provided in 75-11-309.

(3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business that may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.

(4) The board shall use the fund to pay for:

(a) department expenses incurred in providing assistance to the board. The board shall review and comment on all department administrative budget proposals that are assessed against the fund prior to submittal of the department budget for legislative approval. Department administrative expenses on behalf of the board may include:

(i) the review or preparation of corrective action plans;

(ii) the oversight of corrective action undertaken by owners and operators for the purposes of this part; and

(iii) the actual and necessary administrative support provided to the board.

(b) department of transportation staff expenses used for the collection of the petroleum storage tank cleanup fee;

(c) third-party review of corrective action plans or claims pursuant to 75-11-312;

(d) board staff expenses; and

(e) expenses of implementing the board's duties as provided in this part.

(5) The board shall adopt rules to administer this part, including:

(a) rules governing submission of claims by owners or operators to the department and board;

(b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;

(c) procedures for the review and approval of corrective action plans;

(d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of this part;

(e) the criteria and reimbursement rates applicable to those owners and operators who comply with a violation letter issued by the department; and

(f) other rules necessary for the administration of this part.

(6) The board may apply for, accept, and repay loans from the board of investments pursuant to 17-6-225.

(7) The board shall conduct an analysis of the short-term and long-term viability of the fund and report its findings to the director of the department and the legislative auditor by July 1 prior to each regular legislative session. This analysis must include but is not limited to:

(a) trends in fund revenue and expenditure activity;

(b) exposure to long-term liabilities;

(c) impacts of changes in state and federal regulations relating to underground and aboveground storage tanks;

(d) availability of petroleum storage tank liability insurance in the private sector and trends in provisions of the insurance; and

(e) the continuing need for collection of all or part of the petroleum tank release cleanup fee.

History: En. Sec. 9, Ch. 528, L. 1989; amd. Sec. 5, Ch. 763, L. 1991; amd. Sec. 4, Ch. 115, L. 1997; amd. Sec. 2, Ch. 259, L. 1999; amd. Sec. 2, Ch. 112, L. 2001; amd. Sec. 6, Ch. 245, L. 2003; amd. Sec. 5, Ch. 356, L. 2005.

Provided by Montana Legislative Services

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Montana Code Annotated 2015

75-11-319. Rulemaking authority -- department and department of transportation. (1) The department may adopt rules necessary to administer its responsibilities under this part, including requirements for approval of corrective action plans.

(2) The department of transportation shall adopt rules governing the collection of the petroleum storage tank cleanup fee. The rules may include, at a minimum, reporting and recordkeeping requirements, method and timing of payment, and examination of records. The rules must be generally consistent with procedures governing the collection of the gasoline tax provided for in Title 15, chapter 70.

History: En. Sec. 10, Ch. 528, L. 1989.

Provided by Montana Legislative Services

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Montana Code Annotated 2015

75-11-320. Other authorities unaffected. Payment of reimbursement, approval of a corrective action plan, or other action of the department or the board under this part does not affect the authority of the department or any other state agency to pursue an action authorized by Title 75, chapter 10, parts 4 or 7, or any other law or rule that applies to releases from petroleum storage tanks.

History: En. Sec. 11, Ch. 528, L. 1989.

Provided by Montana Legislative Services

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Montana Code Annotated 2015

75-11-321. Criminal penalties. A person who knowingly misrepresents the date of discovery of a release, submits or causes to be submitted a fraudulent claim or document, or makes a false statement or representation in seeking or assisting a person to seek reimbursement under this part is subject to a fine not to exceed $10,000 for each violation or imprisonment not to exceed 6 months, or both. A person convicted of a second or subsequent violation of this section is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both.

History: En. Sec. 12, Ch. 528, L. 1989.

Provided by Montana Legislative Services

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Montana Code Annotated 2015

75-11-322. Liability -- defense and exclusions. (1) A person has a defense against liability in a tort action for damages suffered as a result of an act or omission that constitutes a violation of this part, a rule adopted under this part, or a condition of a permit or authorization required by a rule adopted under this part if the person can establish by a preponderance of the evidence that:

(a) the person is a government entity that acquired ownership or control through bankruptcy, tax delinquency, abandonment, or lien foreclosure in which the government entity acquired title by virtue of the government entity's authority;

(b) the person has not caused or contributed to the violation; and

(c) the person is making an effort to abate the violation.

(2) For the purposes of this part, "government entity" includes a consolidated city-county, a county, and an incorporated city or town.

History: En. Sec. 4, Ch. 159, L. 2013.

Provided by Montana Legislative Services

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ARM TITLE 17

Chapter 58
Montana Petroleum Tank Release Compensation Board

Sub-Chapter 1 Organizational Rule

Sub-Chapter 2 Procedural Rule

Sub-Chapter 3 Substantive Rules

ENVIRONMENTAL QUALITY

CHAPTER 58

MONTANA PETROLEUM TANK RELEASE
COMPENSATION BOARD

Subchapter 1

Organizational Rule

Rule 17.58.101 Organization and Duties of Board

Subchapter 1

Organizational Rule

17.58.101 ORGANIZATION AND DUTIES OF BOARD (1) The Petroleum Tank Release Compensation Board was created by section 8, chapter 528, Laws of 1989.

(2) The board is a unitary organization without divisions. The board is allocated to the Department of Environmental Quality for administrative purposes only.

(3) The functions of the board are to provide a financial assurance mechanism, and to reimburse the owners or operators of eligible tanks for their expenditures in cleaning up releases and compensating third parties who live or own property near the tanks for bodily injury or property damage they may have sustained as a result of the releases.

(4) Inquiries regarding the board may be addressed as follows:

Petroleum Tank Release Compensation Board
P.O. Box 200902
Helena, MT 59620-0902

(History: 2-4-201, MCA; IMP, 2-4-201, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1991 MAR p. 2036, Eff. 11/1/91; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99.)

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ENVIRONMENTAL QUALITY

CHAPTER 58

MONTANA PETROLEUM TANK RELEASE
COMPENSATION BOARD

Subchapter 2

Procedural Rule

Rule 17.58.201 Model Rules

Subchapter 2

Procedural Rule

17.58.201 MODEL RULES (1) The board adopts and incorporates by reference the Attorney General's Organizational and Procedural Rules, ARM 1.3.201,1.3.202, 1.3.211 through 1.3.224, and 1.3.226 through 1.3.233, and the Secretary of State's Organizational and Procedural Rules, ARM 1.3.101, 1.3.102, 1.3.301, 1.3.302, 1.3.304, 1.3.305, 1.3.307 through 1.3.309, 1.3.311 through 1.3.313, including the sample forms that follow the Attorney General's model rules and the Secretary of State's online template forms referenced in ARM 1.3.301 and found at www.armtemplates.com/, depicting standard boilerplate language for model forms related to rulemaking.

(2) The Attorney General's Organizational and Procedural Rules and the Secretary of State's Organizational and Procedural Rules referenced in (1) may be found online at http://www.mtrules.org/. (History: 2-4-201, MCA; IMP, 2-4-201, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, 1996 MAR p. 3125; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

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ENVIRONMENTAL QUALITY

CHAPTER 58

MONTANA PETROLEUM TANK RELEASE COMPENSATION BOARD

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17.58.343 Review and Determination of Third Party Damage Costs

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Subchapter 3

Substantive Rules

17.58.301 GUIDELINES FOR PUBLIC PARTICIPATION (1) Pursuant to 2-3-103, MCA, the board declares that any interested person is encouraged to participate in its deliberations. The following policies will support this objective.

(2) The board shall provide access to the interested parties e-mail list link on the board web site for persons who wish to know about the board's proposed rules and rulemaking proceedings. Any person may add their name and e-mail address to the board's interested parties e-mail list.

(3) The board shall post a copy of its preliminary or tentative agenda on the board web site sufficiently in advance of each meeting.

(4) Upon specific request and payment of reasonable copying fees, the board shall send copies of board determinations, orders, and decisions to any person making such a request. (History: 2-3-103, MCA; IMP, 2-3-103, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, 1996 MAR p. 3125; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.302 CONDUCT OF BOARD MEETINGS (1) All meetings of the board, other than contested case hearings, shall be conducted by the presiding officer. In the absence of the presiding officer, the vice-presiding officer shall exercise the presiding officer's powers.

(2) The presiding officer may call any meeting of the board to order, pursuant to notice, when he or she determines that a quorum is present. A quorum is at least four members present, physically or by teleconference media.

(3) The presiding officer may impose time limits on the oral presentation of any person appearing before the board at any meeting other than a contested case hearing.

(4) The presiding officer may appoint a hearing examiner to conduct a contested case hearing within the agenda of a board meeting. A member of the board, including the presiding officer, may question a witness through and by leave of a hearing examiner so appointed. (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99.)

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17.58.303 OFFICERS; VOTING (1) The board shall elect a presiding officer and a vice-presiding officer for terms of one year each at its first meeting after October 1 of each year.

(2) Members shall vote on all motions in the order prescribed in Robert's Rules of Order.

(3) All votes must be personally cast, whether in person, by a teleconference medium, or by mail ballot if the presiding officer has, by unanimous consent, adopted a mail ballot procedure for all board members. No voting by proxy may be counted. (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96.)

Rules 17.58.304 through 17.58.310 reserved

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17.58.311 DEFINITIONS Unless the context clearly indicates otherwise, the following definitions, in addition to those in 75-11-302, MCA, apply throughout this chapter:

(1) "Act" means Title 75, chapter 11, part 3, and 17-7-502, MCA.

(2) "Actually incurred," for purposes of reimbursing eligible costs caused by a release from a petroleum storage tank, means:

(a) costs actually expended to complete the work required to prepare or implement a corrective action plan, in an amount less than or equal to the corrective action plan budget, as shown by a dated invoice and receipt; or

(b) documented compensation made to a third party for bodily injury or property damage caused by a release.

(3) "Automobile," for purposes of reimbursing eligible costs, means a light vehicle as defined at 61-1-139, MCA.

(4) "Belonging to the federal government," with respect to determining eligibility of a petroleum storage tank, means:

(a) currently under the possession and control of a federal agency, or

(b) located on land held by a federal agency if the petroleum storage tank is operated by a contractor for the primary benefit of a federal agency. However, if the contract binds the operator to hold the federal agency harmless from liability for any release from the petroleum storage tank and the federal agency required its contractor to make this commitment prior to March 31, 1990, the petroleum storage tank is not considered as belonging to the federal government.

(5) "Board staff" means those employees of the Petroleum Tank Release Compensation Board hired by the board pursuant to 75-11-318, MCA.

(6) "Bodily injury," as defined in 75-11-302, MCA, requires proof to a reasonable degree of medical certainty based on competent evidence as opposed to conjecture or speculation.

(7) "Consumptive use" means any use which burns or otherwise consumes heating oil.

(8) "Consultant" means a professional person or organization of such persons who advise petroleum storage tank owners or operators with respect to planning and implementing corrective action.

(9) "Corrective action plan" means a written plan approved by the department specifying all corrective actions necessary to respond to a release. Each corrective action plan must include the cost of each corrective action specified in the plan.

(10) "Corrective action plan budget" means the costs listed in the corrective action plan and preliminarily approved in writing by the board staff for obligation by the board pursuant to 75-11-309(5), MCA.

(11) "Day" means a calendar day, including weekends and holidays. Whenever a period of days specified in the Act or this chapter ends on a day state offices are not open for business, the period ends on the next day state offices are open.

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(12) "De minimis" means that amount of a hazardous substance, as defined in this rule, which when mixed with a petroleum product does not alter the detectability of the petroleum product, effectiveness of corrective action, or toxicity of the petroleum product to any significant degree.

(13) "Department" means the Department of Environmental Quality.

(14) "Farm tank" is defined at ARM 17.56.101.

(15) "Hazardous substance" means:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601(14), as amended;

(b) a substance identified by the administrator of the United States Environmental Protection Agency as a hazardous substance pursuant to section 102 of CERCLA, 42 USC 9602, as amended; or

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 USC 6903(5), as amended, including a substance listed or identified in 40 CFR 261.

(16) "Heating oil" is defined at ARM 17.56.101.

(17) "Hydraulic lift tank" is defined at ARM 17.56.101.

(18) "Inactive tank" is defined at ARM 17.56.101.

(19) "Motor fuel" is defined at ARM 17.56.101.

(20) "Necessarily incurred," for purposes of reimbursing eligible costs caused by a release from a petroleum storage tank, means:

(a) only those costs incurred that are needed to prepare or implement a corrective action plan, in an amount less than or equal to the costs listed in the corrective action plan budget;

(b) costs incurred to complete work, approved by the department in writing, to respond to an emergency at the site of a release, in order to prevent more extensive damage or injury than would have occurred without such approval; or

(c) in the case of third party damages, payment for damages that are a direct and proximate consequence of the release.

(21) "Noncommercial purposes" is defined at ARM 17.56.101.

(22) "Oil/water separator" is defined at ARM 17.56.101.

(23) "Out of service" is defined at ARM 17.56.101.

(24) "Reasonably incurred," for purposes of reimbursing eligible costs caused by a release from a petroleum storage tank, means:

(a) the costs incurred:

(i) to complete the work required to prepare or implement an approved corrective action plan, in an amount less than or equal to the costs listed in the corrective action plan budget;

(ii) to complete work, approved by the department in writing, to respond to an emergency at the site of a release in order to prevent more extensive damage or injury than would have occurred without such approval; or

(iii) in accordance with ARM 17.58.341 and 17.58.342 and that are not presumed to be unreasonable by those rules; or

(b) compensation paid to third parties for bodily injury or property damage when it is more likely than not that such injury or damage was caused by a release.

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(25) "Release discovery date" means the earliest of:

(a) the date of discovery by an owner or an operator of any of the conditions set forth in ARM 17.56.502(1), provided that a release is confirmed in any manner provided in ARM 17.56.504 or 17.56.506 after the condition is discovered;

(b) the date that the owner or operator had actual knowledge of a release; or

(c) the date that the release is confirmed in any manner provided in ARM 17.56.504.

(26) "Residential tank" is defined at ARM 17.56.101.

(27) "Site/facility" means a complex of petroleum storage tanks under the same ownership on a contiguous piece of property.

(28) "Stored for noncommercial purposes", with respect to motor fuel, means any type of storage, except the following:

(a) storing for resale under license from the Weights and Measures Bureau, Department of Commerce (82-15-105, MCA); or

(b) storing for later removal to another location where the fuel will be resold.

(29) "Subcontractor" means a person who performs billable labor in association with a corrective action at the release site when that person is under contract with the contractor/consultant. Subcontractor services do not include delivery or pickup services.

(30) "Tank," as used in 75-11-302(21), MCA, means a fully enclosed stationary device designed to contain an accumulation of petroleum or petroleum products of more than 60 gallons (227L) and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

(31) "Vendor" means a person who provides materials necessary for corrective action at the release site or services away from the release site. (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1990 MAR p. 1784, Eff. 9/14/90; AMD, 1991 MAR p. 2036, Eff. 11/1/91; AMD, 1993 MAR p. 2678, Eff. 11/11/93; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2003 MAR p. 557, Eff. 1/17/03; AMD, 2004 MAR p. 3018, Eff. 12/17/04; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.312 ELIGIBILITY REQUIREMENTS (REPEALED) (History: 75-11-318, MCA; IMP, 75-11-308, MCA; NEW, 1990 MAR p. 1784, Eff. 9/14/90; AMD, 1991 MAR p. 2263, Eff. 11/1/91; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; REP, 2011 MAR p. 377, Eff. 3/25/11.)

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17.58.313 APPLICABLE COPAYMENTS FOR COMMINGLED PETROLEUM STORAGE TANK RELEASES (1) An owner or operator of a site with more than one eligible release from separate petroleum storage tanks whose plumes have commingled shall be reimbursed for eligible costs caused by each release, as specified in 75-11-307(4)(b), MCA. The provisions of 75-11-307(4)(b), MCA, shall be applied separately to each release. If there are costs that are incurred when an ineligible release from a petroleum storage tank has commingled with an eligible release from a separate petroleum storage tank, the owner or operator may not be reimbursed without evidence establishing that it is more likely than not that the costs were caused by the eligible release.

(2) An owner or operator of a site with more than one eligible release from the same petroleum storage tank whose plumes have commingled shall be reimbursed for eligible costs caused by each release, as specified in 75-11-307(4)(b), MCA. The provisions of 75-11-307(4)(b), MCA, shall be applied separately to each such release. If there are costs that are incurred when an ineligible release has commingled with an eligible release from the same petroleum storage tank, the owner or operator may not be reimbursed without evidence establishing that it is more likely than not that the costs were caused by the eligible release.

(3) A person who seeks reimbursement from the fund at a rate different than that provided in 75-11-307(4)(b)(i), MCA, must prove that it is more likely than not that no leaking petroleum storage tank at the site is eligible under that section. (History: 75-11-318, MCA; IMP, 75-11-307, MCA; NEW, 1991 MAR p. 2036, Eff. 11/1/91; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

Rules 17.58.314 through 17.58.322 reserved

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17.58.323 VOLUNTARY REGISTRATION (1) An owner or operator may register a petroleum storage tank with the board for the purposes of determining potential eligibility of the petroleum storage tank for reimbursement under the petroleum tank release cleanup fund.

(2) An owner or operator may apply for such registration by submitting to the board a signed and otherwise completed application on a form provided by the board.

(3) The board may investigate and consult with other regulatory agencies concerning the information submitted in the forms to confirm the accuracy of the information submitted by the owner or operator. If a regulatory agency has information or the board discovers information that indicates the owner or operator submitted false or inaccurate information, the board may deny the application.

(4) If a regulatory agency has reported noncompliance regarding the operation and management of the petroleum storage tank, the board may deny the application.

(5) If the information on the form would, if true, establish potential eligibility and no inaccuracies have been discovered by or reported to the board, the board shall issue a statement to the owner or operator indicating potential eligibility for reimbursement.

(6) The board may delegate to the board staff the authority to issue determinations of potential eligibility for reimbursement when that determination is based on prior board decisions and similar material facts, subject to the owner or operator's right to be heard by the board. (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1991 MAR p. 2036, Eff. 11/1/91; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

Rule 17.58.324 reserved

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17.58.325 ELIGIBILITY DETERMINATION (1) Upon receipt of a completed application for eligibility, the board shall determine eligibility in accordance with 75-11-308 and 75-11-309, MCA. (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1991 MAR p. 2036, Eff. 11/1/91; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.326 APPLICABLE RULES GOVERNING THE OPERATION AND MANAGEMENT OF PETROLEUM STORAGE TANKS (1) The applicable state rules referenced in 75-11-308(1)(b)(ii) and 75-11-309(1)(b), MCA, are:

(a) the following provisions of the International Fire Code (IFC 2009) are applicable to aboveground storage tanks. A copy of the code may be obtained from the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or online with cost at www.iccsafe.org:

(i) 312.1 Vehicle impact protection shall be provided by posts that comply with Section 312.2 or by other approved physical barriers that comply with Section 312.3;

(ii) 2203.2 An approved, clearly identified, and readily accessible emergency disconnect switch shall be provided at an approved location to stop the transfer of fuel to the fuel dispensers in the event of a fuel spill or other emergency. An emergency disconnect switch for exterior fuel dispensers shall be located within 100 feet of, but not less than 20 feet from, the fuel dispensers;

(iii) 2206.7.3 Dispensing devices, except those installed on top of a protected aboveground tank that qualifies as vehicle-impact resistant, shall be protected against physical damage by mounting on a concrete island six inches or more in height;

(iv) 2206.7.5.1 Dispensing hoses for Class I and II liquids shall be equipped with a listed emergency breakaway device designed to retain liquid on both sides of a breakaway point. Such devices shall be installed and maintained in accordance with the manufacturer's instructions. Where hoses are attached to hose-retrieving mechanisms, the emergency breakaway device shall be located between the hose nozzle and the point of attachment of the hose-retrieval mechanism to the hose;

(v) 2704.2.2.4 Secondary containment for outdoor storage areas shall be designed to contain a spill from the largest vessel. If the area is open to rainfall, secondary containment shall be designed to include the volume of a 24-hour rainfall as determined by a 25-year storm and provisions shall be made to drain accumulations of groundwater and rain water. (In Montana the volume of a 24-hour rainfall as determined by a 25-year storm does not exceed 4.6 inches of freeboard.); and

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(vi) 3404.2.9.7.6 Aboveground storage tanks shall not be filled in excess of 95 percent their capacity. No later than December 31, 2013, tanks must comply with one of the following requirements:

(A) an overfill prevention system shall be provided for each tank. During tank-filling operations, the system shall provide an independent means of notifying the person filling the tank that the fluid level has reached 90 percent of tank capacity or by providing an audible or visual alarm signal, or providing a tank level gauge marked at 90 percent of tank capacity; or

(B) an impermeable secondary containment shall be provided for each tank. The tank shall have secondary containment, designed in accordance with 2704.2.2.4 of International Fire Code that is impermeable to petroleum;

(b) the following provisions of the National Fire Protection Association Uniform Fire Code, Flammable and Combustible Liquids Code (NFPA 30) (2008) are applicable to aboveground storage tanks. A copy of the Code may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, or online at www.nfpa.org:

(i) 21.3.1 Tanks shall be permitted to be of any shape, size, or type consistent with recognized engineering standards. Metal tanks shall be welded, riveted and caulked, bolted, or constructed using a combination of these methods;

(ii) 22.5.2.1 Tanks shall rest on the ground or on foundations made of concrete, masonry, piling, or steel;

(iii) 22.5.2.2 Tank foundations shall be designed to minimize the possibility of uneven settling of the tank and to minimize corrosion in any part of the tank resting on the foundation;

(iv) 27.3.2 Piping systems shall be maintained liquidtight. A piping system that has leaks that constitute a hazard shall be emptied of liquid or repaired in a manner acceptable to the authority having jurisdiction;

(v) 27.5.1.1 Joints shall be made liquidtight and shall be welded, flanged, threaded, or mechanically attached;

(vi) 27.5.1.3 Threaded joints shall be made with a suitable thread sealant or lubricant; and

(vii) 27.6.4 Aboveground piping systems that are subject to external corrosion shall be suitably protected;

(c) the following provisions of the National Fire Protection Association Uniform Fire code, Code for Motor Fuel Dispensing Facilities and Repair Garages (NFPA 30A) (2008) are applicable to aboveground storage tanks. A copy of the Code may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, or online with cost at www.nfpa.org:

(i) 4.3.8 Any portion of a tank or its piping that is in contact with the soil shall have properly engineered, installed, and maintained corrosion protection that meets the requirements of 21.4.5 of NFPA 30;

(ii) 5.2.3 Any portion of a piping system that is in contact with the soil shall be protected from corrosion in accordance with good engineering practice; and

(iii) 6.3.4 Dispensing devices shall be mounted on a concrete island or shall otherwise be protected against collision damage by means acceptable to the authority having jurisdiction. Dispensing devices shall be securely bolted in place. Dispensing devices shall be installed in accordance with the manufacturers' instructions;

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(d) the following provisions of the National Fire Protection Association Uniform Fire Code, Standard for the Installation of Oil-burning Equipment (NFPA 31) (2006) are applicable to aboveground storage tanks attached to burners. A copy of the Code may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, or online at www.nfpa.org:

(i) 7.2.7.1 Metal tanks shall be welded or brazed or constructed using a combination of these methods;

(ii) 7.3.1 Tanks shall rest on the ground or on foundations made of concrete, masonry, piling, or steel;

(iii) 7.3.2 Tank foundations shall be designed to minimize the possibility of uneven settling and to minimize corrosion in any part of the tank resting on the foundation;

(iv) 7.3.3.1 Single wood timber supports (not cribbing), laid horizontally, shall be permitted to be used for outside aboveground tanks if the supports are less than 12 inches high at their lowest point;

(v) 7.9.4 Outside aboveground tanks and their appurtenances and supports shall be protected from external corrosion;

(vi) 7.9.7 Each oil burner supply line connected to the gravity feed connection of the supply tank shall be provided with a shutoff valve at the tank;

(vii) 7.12.5 Each tank shall be maintained liquidtight;

(viii) 7.13.1 If an oil storage tank is permanently removed from service, for whatever reason, it shall be emptied of all contents;

(ix) 7.13.2 If an oil storage tank is temporarily removed from service, for whatever reason, it shall be emptied of all contents;

(x) 8.2.9 Piping shall meet the following criteria:

(A) Piping shall be substantially supported and protected against physical damage; and

(B) Piping shall be protected against corrosion; and

(xi) 8.2.12 Piping shall be maintained liquidtight;

(e) 40 CFR Section 112.3, to the extent that this regulation requires an owner or operator to prepare and implement a Spill Prevention, Control, and Countermeasure Plan, is applicable to all petroleum storage tanks; and

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(f) the following requirements in ARM Title 17, chapter 56 are applicable to underground storage tanks:

(i) the installation and design standards for underground storage systems contained in subchapters 1 and 2;

(ii) the spill and overfill prevention and corrosion protection requirements for underground storage tanks contained in subchapter 3;

(iii) the release prevention and detection requirements for underground storage tanks and piping contained in subchapter 4;

(iv) the testing, monitoring, and recordkeeping requirements contained in subchapter 3 and subchapter 4;

(v) the release reporting, initial response, and corrective action requirements contained in subchapters 5 and 6; and

(vi) for inactive and permanently closed underground storage tanks, ARM 17.56.701 and 17.56.702, to the extent that those rules require emptying of such tanks. (History: 75-11-318, 75-11-319, MCA; IMP, 75-11-308, MCA; NEW, 1998 MAR p. 479, Eff. 2/13/98; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2002 MAR p. 2904, Eff. 10/18/02; AMD, 2004 MAR p. 3018, Eff. 12/17/04; AMD, 2006 MAR p. 1734, Eff. 7/7/06; AMD, 2011 MAR p. 377, Eff. 3/25/11; AMD, 2011 MAR p. 1370, Eff. 7/29/11.)

Rules 17.58.327 through 17.58.330 reserved

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17.58.331 ASSENT TO AUDIT (1) Each contractor, subcontractor or vendor employed to carry out a corrective action plan in whole or in part shall assent to an audit of the documentation supporting their invoices if they charge at an hourly labor rate.

(2) The owner or operator shall submit the assent on a form provided by the board. The form must be executed by the contractor, consultant, subcontractor, or vendor before the board approves reimbursement. (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1998 MAR p. 3112, Eff. 11/20/98; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.332 INSURANCE COVERAGE; THIRD-PARTY LIABILITY; INVESTIGATION; DISCLOSURE; SUBROGATION; COORDINATION OF BENEFITS (1) Prior to receiving payment for any claim for reimbursement, an owner or operator who is determined to be eligible under 75-11-308, MCA, shall thoroughly investigate the existence of any policy of insurance or other similar instrument or document that may indicate insurance coverage for some or all of the eligible costs arising from a release. At a minimum, this investigation must include:

(a) complete review of the present owner's and operator's records;

(b) the insurance records of the owner or operator in the possession of the insurance company or its agents or brokers;

(c) where available, the records of prior owners or operators and others who may have information concerning insurance coverage, including insurance policies; and

(d) any insurance records, including policies, in the possession or control of the owner or operator that belong to third parties identified pursuant to (2).

(2) An owner or operator who has been determined to be eligible under 75-11-308, MCA shall investigate and provide the board with the identity of and basis for liability of any third party who through its acts or omissions is known or suspected by the owner or operator to be liable for the eligible costs arising from a release.

(3) If the board determines to aid in the investigation of available coverage, owners or operators must allow the board reasonable access to their records and, where possible, arrange access for the board to the records of others that may contain relevant insurance or third party liability information.

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(4) Owners or operators seeking reimbursement for eligible costs shall disclose to the board, on a form provided by the board, the results of the owner's or operator's investigations undertaken pursuant to (1) and (2). Together with the completed form, the owner or operator may be requested to provide copies of any policy of insurance, or any other evidence that may indicate insurance coverage for some or all of the eligible costs, including any documents identified or discovered as a result of the investigations undertaken pursuant to (1) and (2). Such evidence of insurance includes, but is not limited to, cancelled checks from or to insurance companies, letters to and from insurance companies or their agents or brokers, or policies or declaration sheets indicating extent of coverage. Narrative information from previous owners or operators concerning possible coverage must be submitted in writing along with the form. The disclosure must contain current information as of the date of the release as well as all available historic insurance information from the date of the facility's first use of petroleum storage tanks. Where applicable, this disclosure must also contain the identity of any third party who may be liable for the eligible costs sought to be reimbursed together with an explanation of the basis of liability and any supporting documentation indicating insurance coverage that third parties may have.

(5) To the extent the board may reimburse or has reimbursed owners or operators for eligible costs, the board has a subrogation claim against insurance carriers whose policies cover the reimbursed costs and against other third parties whose acts or omissions render them otherwise liable for the reimbursed costs. An owner or operator who accepts reimbursement for costs subrogates his rights to the board as against such insurance carriers and other third parties to the extent of the accepted reimbursed costs. An owner or operator, prior to receiving any reimbursement of eligible costs, must agree on a form provided by the board, to subrogate its claims to the board to the extent of the accepted reimbursed costs.

(6) The board's obligation to reimburse eligible owners or operators does not include eligible costs owners or operators recover pursuant to contractual or tort-based obligations of insurers or other third parties. For the purposes of providing reimbursement or obtaining subrogation, the board is not an insurer.

(7) Reimbursement of claims by the board may be delayed by the board pending submission of any form or information referenced in this rule. If it appears to the board that a party has previously reimbursed an owner or operator for eligible costs, the board may withhold reimbursement of claims from that owner or operator pending a determination by the board of what eligible costs, if any, remain to be reimbursed. (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2001 MAR p. 660, Eff. 4/27/01; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

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17.58.333 DESIGNATION OF REPRESENTATIVE (1) Owners or operators desiring to designate another person to receive reimbursement in their stead under the Act may do so by submitting the appropriate form provided by the board. (History: 75-11-318, MCA; IMP, 75-11-307, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1991 MAR p. 2036, Eff. 11/1/91; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1997 MAR p. 403, Eff. 2/25/97; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.334 CLAIM FOR REIMBURSEMENT (1) Upon completion of any task or subtask identified in a corrective action plan, the owner or operator, or a remediation contractor acting on behalf of the owner or operator, may submit the claim to the board on a form provided by the board.

(2) The claim must include all the information required by the board's claim form, and a certification verified by a notary public that the individual signing the claim form is the owner or operator or is authorized to represent the owner or operator and that the statements in the claim form are true to the best of the signer's knowledge.

(3) Applications may be submitted in a piecemeal manner on the cleanup of a single release in situations where the cleanup would require a considerable period of time.

(4) The individual that signed the claim can request in writing that any incomplete or insufficiently documented costs be withdrawn from the claim. Withdrawn costs may be submitted at a later date on a new claim form. Costs that are withdrawn and later submitted will be processed as a new claim.

(5) The minimum claim value may not be less than $500 except:

(a) when a claim includes only utility bills or laboratory invoices, the minimum is reduced to $100;

(b) when the five-year limitation period set forth in 75-11-307(2)(i), MCA, will expire before a total of $500 in cleanup costs will be accrued;

(c) when the claim is the final claim for a resolved release; and

(d) when specific circumstances warrant, additional exceptions may be permitted.

(6) When submitting an invoice to be divided among multiple releases, the invoice must be equal to or in excess of $500. (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1991 MAR p. 2036, Eff. 11/1/91; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.335 APPLICATION FOR GUARANTEE OF REIMBURSEMENT OF FUTURE OR UNAPPROVED EXPENDITURES (1) Whenever an owner or operator requests the board to guarantee reimbursement for eligible costs not yet approved by the board, including estimated costs not yet incurred, the board may issue the requested guarantee, if it is able to make the necessary findings under (2).

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(2) The board must find, before guaranteeing reimbursement, that the owner or operator is eligible for reimbursement pursuant to 75-11-308(1), MCA, and that any estimated eligible cost not yet incurred is one that is reasonably certain to occur.

(3) In guaranteeing reimbursement of an estimated eligible cost not yet incurred, the board shall include a provision within the guarantee that the reimbursement is subject to adjustment in conformity with 75-11-309(3), MCA, after the cost has been incurred.

(4) Application forms for guarantee of reimbursement are available upon request from the board. (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1993 MAR p. 2678, Eff. 11/11/93; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.336 REVIEW AND DETERMINATION OF CLAIMS FOR REIMBURSEMENT (1) The board may not approve a claim for reimbursement unless the owner or operator has submitted a completed application for eligibility and the board has determined that the owner or operator is eligible in accordance with 75-11-308, MCA.

(2) Upon receipt of a claim for reimbursement for corrective action costs the board staff shall determine if the claim form is complete. The board staff shall promptly advise the owner or operator, or a remediation contractor acting on behalf of an owner or operator, of any incompleteness or deficiency that appears on the claim form. The final review may be suspended pending the submission of additional information by the owner or operator, or a remediation contractor acting on behalf of an owner or operator.

(3) Claim forms that have been reviewed as complete at least 60 days prior to a scheduled board meeting will normally be considered by the board at that meeting. The reimbursement of claims for which authority to reimburse has been delegated under (4), is not subject to this procedure. The agenda for consideration of claims at board meetings must follow the order in which claim forms were reviewed as complete and that are not reimbursed under (4).

(4) The board may delegate to the director of the Department of Environmental Quality authority to process and order reimbursement of specified categories of claims upon receipt and review. The director of the Department of Environmental Quality shall report the number of such claims and the amounts obligated or expended at the next meeting of the board.

(5) The recommendations of the board staff must be mailed to each board member at least seven days before the date of the board meeting at which the claim is scheduled to be considered.

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(6) The owner or operator may appear before the board and make a statement regarding the claim and the board staff's recommendations. Any other interested party may also make a statement. The board may establish a fair and reasonable limit on the time allowed for oral presentations. The board shall thereafter consider the claim and, upon making the determinations required by 75-11-309(3), MCA, may grant it in whole, in such part as may to the board seem proper, or may deny the claim. Reasons for partial or total denials or disallowed expenses must be stated in the claim reimbursement summary contained in the file. The minutes of a board meeting must reflect the sequence of actions taken on claims.

(7) Claims subject to the provisions of 75-11-309(2) or (3)(b)(ii), MCA, must be reimbursed according to the following:

(a) Except as provided in (7)(e), such claims must be paid pursuant to the following schedule:

Period of Noncompliance	Percent of allowed claim to be reimbursed
1 to 30 days	90%
31 to 60 days	75%
61 to 90 days	50%
91 to 180 days	25%
greater than 180 days	no reimbursement

(b) For claims subject to the provisions of 75-11-309(2), MCA, the period of noncompliance must begin on the date upon which the department issues an administrative order to the owner or operator. The period of noncompliance must end on the date upon which the owner or operator has satisfied the administrative order, as determined by the department in writing.

(c) For claims subject to the provisions of 75-11-309(3)(b)(ii), MCA, the period of noncompliance must begin on the date upon which the board determines that the owner or operator has not complied with 75-11-309, MCA, or rules adopted pursuant to 75-11-309, MCA. The period of noncompliance must end on the date upon which the board determines that the owner or operator has returned to compliance.

(d) Reimbursement of claims filed during the period of noncompliance must be suspended by the board. If the owner or operator returns to compliance as provided in (7)(b) or (c), the board may allow reimbursement of the suspended and future claims as provided in (7)(a). Any such reimbursement is subject to the requirements of 75-11-309(3)(a), MCA.

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(e) The percentages of reimbursement set forth in (7)(a) may be adjusted by the board according to the procedures in (6) upon a substantial showing by the owner or operator that one or more of the following factors applies and would entitle the owner or operator to an adjustment:

(i) the noncompliance has not presented a significant increased threat to public health or the environment;

(ii) there has been no significant additional cost to the fund;

(iii) the delay in compliance was caused by circumstances outside of the control of the owner or operator;

(iv) there was an error in the issuance of the administrative order or an error in the determination of the date an administrative order was satisfied; or

(v) any other factor that would render use of the reimbursement schedule in (7)(a) demonstrably unjust.

(8) With the exception of the timeframes set forth in (7)(a), any other time periods specified in this rule may be extended by agreement between the board and the owner or operator. (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1991 MAR p. 2036, Eff. 11/1/91; AMD, 1993 MAR p. 2678, Eff. 11/11/93; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 1512, Eff. 7/2/99; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2001 MAR p. 2024, Eff. 10/12/01; AMD, 2006 MAR p. 1734, Eff. 7/7/06; AMD, 2011 MAR p. 377, Eff. 3/25/11; AMD, 2011 MAR p. 1370, Eff. 7/29/11.)

17.58.337 THIRD-PARTY DAMAGES: PARTICIPATION IN ACTIONS AND REVIEW OF SETTLEMENTS (1) Any owner or operator who is sued for damages resulting from a release shall notify the board of the suit in writing within 15 days of being served with a summons and complaint. Within 45 days of being served by the summons and complaint, the owner or operator shall also:

(a) advise the board in writing if any insurer is defending the owner or operator, and if so the name of such insurer;

(b) provide the board with a complete copy of any insurance policy covering any part of the release or the damages resulting from the release, including all addendums, riders, and endorsements; and

(c) provide the board with a copy of the summons, complaint, and any answer or answers to the complaint.

(2) Any owner or operator who, prior to litigation, is advised of a claim by a third party, or enters into negotiations with a third party who claims to have been damaged by a release, or who receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall notify the board of such claim, demand, or negotiations within 30 days, and at that time shall provide the board with a copy of any such claim, demand, or negotiations that have been reduced to writing.

(3) In addition to the notice requirements of (1) and (2), the owner or operator shall provide the board with status reports once every three months after the notice is given, setting forth the status of investigation, discovery, motion practice, and negotiations for settlement.

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(4) The board may review the conduct of any such lawsuit or claim, and any negotiation to settle the lawsuit or claim, and may review any pleadings, discovery, investigation, and papers documenting settlement, or negotiations for settlement, of the suit. The owner or operator shall provide copies of any record or document requested by the board to assist the board in its review pursuant to this section. The board will not assume any legal costs incurred by the owner or operator, but may appear and participate in discovery or trial proceedings or settlement negotiations that bear on the determination of a third party's claim for plaintiff's damages caused by the release. If the parties wish to employ a judge pro tempore under the provisions of 3-5-113, MCA, or a settlement mediator, and consult with the board in the selection process, the board may participate in the compensation of the judge pro tempore or settlement mediator.

(5) Unless the board has been provided with a judgment or an executed settlement agreement that has finally determined an owner or operator's liability to a third party for payment of damages caused by a release, the board may require that a third party claiming such injury to property or person obtain at their own expense and provide to the board in writing a property appraisal or report of medical examination. Such appraisals or examinations are more likely to be required if the owner or operator has not kept the board apprised of the course of litigation or settlement negotiations as required under this rule. If the owner or operator does not keep the board apprised of the course of litigation or settlement negotiations as required by this rule, the board may refuse to reimburse any portion of a settlement or judgment pursuant to this section, and the board may deduct from any reimbursement owed its costs for hiring an independent physician, property appraiser, or claims adjuster under this rule.

(6) The board may review any settlement papers or negotiations, including confidential settlement mediations or conferences, for the purpose of determining the dollar amount of bodily injury or property damages actually, necessarily, and reasonably incurred by third parties which, if required to be paid by the owner or operator, would be considered eligible costs caused by a release, provided that the board shall comply with any confidentiality requirements imposed by the court or the mediator, unless there is a compelling state interest to do otherwise.

(7) "Property damage," as defined in 75-11-302, MCA, will be measured by the board in terms of diminution of market value, unless the costs of repairing damage are less than the diminution of market value.

(8) Failure to comply with any provision of this rule shall be considered noncompliance subject to 75-11-309(3)(b)(ii), MCA. (History: 75-11-318, MCA; IMP, 75-11-309(1)(g), MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, 1996 MAR p. 3125; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

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17.58.338 REVIEW OF CORRECTIVE ACTION PLAN (REPEALED) (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1991 MAR p. 2036, Eff. 11/1/91; AMD, 1995 MAR p. 118, Eff. 1/27/95; TRANS, from DHES, 1996 MAR p. 3125; REP, 1999 MAR p. 2279, Eff. 10/8/99.)

17.58.339 CORRECTIVE ACTION EXPENDITURES: DOCUMENTATION (REPEALED) (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1993 MAR p. 2678, Eff. 11/11/93; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; REP, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.340 THIRD-PARTY DAMAGES: REIMBURSEMENT DOCUMENTATION (1) For cases in which the board received notice as required in ARM 17.58.337, an owner or operator's claim for reimbursement of payments for third-party damages pursuant to a judgment entered in a court shall include copies of the notice of entry of judgment, abstract of costs, and a declaration:

(a) that the case has been concluded, including appeal, if any; and

(b) of the fees paid by the owner or operator to each attorney who appeared in the proceeding.

(2) For cases in which the board received notice as required in ARM 17.58.337, an owner or operator's claim for reimbursement of payments for third-party damages made by agreement in settlement of litigation or a claim shall include copies of the fully executed settlement agreement and such supporting documents as may be required under ARM 17.58.337.

(3) The board shall require a listing of amounts attributed to compensation for property damage, bodily injury, fees, costs, and any other aspect of damage paid to a third party pursuant to a settlement or judgment described in (1) or (2). (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11; AMD, 2011 MAR p. 1370, Eff. 7/29/11.)

17.58.341 REIMBURSABLE COSTS (1) Claims by an owner or operator for services provided by a consultant/contractor, or subcontractor, including services of its employees, must be categorized into standard codes according to the list of codes maintained by the board. This requirement does not apply to any service provided by an individual or remediation activity that does not closely approximate one of the standard categories in the board's list of codes.

(2) A consultant/contractor/subcontractor may file with the board, and amend, not more than once a year (unless further amendment is approved by the board staff), the labor and equipment hourly rates and remediation supply costs it bills clients in Montana for the remediation services reimbursed from the fund. The rate schedules and amendments must be maintained in confidence by and accessible only to the board staff, as the consultant's expectation of privacy is reasonable and outweighs the merits of public disclosure.

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(3) The board staff shall calculate the industry standard once a year after receipt of labor, equipment, and material schedules from companies whose invoices the board frequently reviews and that have been filed in a number sufficient for a meaningful statistical analysis. In calculating the industry standard, the board staff shall compute a range of allowable rates for each code listed in the board's consultant/contractor code list, which will be the mean rate for each code plus the standard deviation, not to exceed 10% of that mean. The board staff shall then notify each filing firm whether its rates exceed the range of allowable rates, and if so, by how much. The amount by which a consultant's rate for a particular code exceeds the range of allowable rates will be presumed unreasonable.

(4) Board staff may request a detailed explanation of rate structures when a submitted rate appears to vary significantly from those submitted by other consultants/contractors/subcontractors for the same code. Board staff may refuse to use rates that significantly vary from similar rates submitted by others, rates from persons who have not submitted claims for reimbursement, rates from persons who have not submitted proper documentation for claim reimbursement, and other rates not deemed acceptable by the board.

(5) A consultant/contractor/subcontractor who has not filed its schedule of rates must submit its invoices for services formatted in accordance with (1). Any rates which exceed the range of allowable rates will be presumed unreasonable.

(6) Any presumption in this rule may be overcome by presenting clear and convincing evidence to the board that the presumption should not apply, in accordance with the procedure set forth in ARM 17.58.336(6).

(7) Copies of the list, which establishes categories and codes of consultant/contractor/subcontractor services, may be obtained from the board. The list must explain the typical duties to be performed. The consultant/contractor/ subcontractor must be reimbursed labor costs billed on a time basis, and hourly labor costs for personnel time may not be for more than the minimum appropriate level of skill needed to perform a particular task.

(8) The board staff shall calculate the reasonable cost for department standard plans and standard reports and board standard remediation tasks once a year from requested costs received from companies in a quantity sufficient for a meaningful statistical analysis. The calculation must use the requested costs from the prior five years. In calculating the reasonable costs, the board staff shall compute a range of allowable costs for each standard document in the department's standard corrective action plans and reports lists and board tasks, which will be the mean rate for each standard plus the standard deviation, not to exceed 10% of that mean. The board staff shall then publish the reasonable cost reimbursement for the standard plans and reports on the board web site. The amount by which a consultant claim for a particular standard document exceeds the range of allowable rates will be presumed unreasonable. (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 1993 MAR p. 2678, Eff. 11/11/93; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

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17.58.342 OTHER CHARGES ALLOWED OR DISALLOWED (1) The following costs incurred in implementing a corrective action plan are presumed to be reasonably incurred:

(a) long distance telephone charges specific to the project;

(b) computer usage for generating graphics, maps, well logs, etc., that are necessary for reports;

(c) supplies and materials directly associated with the project (e.g., equipment purchased or withdrawn from inventory specifically for the corrective action, laboratory analysis, or well supplies);

(d) copies and facsimiles, not to exceed the preapproved rate, unless documentation supports a higher charge paid to an outside entity;

(e) mileage, at a rate equal to $0.05 per mile above the high rate for mileage reimbursement prescribed in the Montana Operation Manual (MOM), Volume I, Chapter 1-0300, Policy No. 1-0310.10 (August 13, 2002);

(f) lodging at actual cost unless excessive. Documentation supporting the cost (lodging invoice) is required. If no lodging invoice is provided, the reimbursement shall be at the rate of non-receiptable lodging facilities in accordance with 2-18-501(5), MCA;

(g) meals at the rates set forth in 2-18-501, MCA, for state employees traveling within Montana. Computation of time for purposes of determining meal allowances must be made according to 2-18-502, MCA. Exceptions for higher actual costs may be made by showing that seasonal or other factors make meals available at the above listed rates in certain limited areas (receipts will be required);

(h) vendor charges at cost;

(i) subcontractor charges at cost, unless a markup is allowed under (3)(c);

(j) sampling fees at $10 per sample, which includes ice, cooler, packing, and office-related handling charges.

(2) The following list indicates, by way of example and not limitation, types of charges that are presumed not to be reasonably incurred:

(a) miscellaneous office postage, such as mailing of application, reports, and correspondence;

(b) preparation of billing information and invoices;

(c) computer charges for writing reports;

(d) administrative charges for handling payments;

(e) standard office supplies;

(f) markups, add-ons, or profit added to vendor or subcontractor invoices, except as allowed under (3)(c);

(g) charges for basic telephone service;

(h) interest;

(i) multi-tiered markups;

(j) markups by a person who serves the sole function of providing funding for a corrective action;

(k) charges incurred prior to release discovery date;

(l) charges for preparation of board forms;

(m) charges for preparation of department 30-day release report;

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(n) removal and disposal of petroleum, petroleum sludge, and other liquids from tanks;

(o) removal of petroleum storage tanks required by underground storage tank rules or the International Fire Code; and

(p) state permit fees for tank removal or system modifications.

(3) The following costs for implementing a corrective action plan are presumed to be reasonably incurred, only if approved by the board staff prior to claim submission:

(a) rates for labor categories not listed in the board's fee schedule list;

(b) access or trespass fees;

(c) markups, not to exceed 7%, on subcontractor invoices when the subcontractor is furnishing labor (and incidental goods or supplies) on a project as part of the cleanup. Proof of payment by the contractor to the subcontractor must be submitted prior to board approval or director approval, authorized under ARM 17.58.336(3). The subcontractor markup may be reimbursable when the subcontractor's invoice and the evidence of subcontractor payment is on the same claim form as the markup. Subcontractor markup is allowed only when the subcontracted work was preapproved in a corrective action plan; and

(d) shipping of samples and equipment.

(4) Any presumption in this rule may be overcome by presenting clear and convincing evidence to the board that the presumption should not apply, in accordance with the procedure set forth in ARM 17.58.336(6). (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 1993 MAR p. 2678, Eff. 11/11/93; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1997 MAR p. 2198, Eff. 12/2/97; AMD, 1999 MAR p. 1512, Eff. 7/2/99; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2003 MAR p. 11, Eff. 1/17/03; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.343 REVIEW AND DETERMINATION OF THIRD-PARTY DAMAGE COSTS (1) All claims for reimbursement of third party damages must be filed with the board. Upon receipt of the claim, the board shall determine if the claim is complete. The board shall advise the owner or operator of any incompleteness or deficiency which appears on the claim. The final review may be suspended pending the submission of additional information by the owner or operator.

(2) The board may delegate to the director of the Department of Environmental Quality authority to process and order reimbursement of specified categories of claims upon receipt and review. The director of the Department of Environmental Quality shall report the number of such claims and the amounts obligated or expended at the next meeting of the board.

(3) The recommendations of the board staff must be mailed to each board member and to the owner or operator at least seven days prior to the board meeting that is scheduled to consider the claim.

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(4) The owner or operator may appear before the board and make a statement on the claim and on the recommendations. Any other interested party may also make a statement. The board may establish a fair and reasonable limit on the time allowed for oral presentations. The board shall thereafter proceed to consider the claim and may grant it in whole, in such part as may seem proper, or may deny the claim. Reasons for partial or total denial of disallowed expenses must be mailed to the owner or operator within ten days of the board's decision. The minutes of the board meeting shall reflect the sequence of actions taken on claims.

(5) Any time periods specified in this rule may be extended by agreement between the board or its staff and the owner or operator. (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 1512, Eff. 7/2/99; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.344 REVIEW OF CORRECTIVE ACTION PLAN (1) The board staff shall review each corrective action plan and establish the allowable reimbursement for each corrective action in a corrective action plan budget.

(2) Owners or operators or their representatives shall solicit at least three competitive bids for subcontractor corrective action work costing over $2500. The owner or operator shall submit documentation showing that at least three bids were solicited for the corrective action. Owners and operators must be reimbursed a reasonable amount for the time to prepare, solicit, and evaluate bids.

(3) Corrective action plans that require the removal of petroleum storage tanks, dispensers, or product piping must be shown to be the most cost effective corrective action and the costs must be approved by the board in writing before the action is performed.

(4) Corrective action plans that require the removal, repair, or replacement of building(s), sign(s), or canopies must be shown to be the most cost effective corrective action and the costs must be approved by the board in writing before the action is performed.

(5) Owners or operators are responsible for determining whether it is more cost effective to purchase or lease remediation equipment necessary to remediate a petroleum release. Board staff may assist owners or operators in this evaluation.

(6) Purchased remediation equipment, when no longer required to remediate the release, may be:

(a) used on another site that the owner or operator owns, or for the owner's or operator's own purpose;

(b) donated to the state of Montana. The state will then sell the equipment as surplus property. The proceeds of the sale will return to the fund; or

(c) sold with the owner or operator retaining 50% of the sale price and 50% returning to the fund. (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 2011 MAR p. 377, Eff. 3/25/11.)

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ENVIRONMENTAL QUALITY

CHAPTER 56

UNDERGROUND STORAGE TANKS
PETROLEUM AND CHEMICAL SUBSTANCES

Subchapter 1

General Provisions

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Subchapter 1

General Provisions

17.56.101 DEFINITIONS For the purposes of this chapter and unless otherwise provided, the following terms have the meanings given to them in this rule and must be used in conjunction with those definitions in 75-11-203, 75-11-302, and 75-11-503, MCA.

(1) "Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system or tank system and aboveground releases associated with overfills and transfer operations as the regulated substances moves to or from an UST system.

(2) "Aboveground storage tank" or "AST" means any one or a combination of tanks that is used to contain an accumulation of petroleum or petroleum products, and the volume of which is 90% or more above the surface of the ground.

(3) "Active tank" means, for the purpose of determining operating permit and compliance inspection requirements in subchapter 3 and closure requirements in subchapter 7, an underground storage tank that is being used, or is capable of being used, for dispensing, depositing or storing a regulated substance and is not inactive as defined in (31).

(4) "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

(5) "Belowground release" means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

(6) "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

(7) "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

(8) "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

(9) "CERCLA" means the Comprehensive, Environmental Response, Compensation, and Liability Act of 1980, as amended.

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(10) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(11) "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

(12) "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

(13) "Consumptive use" with respect to heating oil means consumed on the premises.

(14) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(15) "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(16) "Department" means the Department of Environmental Quality created by 2-15-3501, MCA.

(17) "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

(18) "Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

(19) "Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

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(20) "Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before November 3, 1989. Installation is considered to have commenced if:

(a) the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and

(b) either a continuous on-site physical construction or installation program has begun, or the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(21) "Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

(22) "Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or byproducts from the production process.

(23) "Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

(24) "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

(25) "Ground water" means water below the land surface in a zone of saturation.

(26) "Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

(27) "Hazardous waste" means a hazardous waste as defined by 75-10-403, MCA.

(28) "Heating oil" means petroleum that is No. 1, No. 2, No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including navy special fuel oil and bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(29) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

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(30) "Implementing agency" means an office or program of a local governmental unit, designated by the department pursuant to ARM 17.56.1003, in which the PST or UST system is located. Only one local governmental unit may act as an implementing agency for any given PST or UST system.

(31) "Inactive tank" means, for the purpose of determining operating permit and compliance inspection requirements in subchapter 3 and closure requirements in subchapter 7, an underground storage tank for which the department has received written notice, in accordance with ARM 17.56.701, that the tank is currently not being used for dispensing, depositing, or storing a regulated substance.

(32) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system. The terms "installation" and "to install" do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

(33) "Installer" means an individual who installs or closes underground storage tank systems.

(34) "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

(35) "Local governmental unit" means a city, town, county, or fire district.

(36) "Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

(37) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

(38) "New tank performance standards" includes design, construction, installation, release detection, and compatibility standards.

(39) "New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after the effective date of this rule.

(40) "Noncommercial purposes" with respect to motor fuel means not for resale.

(41) "Oil/water separator" means a flow-through tank designed to separate petroleum from water. The term does not include piping or tanks that contain petroleum effluent.

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(42) "On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

(43) "Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under subchapter 7.

(44) "Operator" means:

(a) for purposes of administration of Title 75, chapter 11, parts 2 and 5, MCA, the term as defined in 75-11-203, MCA; and

(b) for purposes of administration of Title 75, chapter 11, part 3, MCA, the term as defined in 75-11-302, MCA.

(45) "Out of service" means that the normal operation of the UST system is discontinued as characterized by the fact that no regulated substances are being deposited into or drawn from the system, and:

(a) leak detection or leak prevention procedures are not conducted in a manner normally associated with an in-service system of a similar type and purpose; or

(b) for emergency generator tanks, used oil tanks, heating oil tanks, or hazardous substance tanks, the infrequent use of the UST system cannot be justified as part of its purpose.

(46) "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(47) "Owner" means:

(a) for purposes of administration of Title 75, chapter 11, part 2, MCA, the term as defined in 75-11-203, MCA;

(b) for purposes of administration of Title 75, chapter 11, part 3, MCA, the term as defined in 75-11-302, MCA; and

(c) unless otherwise provided in statute or rule, for purposes of administration of Title 75, chapter 11, part 5, MCA, any person who:

(i) holds title to, controls, or possesses an interest in an UST system; or

(ii) owns the property on which an UST system is located. The term does not include a person who holds an interest in a storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(48) "Person" means:

(a) for purposes of administration of Title 75, chapter 11, part 2, MCA, the term as defined in 75-11-203, MCA;

(b) for purposes of administration of Title 75, chapter 11, part 3, MCA, the term as defined in 75-11-302, MCA; and

(c) for purposes of administration of Title 75, chapter 11, part 5, MCA, the term as defined in 75-11-503, MCA.

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(49) "Petroleum mixing zone" has the meaning given in 75-11-503, MCA.

(50) "Petroleum storage tank" or "PST" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-11-503, MCA;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, draft, shaft, or tunnel;

(c) an aboveground storage tank with a capacity less than 30,000 gallons; or

(d) aboveground pipes associated with tanks under (49)(b) and (c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 USC 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 USC 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in (49)(d)(i) and (ii), if the facility is intrastate.

(51) "Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(52) "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials.

(53) "Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

(54) "Primary leak detection method" means the leak detection method, approved under this chapter, that is:

(a) specified by the owner or operator and recorded by the compliance inspector as the primary leak detection method in the most recent UST program compliance inspection; or

(b) specified by the owner or operator in writing or e-mail to the department as the primary leak detection method.

(55) "Public water supply system" means a public water supply system as defined in 75-6-102, MCA.

(56) "RCRA" means the federal Resource Conservation and Recovery Act of 1986.

(57) "Regulated substance" means a hazardous substance as defined in 75-10-602, MCA; or petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute); does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4, MCA.

(58) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a tank system into ground water, surface water, surface soils, or subsurface soils.

(59) "Release detection" means determining whether a release of a regulated substance has occurred from the tank system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

(60) "Repair" means to restore a damaged or leaking tank or UST system component to the manufacturer's original design standards.

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(61) "Residential tank" is a tank located on property used primarily for dwelling purposes.

(62) "Safe Drinking Water Act" means the federal Safe Drinking Water Act, as amended, 42 USC 300f, et seq., and implementing regulations in 40 CFR Parts 141 and 142.

(63) "SARA" means the Superfund Amendments and Reauthorization Act of 1986.

(64) "Secondary containment" means:

(a) a liquid-tight (secondary) shell or jacket that extends around the inner (primary) shell of a tank or piping that is designed, constructed, and installed to contain any leak from any part of the tank or piping that routinely contains a regulated substance. Secondary containment must be designed, constructed, and installed to:

(i) prevent releases to the environment;

(ii) allow for monitoring of releases between the primary and secondary shells; and

(iii) allow for detection of any leak; and

(b) liquid-tight tank sumps, transition sumps, or under-dispenser containment sumps that will contain a leak from any part of the tank or piping that routinely contains a regulated substance until detection.

(65) "Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(66) "Significant noncompliance" means the existence of one or more violations that:

(a) cause, or may cause, a substantial, continuing risk to public health and the environment;

(b) substantially deviate from a requirement of this chapter; or

(c) include failure to install, maintain, or operate equipment essential to preventing or detecting leaks.

(67) "State fire marshal" means the state fire marshal as provided for in 2-15-2005, MCA.

(68) "Storm water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

(69) "Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

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(70) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

(71) "Terminal piping" means piping that:

(a) is located within a facility with a NAICS code of 424720 (product terminals), 486110 (petroleum pipelines, crude), 4486910 (petroleum pipelines, refined), or 482111 (line-haul railroads);

(b) is underground, or is above ground, if the above ground piping:

(i) cannot be segregated, disconnected, or isolated from subject underground piping; and

(ii) is connected to ancillary equipment including, but not limited to, pumps, valves, or meters;

(c) is connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely underground;

(d) is used to contain or transport a regulated substance; and

(e) has a normal operating pressure greater than 50 psi or a piping capacity greater than 362 gallons for diesel and 316 gallons for gasoline.

(72) "Underground area" means an underground room, such as a basement, cellar, shaft, or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

(73) "Underground release" means any belowground release.

(74) "Under-dispenser containment" means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or ground water (see ARM 17.56.204).

(75) "Underground storage tank" or "UST" has the meaning given in 75-11-503, MCA.

(76) "Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

(77) "UST system" or "tank system" means an underground storage tank or petroleum storage tank, as appropriate, ancillary equipment designed to prevent, detect, or contain a release from an UST system, the equipment necessary to connect dispensers to product piping, and containment system, if any.

(78) "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods. (History: 75-11-204, 75-11-319, 75-11-505, MCA; IMP, 75-11-203, 75-11-302, 75-11-319, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 1999 MAR p. 2046, Eff. 9/24/99; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2003 MAR p. 2759, Eff. 12/12/03; AMD, 2005 MAR p. 443, Eff. 4/1/05; AMD, 2006 MAR p. 913, Eff. 4/7/06; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2008 MAR p. 2475, Eff. 11/27/08; AMD, 2009 MAR p. 2247, Eff. 11/26/09; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2011 MAR p. 2279, Eff. 10/28/11.)

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17.56.102 APPLICABILITY (1) Except as otherwise provided in (2) through (6), this chapter applies to all owners and operators of UST systems and to all owners and operators of petroleum storage tanks who seek or intend to seek reimbursement from the Montana Petroleum Tank Release Cleanup Fund. An UST system listed in (4) or (5) must comply with ARM 17.56.104.

(2) This chapter does not apply to the following UST systems:

(a) any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances; and

(b) any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 402 or 307(b) of the Clean Water Act.

(3) Subchapters 2, 3, 4, 7, 8, 9, 10, 13, 14, and 15 do not apply to any of the following types of PSTs and UST systems:

(a) equipment or machinery that contains regulated substances for operation purposes such as hydraulic lift tanks and electrical equipment tanks;

(b) any UST system that contains a de minimis concentration of regulated substances;

(c) any emergency spill or overflow containment UST system that is expeditiously emptied after use;

(d) a storage tank that is situated in an underground area such as a basement, cellar, mine draft, shaft, or tunnel;

(e) an aboveground storage tank with a capacity less than 30,000 gallons;

(f) aboveground pipes associated with tanks under (3)(d) or (e); or

(g) oil/water separators.

(4) Subchapters 2, 3, 4, 5, 7, 8, 9, 10, 13, 14, and 15 do not apply to any of the following types of UST systems:

(a) wastewater treatment tank systems;

(b) any UST system containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following); and

(c) any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A.

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(5) Subchapters 2, 3, 4, 8, and 15 do not apply to any of the following types of UST systems:

(a) any UST system whose capacity is 110 gallons or less;

(b) airport hydrant fuel distribution system; and

(c) UST systems with field-constructed tanks.

(6) Subchapter 8 does not apply to any of the following types of UST systems:

(a) farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) tank used for storing heating oil for consumptive use on the premises where stored; and

(c) underground pipes connected to an aboveground storage tank. (History: 75-11-319, 75-11-505, MCA; IMP, 75-11-319, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2006 MAR p. 913, Eff. 4/7/06; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2011 MAR p. 145, Eff. 2/11/11.)

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17.56.103 INTERIM PROHIBITION FOR INSTALLATION (REPEALED) (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 1986 MAR p. 669, Eff. 4/25/86; TRANS, from DHES, 1995 MAR p. 2259; REP, 2003 MAR p. 1079, Eff. 5/23/03.)

17.56.104 TANK STANDARDS FOR EXEMPTED UST SYSTEMS (1) No person may install an UST system listed in ARM 17.56.102(4) or (5) for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):

(a) will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(b) is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(c) is constructed or lined with material that is compatible with the stored substance. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07.)

17.56.105 VARIANCES (1) Any person subject to this chapter may request in writing that a variance from any requirement or procedure of this chapter be granted by the department to the requestor if the request includes approval of an alternate requirement or procedure.

(2) The written request must include the following:

(a) the specific site for which a variance is sought;

(b) the specific provision of this chapter from which the variance is sought;

(c) the time period for which the variance is sought;

(d) the reason the variance is requested; and

(e) the alternate procedure or requirement for which approval is sought and a demonstration that the alternate procedure or requirement provides an equivalent or greater degree of protection for the public health, welfare, safety, and environment as the established requirement.

(3) The department shall grant or deny a variance requested in accordance with (1) within 30 days of receipt of the information required by (2). The department may only grant the variance if the applicant proves compliance with the requirements of (2)(e) by substantial evidence.

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(4) The department, on its own initiative, may issue a variance from any requirement or procedure of this chapter when noncompliance is discovered as a result of a compliance inspection, immediate compliance is impracticable, and the cost of immediate compliance is disproportionate to the benefit provided. The following criteria apply to a variance issued under this rule:

(a) a variance may be issued only when the department makes a written determination that delaying compliance does not create a significant increased threat to the public health, welfare, safety, and the environment;

(b) a variance may postpone compliance only until the earliest practicable time for replacement or upgrading the facility UST systems as identified in department findings; and

(c) the department may define a time period for each variance issued under this section. In no case may a variance be issued under this section for a term longer than 15 years.

(5) A variance issued under (4) must include the following:

(a) the specific provision of this chapter to which the variance applies;

(b) the time period for the variance; and

(c) any conditions or other procedures, methods, or equipment that the department determines are required in order to minimize the risk of release during the term of the variance.

(6) In order to reduce the risk of a release, any variance granted or issued by the department under this rule may be subject to conditions which may include implementation of procedures, methods, and the use of equipment not specifically required by law or rules. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2002 MAR p. 1477, Eff. 5/17/02; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10.)

Rules 17.56.106 through 17.56.119 reserved

17.56.120 NOTICE OF ASSESSMENT OF ADMINISTRATIVE PENALTY (REPEALED) (History: 75-11-505, MCA; IMP, 75-11-505, 75-11-525, MCA; NEW, 1998 MAR p. 1739, Eff. 6/26/98; REP, 2007 MAR p. 1189, Eff. 8/24/07.)

17.56.121 DETERMINATION OF ADMINISTRATIVE PENALTIES (REPEALED) (History: 75-11-505, MCA; IMP, 75-11-505, 75-11-525, MCA; NEW, 1998 MAR p. 1739, Eff. 6/26/98; AMD, 2001 MAR p. 2459, Eff. 12/21/01; AMD, 2003 MAR p. 2759, Eff. 12/12/03; AMD, 2006 MAR p. 1874, Eff. 5/5/06; REP, 2007 MAR p. 1189, Eff. 8/24/07.)

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ENVIRONMENTAL QUALITY

CHAPTER 56

UNDERGROUND STORAGE TANKS
PETROLEUM AND CHEMICAL SUBSTANCES

Subchapter 3

General Operating Requirements

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Subchapter 3

General Operating Requirements

17.56.301 SPILL AND OVERFILL CONTROL (1) Owners and operators shall ensure that releases due to spilling or overfilling do not occur. The owner and operator shall ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. The transfer procedures described in National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids," must be used to comply with this section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(2) The owner and operator shall report, investigate, and clean up any spills and overfills in accordance with ARM 17.56.505.

(3) The department adopts and incorporates by reference the version in effect on July 1, 2006, of the following standards and publications:

(a) National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids," which applies to tank vehicles to be used for the transportation of normally stable flammable and combustible liquids with a flash point below 200ºF (93.4ºC). Standard 385 provides minimum requirements for the design and construction of cargo tanks and their appurtenances. A copy may be obtained from National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (800) 344-3555;

(b) American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," which sets forth transferring and dispensing practices for flammable and combustible liquids, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956; and

(c) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code," which sets forth transferring and dispensing practices for flammable and combustible liquids, a copy of which may be obtained from National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (800) 344-3555. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2007 MAR p. 1189, Eff. 8/24/07.)

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17.56.302 OPERATION AND MAINTENANCE OF CORROSION PROTECTION (1) All owners and operators of steel UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(a) all corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that are in contact with the ground;

(b) all UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(i) all cathodic protection systems must be tested within six months of installation and at least every three years thereafter; and

(ii) the criteria that are used to determine that cathodic protection is adequate as required by this rule must be in accordance with National Association of Corrosion Engineers Standard RP0285, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection;"

(c) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly; and

(d) for UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained in accordance with ARM 17.56.305 to demonstrate compliance with the performance standards in this rule. These records must provide the following:

(i) the results of the last three inspections required in (1)(c); and

(ii) the results of testing from the last two inspections required in (1)(b).

(2) The department adopts and incorporates by reference the version in effect on July 1, 2006, of National Association of Corrosion Engineers Standard RP0285, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth cathodic protection system standards for prevention of corrosion on buried or submerged metallic UST systems, a copy of which may be obtained from NACE, International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259, Eff. 7/1/95; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10.)

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17.56.303 COMPATIBILITY (1) Owners and operators shall use an UST system made of or lined with materials that are compatible with the substance stored in the UST system. Owners and operators storing alcohol blends shall use the following codes to comply with the requirements of this rule:

(a) American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations;" and

(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."

(2) The department adopts and incorporates by reference the version in effect on July 1, 2006, of the following publications:

(a) American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations," which sets forth requirements for storing and handling regulated substances at UST facilities, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and

(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations," which sets forth requirements for storing and handling regulated substances of UST facilities, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10.)

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17.56.304 REPAIRS (1) Owners and operators of UST systems shall ensure that repairs will prevent releases due to structural failure or corrosion for as long as the UST system is used to store regulated substances. Owners and operators shall receive a permit from the department prior to making any repair of an UST system.

(2) Tanks not meeting the design or construction standards of the applicable code of practice in (4) may not be repaired and must be closed in accordance with ARM 17.56.702.

(3) Repairs must meet the following requirements:

(a) repairs to UST systems must be conducted in accordance with all applicable state, federal, and local laws and regulations and the applicable code of practice in (4). If there is a conflict in the referenced codes, the more stringent and protective code applies;

(b) tanks must be repaired according to the manufacturer's recommendation and under the supervision on site of a manufacturer's authorized representative or the tank manufacturer shall certify that the repaired tank meets the manufacturer's design standards;

(c) the tank manufacturer shall re-warranty the repaired tank for ten years or the remainder of the original warranty period, whichever is longer;

(d) the department may require excavation of the tank to be repaired so that the outer wall of the tank may be inspected and tested for defects;

(e) metal pipe sections and fittings that are damaged or have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings must be repaired in accordance with the manufacturer's specifications or be replaced;

(f) upon completion of the repair and before the UST system is placed in service, the following tests must be performed:

(i) repaired tanks and piping must be tightness tested in accordance with ARM 17.56.407(1)(c) and 17.56.408(1)(b); and

(ii) corrosion protection systems circuitry must be tested to ensure it is still functioning;

(g) within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with ARM 17.56.302(1)(b) and (c) to ensure that it is operating properly; and

(h) UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this rule.

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(4) The department adopts and incorporates by reference the version in effect on July 1, 2006, of the following standards or specifications:

(a) Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products," which sets forth requirements for the manufacture and installation of glass-fiber-reinforced plastic underground storage tanks for petroleum products, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(b) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," which sets forth requirements for corrosion protection systems for underground storage tanks, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(c) American Society of Testing and Materials Standard D4021, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks," which sets forth design standards for FRP UST tanks, a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017;

(d) Steel Tank Institute, "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks," which sets forth design and installation standards of cathodically protected steel underground storage tanks, a copy of which may be obtained from Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265; and

(e) Steel Tank Institute ACT-100, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks," which sets forth a minimum consensus standard for the fabrication, installation, and repair of FRP clad/composite tanks, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 1999 MAR p. 2046, Eff. 9/24/99; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10.)

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17.56.305 REPORTING AND RECORDKEEPING (1) Owners and operators of UST systems shall cooperate fully with inspections, monitoring, and testing conducted by the department or the implementing agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to section 9005 of Subtitle I of RCRA, as amended or pursuant to other state laws or rules, including the following:

(a) owners and operators shall submit the following information to the department:

(i) notification for all UST systems which includes certification of installation for new UST systems;

(ii) reports of all releases including suspected releases, spills and overfills, and confirmed releases;

(iii) corrective actions planned or taken including initial abatement measures, initial site history, free product removal, the result of remedial investigations, and cleanup plan; and

(iv) a notification before permanent closure or change-in-service;

(b) owners and operators shall maintain the following information:

(i) documentation of operation of corrosion protection equipment;

(ii) documentation of UST system repairs;

(iii) recent compliance with release detection requirements; and

(iv) results of the site investigation conducted at permanent closure; and

(c) owners and operators shall keep the records required either:

(i) at the UST site and immediately available for inspection by the department or the implementing agency;

(ii) at a readily available alternative site and be provided for inspection by the department or the implementing agency upon request; or

(iii) in the case of permanent closure records required under ARM 17.56.705, owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2010 MAR p. 1888, Eff. 8/27/10.)

Rules 17.56.306 and 17.56.307 reserved

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17.56.308 OPERATING PERMIT REQUIRED (1) After March 31, 2003, except as provided in (9), a person may not place a regulated substance in, dispense a regulated substance from, or otherwise operate an underground storage tank system unless the owner or operator has a valid operating permit for the system.

(2) When the ownership of an UST changes, the operating permit in the name of the previous owner will remain valid for the new owner for 45 days after the transfer is completed.

(3) The department shall issue an operating permit when:

(a) the owner or operator has filed with the department an inspection report signed by a licensed compliance inspector and the department determines, on the basis of the inspection report and other relevant information, that the operation and maintenance of the underground storage tank systems at that facility are not in significant noncompliance with Title 75, chapter 11, part 5, MCA, or rules adopted thereunder, on the date of the inspection. The department may issue and renew permits for tanks that are in significant noncompliance with applicable requirements. The department may take enforcement actions, including actions for penalties, and may pursue any other remedy available to the department to address noncompliance with statutes, rules, permits, or orders issued pursuant to this chapter; and

(b) the department has received all required UST-related permit, inspection, and registration fees.

(4) If a filed inspection report contains substantive errors or inconsistencies, the department may, before determining whether to issue an operating permit, correct the report based on available information, require the inspector to provide additional information or require the owner or operator to obtain a follow-up inspection.

(5) An operating permit must be issued for three years.

(6) The department may suspend, revoke, or determine not to renew an operating permit issued under this rule upon its finding that there is substantial evidence that:

(a) the underground storage tank system for which the permit was issued is in significant noncompliance with Title 75, chapter 11, part 5, MCA, or with rules, permits or orders issued pursuant to Title 75, chapter 11, part 5, MCA;

(b) the permittee committed fraud or deceit in applying for the operating permit; or

(c) the operating permit was issued in error.

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(7) Except as provided in (8), the department shall suspend or revoke an operating permit issued under this rule according to the provisions of 75-11-512, MCA.

(8) If the department determines that noncompliance with Title 75, chapter 11, part 5, MCA, or this chapter, poses an immediate or substantial threat to the public health, safety, or environment, it may immediately revoke the operating permit. A permittee whose operating permit has been revoked in accordance with this rule may request a hearing before the department. The department shall schedule a hearing within ten days of the request for hearing.

(9) For the first 45 days after an operating permit expires, an UST is considered not operating if no regulated substance is deposited into or dispensed from the system. (History: 75-11-505, MCA; IMP, 75-11-509, MCA; NEW, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2001 MAR p. 2459, Eff. 12/21/01; AMD, 2002 MAR p. 1091, Eff. 4/12/02; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2003 MAR p. 2759, Eff. 12/12/03; AMD, 2006 MAR p. 913, Eff. 4/7/06; AMD, 2007 MAR p. 1667, Eff. 8/24/07; AMD, 2011 MAR p. 2139, Eff. 10/14/11.)

17.56.309 REQUIREMENTS FOR COMPLIANCE INSPECTIONS (1) The owner or operator of an underground storage tank system shall have all active underground storage tank systems inspected by a licensed compliance inspector, licensed pursuant to ARM 17.56.1402(3), at least every three years for compliance with the operation and maintenance requirements of this chapter. The inspections must:

(a) be completed at least 90 days before the expiration date of the operating permit issued pursuant to ARM 17.56.308; and

(b) include examination, assessment, and documentation of compliance with all tank operation and maintenance requirements under 75-11-509, MCA, and rules adopted thereunder. The aforementioned "operation and maintenance requirements" are those requirements in ARM Title 17, chapter 56, subchapters 2, 3, and 4 that address the following categories:

(i) release prevention and detection;

(ii) spill and overfill prevention;

(iii) corrosion protection; and

(iv) testing, monitoring, and recordkeeping related to (1)(a)(i) through (iii).

(2) The owner or operator of an underground storage tank system must have all inactive underground storage tank systems inspected by a compliance inspector or an oversight inspector, licensed pursuant to ARM 17.56.1402(3) and (4), at least every three years for compliance with the requirements of ARM 17.56.701.

(3) Underground storage tank systems that:

(a) under ARM 17.56.102(3), are exempt from ARM Title 17, chapter 56, subchapters 2, 3, and 4, are also exempt from compliance inspection requirements. Owners or operators of these underground storage tank systems may obtain an operating permit by making a written request to the department and providing evidence, satisfactory to the department, that the UST systems qualify for this exemption; and

(b) are referenced in ARM17.56.102(2), (4), and (5), are not required to have compliance inspections.

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(4) For an underground storage tank system that is installed or returned to active status pursuant to ARM 17.56.701 after November 1, 2001, an initial inspection must be completed at least 90 days, but no more than 120 days, after the date the conditional operating permit is issued or reissued pursuant to ARM 17.56.310. If the facility has other underground storage tank systems installed prior to November 1, 2001, all subsequent inspections of an underground storage tank system installed on or after November 1, 2001, must be conducted on the same schedule as the underground storage tank systems in existence prior to that date.

(5) Upon completion of the inspection, the inspector shall provide the owner or operator with a copy of the inspection report.

(6) No later than 15 days after any inspection conducted pursuant to this rule, the owner or operator, or the compliance inspector, shall provide to the department the results of the compliance inspection on a form approved by the department. The form must be signed by the licensed compliance inspector and the underground storage tank system owner or operator.

(7) All underground storage tank systems at an individual facility must be inspected at one time.

(8) The owner or operator shall correct all violations noted in a compliance inspection report either within 90 days of receipt of the inspection report by the owner or operator, or at least 14 days prior to the expiration of the facility's operating permit, whichever occurs first. For violations that have moderate or minor gravity, as defined in ARM 17.4.303, the department may establish another time period in which the violations must be corrected.

(9) The owner or operator shall submit to the department a follow-up inspection report either:

(a) within seven days after completion of the corrective actions required under (8), or at least 14 days before the expiration of the facility's operating permit, whichever occurs first; or

(b) within another time frame determined by the department. (History: 75-11-505, 75-11-509, MCA; IMP, 75-11-509, MCA; NEW, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2001 MAR p. 2459, Eff. 12/21/01; AMD, 2002 MAR p. 1091, Eff. 4/12/02; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2003 MAR p. 2759, Eff. 12/12/03; AMD, 2006 MAR p. 913, Eff. 4/7/06; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2009 MAR p. 2247, Eff. 11/26/09; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2011 MAR p. 145, Eff. 2/11/11; AMD, 2011 MAR p. 2139, Eff. 10/14/11.)

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17.56.310 CONDITIONAL, ONE-TIME FILL AND EMERGENCY OPERATING PERMITS (1) For an underground storage tank system installed after December 31, 2001, the department shall issue a conditional operating permit upon the submission of all documentation required by ARM 17.56.1305, related to the installation of that underground storage tank system.

(2) The department may issue or reissue a conditional operating permit when an underground storage tank system is returned to active status, pursuant to ARM 17.56.701, or when the department has determined that violations resulting from a compliance or oversight inspection have not been resolved.

(3) A conditional operating permit issued under (1) or (2) expires 180 days after issuance.

(4) Notwithstanding issuance of a conditional operating permit, the department may pursue any enforcement measures available under Title 75, chapter 11, part 5, MCA, to address UST violations.

(5) The department may issue a one-time fill permit for the following purposes:

(a) testing related to installation of a new UST system. The department may issue the fill permit concurrently with an installation permit issued pursuant to subchapter 13; or

(b) testing related to returning an inactive UST system to active status. The department may issue the fill permit upon receipt of written notice, in accordance with ARM 17.56.701, that the UST will return to active operational status.

(6) The department may issue an emergency operating permit to allow operation of an UST without a valid operating permit when operation of the UST is necessary to protect the safety and welfare of persons, property, or national security from imminent harm or threat of harm, as follows:

(a) before issuing an emergency operating permit, the department shall determine that under all the circumstances, any potential impacts to human health and the environment arising from operation of the UST are outweighed by the interest in preserving health, safety, or welfare of persons, property, or national security;

(b) emergency permits expire when the emergency is abated or 90 days after issuance of the permit, whichever time period is shorter;

(c) notwithstanding issuance of an emergency permit, the department may pursue any enforcement measures available under Title 75, chapter 11, part 5, MCA, to address UST violations; and

(d) in order to reduce the risk of a release, any emergency operating permit issued by the department under this rule may be subject to conditions or procedures that the department determines are necessary to minimize risks to human health or to the environment. (History: 75-11-505, 75-11-509, MCA; IMP, 75-11-509, MCA; NEW, 2003 MAR p. 2759, Eff. 12/12/03; AMD, 2006 MAR p. 913, Eff. 4/7/06; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2011 MAR p. 2139, Eff. 10/14/11.)

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17.56.311 PERMANENT NONEXPIRING TAG (1) For purposes of this rule, "permanent nonexpiring tag" means a tank tag issued by the department for an underground storage tank system for identification and recordkeeping purposes.

(2) After September 1, 2011, the department shall issue a permanent nonexpiring tag for each underground storage tank for which the department has newly issued an operating permit as described in ARM 17.56.308(3) and (5). The tag must be visibly affixed by the owner or operator to each tank's fill pipe or to another visible part of the tank if affixing the tag to the fill pipe is impracticable. (History: 75-11-505, 75-11-509, MCA; IMP, 75-11-509, MCA; NEW, 2011 MAR p. 2139, Eff. 10/14/11.)

17.56.312 DELIVERY PROHIBITION (1) For purposes of meeting the delivery prohibition requirements of The Energy Policy Act of 2005, whenever the department finds that there has been significant noncompliance with Title 75, chapter 11, part 5, MCA, or with rules, permits, or orders issued pursuant to part 5, and the department has suspended, revoked, or determined not to renew an operating permit pursuant to ARM 17.56.308(7), or determined not to issue, or determined not to renew an operating permit pursuant to 75-11-509(9), MCA, the department will classify such underground storage tank(s) as ineligible for delivery, deposit, or acceptance of product.

(2) The department shall:

(a) make every reasonable effort to notify tank owners, operators, or both prior to prohibiting the delivery, deposit, or acceptance of product;

(b) notify product deliverers when an underground storage tank is ineligible for delivery, deposit, or acceptance of product;

(c) issue a certificate that clearly identifies the ineligible underground storage tank classified in (1); and

(d) issue an operating permit to the owner or operator within ten business days to reclassify an ineligible underground storage tank as eligible following correction of violations identified as significant noncompliance based on a follow-up inspection report submitted to the department in accordance with ARM 17.56.309(8).

(3) The certificate issued in (2)(c) must be conspicuously displayed at the facility until the underground storage tank is reclassified as eligible for delivery, deposit, or acceptance of product. (History: 75-11-505, 75-11-509, MCA; IMP, 75-11-509, MCA; NEW, 2011 MAR p. 2139, Eff. 10/14/11.)

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ENVIRONMENTAL QUALITY

CHAPTER 56

UNDERGROUND STORAGE TANKS
PETROLEUM AND CHEMICAL SUBSTANCES

Subchapter 4

Release Detection

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Subchapter 4

Release Detection

17.56.401 GENERAL REQUIREMENTS FOR ALL UST SYSTEMS

(1) Owners and operators of new and existing UST systems shall provide a method, or combination of methods, of release detection that:

(a) can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

(b) is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(c) meets the performance requirements in ARM 17.56.407 or 17.56.408, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990, except for methods permanently installed prior to that date, must be capable of detecting a leak rate or quantity specified for that method in ARM 17.56.407(1)(b) through (d) or 17.56.408(1)(a) and (b) with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(2) When a release detection method operated in accordance with the performance standards in ARM 17.56.407 and 17.56.408 indicates a release may have occurred, owners and operators shall notify the department and the implementing agency in accordance with subchapter 5.

(3) Owners and operators of all UST systems shall comply with the release detection requirements of this subchapter by December 22 of the year listed in the following table below:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year system was installed	Year when release detection is required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown	RD	P			
1965-69		P/RD			
1970-74		P	RD		
1975-79		P		RD	
1980-88		P			RD

New tanks (after Dec. 22, 1988) immediately upon installation.

P = Must begin release detection for all pressurized piping in accordance with ARM 17.56.402(1)(b)(i) and 17.56.403(1)(b)(iv).

RD = Must begin release detection for tanks and suction piping in accordance with ARM 17.56.402(1)(a) and (b)(ii), and 17.56.403.

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(4) Farm or residential tanks of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes, heating oil tanks, and emergency power generator tanks which were installed before 1965 or for which the date of installation is unknown, must comply with release detection requirements by December 22, 1990. Any of these types of tanks installed on or after January 1, 1965, must follow the schedule set forth in (3).

(5) Any existing UST system that cannot apply a method of release detection that complies with the requirements of this subchapter must complete the closure procedures in subchapter 7 by the date on which release detection is required for that UST system under (4). (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2010 MAR p. 1888, Eff. 8/27/10.)

17.56.402 REQUIREMENTS FOR PETROLEUM UST SYSTEMS

(1) Except as provided in (3), owners and operators of petroleum UST systems shall provide release detection for tanks and piping as follows:

(a) tanks must be monitored at least every 30 days for releases using one of the methods listed in ARM 17.56.407(1)(d) through (h) except that:

(i) UST systems that meet the performance standards in ARM 17.56.201 or 17.56.202, and the monthly inventory control requirements in ARM 17.56.407(1)(a) or (b), may use tank tightness testing (conducted in accordance with ARM 17.56.407(1)(c)) at least every five years until December 22, 1998, or until ten years after the tank is installed or upgraded under ARM 17.56.202(2), whichever is later;

(ii) UST systems that do not meet the performance standards in ARM 17.56.201 or 17.56.202 may use monthly inventory controls (conducted in accordance with ARM 17.56.407(1)(a) or (b)) and annual tank tightness testing (conducted in accordance with ARM 17.56.407(1)(c)) until December 22, 1998, when the tank must be upgraded under ARM 17.56.202 or permanently closed under ARM 17.56.702;

(iii) tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with ARM 17.56.407(1)(b)); and

(iv) farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes, a tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored, and emergency power generator tanks with capacities of 1,100 gallons or less capacity may use yearly tank gauging (conducted in accordance with ARM 17.56.407(1)(b)); and

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(b) underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(i) underground piping that conveys regulated substances under pressure must:

(A) be equipped with an automatic line leak detector conducted in accordance with ARM 17.56.408(1)(a); and

(B) have an annual line tightness test conducted in accordance with ARM 17.56.408(1)(b) or have monthly monitoring conducted in accordance with ARM 17.56.408(1)(c); and

(ii) underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three years and in accordance with ARM 17.56.408(1)(b), or use a monthly monitoring method conducted in accordance with ARM 17.56.408(1)(c). No release detection is required for suction piping that is designed and constructed to meet the following standards:

(A) the below-grade piping operates at less than atmospheric pressure;

(B) the below-grade piping is closed so that the contents of the pipe will drain back into the storage tank if the suction is released;

(C) only one check valve is included in each suction line;

(D) the check valve is located directly below and as close as practical to the suction pump; and

(E) a method is provided that allows compliance with (1)(b)(ii)(B) through (D) to be readily determined;

(iii) underground piping connected to heating oil tanks with a capacity of 660 gallons or less is exempt from the requirements of (1)(b)(i) and (ii) provided that:

(A) the new primary underground piping has secondary containment;

(B) liquid released into the interstitial space will move not more than 20 feet before being detected in a standpipe or sump;

(C) the interstice is visually monitored for released liquid once every 30 days; and

(D) the test results are maintained for at least one year; and

(iv) new underground piping connected to underground heating oil tanks with a capacity of 660 gallons or less shall slope back towards tanks that do not have foot valves.

(2) All leak testing results required by this rule must be observed by the owner, operator, or facility employee and the owner or operator shall document and retain the results.

(3) Terminal piping is exempt from the requirements of ARM 17.58.204(2) and (3), 17.56.304(3)(f)(i), 17.56.408(1)(a) through (d), 17.56.504(1)(a), and 17.56.701(4)(b)(ii) and (d)(ii). The department may exempt other associated piping on a case-by-case basis, if the department determines the exemption would not cause harm to human health or the environment.

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(4) The exempt piping referenced in (2) must be annually leak tested using:

(a) the procedures described in American Petroleum Institute Recommended Practice 1110, "Recommended Practice for Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquids or Carbon Dioxide," with the following exceptions:

(i) the minimum leak test pressure ratios may not be less than 1.0;

(ii) the leak test duration may not be less than one hour; and

(iii) leak acceptance criteria must be based on 5% decrease in pressure of the pipeline segment during the test period; or

(b) another leak test procedure approved by the department.

(5) The department adopts and incorporates by reference the version in effect on July 1, 2008, of American Petroleum Institute Recommended Practice 1110, "Recommended Practice for Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquids or Carbon Dioxide," which sets forth guidelines for pressure testing steel pipelines for the transportation of gas, petroleum gas, hazardous liquids, highly volatile liquids, or carbon dioxide, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956. (History: 75-11-302, 75-11-505, MCA; IMP, 75-11-302, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2559, Eff. 7/1/95; AMD, 1995 MAR p. 2488, Eff. 11/23/95; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2008 MAR p. 2475, Eff. 11/27/08; AMD, 2009 MAR p. 2247, Eff. 11/26/09; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2011 MAR p. 145, Eff. 2/11/11.)

17.56.403 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS (1) Owners and operators of hazardous substance UST systems shall provide release detection that meets the following requirements:

(a) release detection at existing UST systems must meet the requirements for petroleum UST systems in ARM 17.56.402. All existing hazardous substance UST systems must meet the release detection requirements for new systems in (1)(b); and

(b) release detection at new hazardous substance UST systems must meet the following requirements as provided in 40 CFR 264.193, adopted by reference in this rule:

(i) secondary containment systems must be designed, constructed, and installed to:

(A) contain regulated substances released from the tank system until they are detected and removed;

(B) prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(C) be checked for evidence of a release at least every 30 days;

(ii) double-walled tanks must be designed, constructed, and installed to:

(A) contain a release from any portion of the inner tank within the outer wall; and

(B) detect the failure of the inner wall;

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(iii) external liners (including vaults) must be designed, constructed, and installed to:

(A) contain 100% of the capacity of the largest tank within its boundary;

(B) prevent the interference of precipitation or ground water intrusion with the ability to contain or detect a release of regulated substances; and

(C) surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances); and

(iv) underground piping must be equipped with secondary containment that satisfies the requirements of (1)(b)(i) (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with ARM 17.56.408(1). The department adopts and incorporates by reference 40 CFR 264.193, which sets forth standards for secondary containment and detection of releases of UST systems, a copy of which may be obtained from Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10.)

Rules 17.56.404 through 17.56.406 reserved

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17.56.407 METHODS OF RELEASE DETECTION FOR TANKS (1) Each method of release detection for tanks used to meet the requirements of ARM 17.56.402 must be conducted in accordance with the following:

(a) product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0% of flow-through plus 130 gallons on a monthly basis in the following manner:

(i) inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(ii) the equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(iii) the regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(iv) deliveries are made through a drop tube that extends to within one foot of the tank bottom;

(v) product dispensing is metered and recorded within for an accuracy of six cubic inches for every five gallons of product withdrawn; and

(vi) the measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month;

(b) manual tank gauging must meet the following requirements:

(i) tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

(ii) level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(iii) the equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(iv) a leak is suspected and subject to the requirements of subchapter 5 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal tank capacity	Weekly standard (one test)	Monthly standard (average of four tests)
550 gallons or less	10 gallons	5 gallons
551-1000 gallons	13 gallons	7 gallons
1001-2000 gallons	26 gallons	13 gallons

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(v) tanks of 550 gallons or less nominal capacity may use this method as the sole method of release detection. Tanks of 551 to 2000 gallons may use the method in place of manual inventory control in (1)(a). Tanks of greater than 2000 gallons nominal capacity may not use this method to meet the requirements of this subchapter; and

(vi) tanks listed in ARM 17.56.402(1)(a)(iv) may use this method of release detection as the sole method of annual tank tightness testing;

(c) tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table;

(d) equipment for automatic tank gauging that tests for the loss of product or conducts inventory control must meet the following requirements:

(i) the automatic product level monitor test can detect a 0.2 gallon per hour (gph) leak rate from any portion of the tank that routinely contains product;

(ii) after December 31, 2010, if the automatic tank gauging equipment has the capability, the leak detection console must be set to temporarily disable the pumping system after a failed 0.2 gph leak test. The owner or operator may not restart the pumping system until:

(A) an investigation of the UST system alarm condition is conducted in accordance with the leak detection equipment manufacturer's requirements and ARM Title 17, chapter 56, subchapter 5; and

(B) the owner or operator determines that a release to the environment has not occurred; and

(iii) inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of (1)(a);

(e) testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(i) the materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(ii) the stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(iii) the measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

(iv) the level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

(v) the vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

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(vi) in the UST excavation zone, the site is assessed to ensure compliance with the requirements in (1)(e)(i) through (iv) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product;

(vii) monitoring wells are clearly marked and secured to avoid unauthorized access and tampering; and

(viii) after December 31, 2010, if the vapor monitoring equipment has the capability, the leak detection console must be set to temporarily disable the pumping system after a failed leak test. The owner or operator may not restart the pumping system until:

(A) an investigation of the UST system alarm condition is conducted in accordance with the leak detection equipment manufacturer's requirements and ARM Title 17, chapter 56, subchapter 5; and

(B) the owner or operator determines that a release to the environment has not occurred;

(f) testing or monitoring for liquids on the ground water must meet the following requirements:

(i) the regulated substance stored is immiscible in water and has a specific gravity of less than one;

(ii) ground water is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, course silts, or other permeable materials);

(iii) the slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low ground water conditions, as well as all conditions between the high and low ground water conditions;

(iv) monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(v) monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(vi) the continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;

(vii) within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in (1)(f)(i) through (v) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product;

(viii) monitoring wells are clearly marked and secured to avoid unauthorized access and tampering;

(ix) monitoring wells must be accessible for the sampling purposes of ARM 17.56.503;

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(x) after December 31, 2010, if the ground water monitoring equipment has the capability, the leak detection console must be set to temporarily disable the pumping system after a failed leak test. The owner or operator may not restart the pumping system until:

(A) an investigation of the UST system alarm condition is conducted in accordance with the leak detection equipment manufacturer's requirements and ARM Title 17, chapter 56, subchapter 5; and

(B) the owner or operator determines that a release to the environment has not occurred;

(g) interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed, and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(i) for double-walled UST systems:

(A) the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product; and

(B) after December 31, 2010, if the interstitial monitoring equipment has the capability, the leak detection console must be set to temporarily disable the pumping system after a failed leak test. The owner or operator may not restart the pumping system until:

(I) an investigation of the UST system alarm condition is conducted in accordance with the leak detection equipment manufacturer's requirements and ARM Title 17, chapter 56, subchapter 5; and

(II) the owner or operator determines that a release to the environment has not occurred;

(ii) for UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;

(A) the secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

(B) the barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(C) for cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(D) the ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(E) the site is assessed to ensure that the secondary barrier is always above the ground water and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

(F) monitoring wells are clearly marked and secured to avoid unauthorized access and tampering; and

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(iii) for tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored; and

(h) any other type of release detection method, or combination of methods, can be used if it can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(2) An owner or operator of an UST who conducts interstitial monitoring as the primary leak detection method pursuant to this chapter shall document the communication of all sensors with the console at least monthly, and maintain the records on site for the previous 12 months. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2009 MAR p. 2247, Eff. 11/26/09.)

17.56.408 METHODS OF RELEASE DETECTION FOR PIPING (1) Each method of release detection for piping used to meet the requirements of ARM 17.56.402 must be conducted in accordance with the following:

(a) methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour;

(b) an annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements. If an automatic line leak detector fails the annual test at 3.0 gallons per hour, it must be replaced or retested at 5.0 gallons per hour. An automatic line leak detector must be replaced if it fails the 5.0 gallons-per-hour test;

(c) a periodic test of piping may be conducted only if it can detect a 0.1 gallon-per-hour leak rate at 1 1/2 times the operating pressure; and

(d) any of the methods in ARM 17.56.407(1)(e) through (2) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

(2) After December 31, 2010, if the leak detection monitoring equipment has the capability, an owner or operator of an UST system that conducts pipe leak detection pursuant to ARM 17.56.408(1)(a) or (d) shall set the leak detection console to temporarily disable the pumping system after a failed leak test. An operator may not restart the pumping system until:

(a) an investigation of the UST system alarm condition is conducted in accordance with the leak detection equipment manufacturer's requirements and ARM Title 17, chapter 56, subchapter 5; and

(b) the owner or operator determines that a release to the environment has not occurred.

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(3) An owner or operator of an UST who conducts piping interstitial monitoring as the primary leak detection method pursuant to this chapter shall conduct one of the following tests to determine liquid tightness:

(a) hydrostatically test all containment sumps once every three years with liquid for one hour to a height six inches above the highest sump penetration. A passing test must show no liquid loss measured during the testing interval;

(b) vacuum or pressure test containment sumps in accordance with the testing equipment manufacturer's instructions and pass/fail requirements; or

(c) functionally test containment sumps as recommended by the manufacturer of the containment sump.

(4) An owner or operator who conducts a test pursuant to (3) shall report a failed test to the department.

(5) Testing conducted pursuant to (3) must be accomplished by a licensed installer or compliance inspector pursuant to this chapter. Initial sump functional tests at each facility must be conducted prior to December 31, 2012. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2009 MAR p. 2247, Eff. 11/26/09; AMD, 2010 MAR p. 1888, Eff. 8/27/10.)

17.56.409 RELEASE DETECTION RECORDKEEPING (1) All UST system owners and operators shall maintain records in accordance with ARM 17.56.305 demonstrating compliance with all applicable requirements of this subchapter. These records must include the following:

(a) all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for the operating life of the release detection system;

(b) the results of any sampling, testing, or monitoring must be maintained for at least one year, except that the results of tank tightness testing conducted in accordance with ARM 17.56.407(1)(c) must be retained until the next test is conducted; and

(c) written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for the operating life of the release detection system. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2010 MAR p. 1888, Eff. 8/27/10.)

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ENVIRONMENTAL QUALITY

CHAPTER 56

UNDERGROUND STORAGE TANKS
PETROLEUM AND CHEMICAL SUBSTANCES

Subchapter 5

Release Reporting, Investigation, and Confirmation

Rule 17.56.501 General

17.56.502 Reporting of Suspected Releases

17.56.503 Investigation Due to Off-site Impacts

17.56.504 Release Investigation and Confirmation Steps

17.56.505 Reporting and Cleanup of Spills and Overfills

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Subchapter 5

Release Reporting, Investigation, and Confirmation

17.56.501 GENERAL (1) Except as otherwise provided in this subchapter, owners and operators of UST systems must comply with the requirements of this subchapter. Owners and operators of PSTs seeking reimbursement from the Montana Petroleum Tank Release Cleanup Fund must comply with the requirements of this subchapter. (History: 75-10-405, 75-11-319, MCA; IMP, 75-10-405, 75-11-309, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259.)

17.56.502 REPORTING OF SUSPECTED RELEASES (1) Owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report suspected releases to a person within the Remediation Division of the department and the implementing agency or to the 24-hour Disaster and Emergency Services officer available at telephone number (406) 324-4777 within 24 hours of discovery of the existence of any of the following conditions:

(a) visual or olfactory observations, field monitoring results or other indicators of the presence of regulated substances in soil or nearby surface or ground water, or the presence of free product or vapors in basements, sewer or utility lines;

(b) the sudden or unexplained loss of product from the tank system;

(c) a failed tightness test, performed in accordance with subchapter 4, unless the tank system is found to be defective but not leaking and is immediately repaired or replaced;

(d) sampling, testing, or monitoring results from a release detection method, performed in accordance with subchapter 4, that indicate a release may have occurred, unless the release detection or monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and subsequent monitoring, sampling, or testing indicates that the system is not leaking;

(e) the presence of product in the tank secondary containment system;

(f) erratic behavior of product dispensing equipment or automatic release detection equipment unless the equipment is found to be defective but not leaking, and is immediately repaired or replaced;

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(g) an unexplained presence of water in the tank or in the interstitial space between the tank and the tank secondary containment;

(h) inconclusive results from a tank tightness test, performed in accordance with subchapter 4, unless the tank system is found to be defective but not leaking;

(i) sampling, testing, or monitoring results from a release detection method, required under subchapter 4, that are inconclusive and cannot rule out the occurrence of a release, unless the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and subsequent monitoring, sampling, or testing indicates that the system is not leaking;

(j) analytical results from soil samples that exceed 200 milligrams per kilogram for extractable petroleum hydrocarbons (EPH); and

(k) activation of a leak detection equipment monitoring alarm, or activation of flow restriction mode for a mechanical line leak detector, unless:

(i) within 24 hours of the occurrence of the condition, the condition is investigated, the cause of the condition is discovered, corrected, and a release to the environment or to secondary containment has not occurred;

(ii) the leak detection system is returned to a fully operational condition within 24 hours; and

(iii) records documenting the cause of the condition and the investigative and corrective actions undertaken in response to the condition are maintained for a one-year period at the facility, or at a readily available alternative site, where the records may be provided for inspection by the department upon request.

(2) Messages left on answering machines, received by facsimile, e-mail, voice mail, or other messaging device are not adequate 24-hour notice. For further assistance, the department's release reporting hotline may be reached at 1 (800) 457-0568. (History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2004 MAR p. 1391, Eff. 6/18/04; AMD, 2005 MAR p. 87, Eff. 1/14/05; AMD, 2007 MAR p. 2124, Eff. 12/21/07; AMD, 2009 MAR p. 4, Eff. 1/16/09; AMD, 2011 MAR p. 234, Eff. 2/25/11.)

17.56.503 INVESTIGATION DUE TO OFF-SITE IMPACTS (1) When required by the department based upon a suspected release, an owner and operator must follow the procedures in ARM 17.56.504 to determine if the system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that have been observed by the department or the implementing agency or brought to its attention by another person. (History: 75-10-405, 75-11-319, MCA; IMP, 75-10-405, 75-11-309, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259.)

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17.56.504 RELEASE INVESTIGATION AND CONFIRMATION STEPS

(1) Unless corrective action is initiated in accordance with subchapter 6, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under ARM 17.56.502, within seven days of the discovery of the condition identified in ARM 17.56.502, using either of the following steps, unless both are required by the language of this rule:

(a) Owners and operators must conduct tests (according to the requirements for tightness testing in ARM 17.56.407 and 17.56.408) that determine whether a leak exists in any portion of the tank that routinely contains product, or the attached delivery piping, or both.

(i) Owners and operators must immediately repair, replace or upgrade the PST or UST system, and begin corrective action in accordance with subchapter 6 if the test results for the system, tank, or delivery piping indicate that a leak exists.

(ii) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

(iii) Owners and operators must conduct a site check as described in (1)(b) if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(b) Owners and operators must measure for the presence of a release where contamination is most likely to be present at the PST or UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release. The department should be consulted to assist in determining sample types, sample locations, and measurement methods. Owners and operators of PST sites and owners and operators of UST sites should refer to the Montana Quality Assurance Plan for Investigation of Underground Storage Tank Releases as a guide in the collection, preservation and analysis of field samples;

(i) if the test results for the excavation zone or the PST or UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with subchapter 6;

(ii) if the test results for the excavation zone or the PST or UST site are taken according to (1)(b) and do not indicate that a release has occurred, further investigation is not required if approved by the department; and

(iii) the department may reject all or part of the test results, if it has reasonable doubt as to the quality of data or if the sample or test methods are scientifically unsound. In such cases, the department may require resampling, reanalysis, or both. The department will provide the owner or operator with an explanation of its decision to reject any test results. (History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2004 MAR p. 1391, Eff. 6/18/04.)

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17.56.505 REPORTING AND CLEANUP OF SPILLS AND OVERFILLS

(1) Owners and operators must contain and immediately clean up a spill or overfill, immediately report the spill or overfill to the department and the implementing agency pursuant to (3) or by another method that ensures that a person within the Remediation Division of the department receives notice within 24 hours of the release, and must begin corrective action in accordance with subchapter 6 in the following cases:

(a) spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons, or that causes a sheen on nearby surface water; and

(b) spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under 40 CFR Part 302.

(2) Owners and operators must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons and a spill or overfill of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, owners and operators must immediately notify the department and the implementing agency.

(3) Telephone notification required in (1) or (2) must be made to a person in the Remediation Division of the department or to the 24-hour Disaster and Emergency Services duty officer at (406) 324-4777. Messages left on answering machines, received by facsimile, e-mail, voice mail or other messaging device are not adequate 24-hour notice. For further assistance, the department's release reporting hotline may be reached at 1 (800) 457-0568. (History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2004 MAR p. 1391, Eff. 6/18/04; AMD, 2011 MAR p. 234, Eff. 2/25/11.)

17.56.506 REPORTING OF CONFIRMED RELEASES (1) Upon confirmation of a release in accordance with ARM 17.56.504, or after a release from the PST or UST system is identified in any other manner, owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report releases to the department and the implementing agency within the specified timeframes and in the following manner:

(a) Except as provided in (1)(b), all confirmed releases must be reported to a person within the Remediation Division of the department, the implementing agency, or the 24-hour disaster and emergency services duty officer available at telephone number (406) 324-4777 within 24 hours of confirming the release. Messages left on answering machines, received by facsimile, e-mail or voice mail, or other messaging device are not adequate 24-hour notice. For further assistance, the department's release reporting hotline may be reached at 1 (800) 457-0568.

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(b) When a release is confirmed from laboratory analysis of samples collected from a site, the release must be reported to the department and implementing agency by a method that ensures the department or the implementing agency receives the information within seven days of release confirmation. The date of release confirmation, for purposes of this rule, is the date the owner, operator, installer, remover, or person who performs subsurface investigations for the presence of regulated substances received notification of the sample results from the laboratory. Laboratory analytical results that exceed the following values confirm that a release has occurred:

(i) risk-based screening levels (RBSLs) established for petroleum contaminants in surface soil at UST sites, published in Table 1 of Montana Tier 1 Risk-based Corrective Action Guidance for Petroleum Releases (RBCA) for petroleum compounds and mixtures in surface and subsurface soil;

(ii) regional screening levels published in the United States Environmental Protection Agency, Regional Screening Level (RSL) Table for contaminants in soil that are not listed in RBCA; or

(iii) contaminant levels in water that exceed background levels in the receiving water. (History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 2004 MAR p. 1391, Eff. 6/18/04; AMD, 2010 MAR p. 1502, Eff. 6/25/10; AMD, 2011 MAR p. 234, Eff. 2/25/11.)

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

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (October 2012 edition);

(b) Montana Tier 1 Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) (September 2009);

(c) U.S. Environmental Protection Agency, Regional Screening Level (RSL) Table (May 2009); and

(d) Reportable Quantities for Hazardous Substances under section 102(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) published at 40 CFR Part 302 (2009).

(2) All references in this subchapter to the documents incorporated by reference in this rule are to the edition specified in this rule.

(3) Copies of the documents incorporated by reference in this rule may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. (History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 2004 MAR p. 1391, Eff. 6/18/04; AMD, 2005 MAR p. 87, Eff. 1/14/05; AMD, 2006 MAR p. 528, Eff. 2/24/06; AMD, 2007 MAR p. 2124, Eff. 12/21/07; AMD, 2008 MAR p. 946, Eff. 5/9/08; AMD, 2010 MAR p. 1502, Eff. 6/25/10; AMD, 2010 MAR p. 1796, Eff. 8/13/10; AMD, 2012 MAR p. 2060, Eff. 10/12/12.)

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17.56.508 NUMBERING PETROLEUM RELEASES (1) The department shall assign each confirmed petroleum release from a petroleum storage tank a unique identification number. Except as provided in (2), from the date of discovery of a confirmed release of petroleum from a petroleum storage tank at a facility, all contamination from petroleum storage tanks subsequently discovered through any investigative or corrective action in response to the previously confirmed and numbered release pursuant to subchapter 5 or 6, is considered "one release" and part of the previously confirmed and numbered release.

(2) Under the following circumstances the department shall confirm a separate release and assign another release identification number to petroleum contamination from a petroleum storage tank at a facility that has a previously confirmed and numbered release:

(a) when a separate release from a petroleum storage tank is discovered at a facility and, based on substantial evidence, the department finds the release began after the department categorized all earlier confirmed releases at the facility as resolved in accordance with ARM 17.56.607(4);

(b) when, based on substantial evidence, the department finds that there is a separate release of petroleum from a petroleum storage tank at a facility that began after any previously confirmed and numbered release was discovered; or

(c) when additional contamination from a petroleum storage tank is discovered and, based on substantial evidence, the department finds that the contamination originated from a petroleum storage tank or tanks at a different facility than the facility where the previously confirmed and numbered release occurred.

(3) For the purposes of this rule only, "facility" means any one or a combination of petroleum storage tanks that are located on contiguous property and owned and operated as a single business by the same person(s), at the time a confirmed release is discovered. A facility does not include petroleum storage tanks used in different businesses, or owned by different persons, and connected through permanent or temporary piping used to transfer petroleum products from one business to another at the time a confirmed release was discovered.

(4) "Petroleum storage tank" has the meaning provided in 75-11-302, MCA.

(5) The department may rescind a release number if the department determines that the release should not have been confirmed. This determination must be based on substantial evidence upon which the department may conclude that the release did not occur, that the contamination did not exceed standards cited in ARM 17.56.506, or that the contamination does not meet the criteria set forth in (2) and should have been attributed to an earlier confirmed release that has been assigned a release number. (History: 75-11-319, 75-11-505, MCA; IMP, 75-11-308, 75-11-309, 75-11-505, MCA; NEW, 2007 MAR p. 2124, Eff. 12/21/07.)

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ENVIRONMENTAL QUALITY

CHAPTER 56

UNDERGROUND STORAGE TANKS
PETROLEUM AND CHEMICAL SUBSTANCES

Subchapter 6

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Subchapter 6

Release Response and Corrective Action for Tanks
Containing Petroleum or Hazardous Substances

17.56.601 GENERAL (1) Except as otherwise provided in this rule, owners and operators of UST systems must, in response to a confirmed release from a tank or system, comply with the requirements of this subchapter. Owners or operators of PSTs seeking reimbursement from the Montana petroleum tank release cleanup fund, must, in response to a confirmed release from a tank or system, comply with the requirements of this subchapter. This subchapter does not apply to USTs excluded under ARM 17.56.102(2) and (4) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended.

(2) If corrective action, initial response and abatement, initial site history, remedial investigation, preparation of remedial investigation and cleanup plans, or cleanup, or any of them are conducted by:

(a) the department through a response action contractor employed by the department, this subchapter governs only to the extent it is not inconsistent with the master contract and task order agreed to between the contractor and the department.

(b) the owner or operator of the PST or UST system, whether with or without a response action contractor, this subchapter governs only to the extent it is not inconsistent with any order issued by a court, the department or the implementing agency or any corrective action plan approved by the department. (History: 75-10-405, 75-11-319, MCA; IMP, 75-10-405, 75-11-309, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259.)

17.56.602 INITIAL RESPONSE AND ABATEMENT MEASURES (1) Upon confirmation of a release in accordance with ARM 17.56.504 or after a release from the PST or UST system is identified in any other manner, owners and operators must:

(a) perform the following initial response actions:

(i) report the release to the department in accordance with ARM 17.56.506;

(ii) take immediate action to prevent any further release of the regulated substance into the environment; and

(iii) identify and mitigate fire, explosion, and vapor hazards.

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(b) perform the following initial abatement measures:

(i) remove as much of the regulated substance from the PST or UST system as is necessary to prevent further release into the environment;

(ii) visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water;

(iii) continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone or the PST and entered into subsurface structures (such as sewers or basements). Vapor concentrations measured as gasoline in surface or subsurface structures (basements, buildings, utility conduits) must be reduced to a level below the action levels established by the department. A combustible gas indicator should be used to determine explosive levels measured from the lowest point in a structure. To determine health-based vapor levels, air samples should be collected from the breathing space approximately four feet above the floor. The Montana Quality Assurance Plan for Investigation of Underground Storage Tank Releases should be consulted for appropriate sampling and analytical methods for collection of air samples. The following action levels for gasoline vapors are established by the department:

(A) action level to guard against explosion or fire is 10% of the lower explosive limit of gasoline, (1300 parts per million (ppm));

(B) action level to protect the health of individuals exposed in affected structures eight hours per day, five days per week is 30 ppm; and

(C) action level to protect the health of individuals in affected structures with full-time occupancy is seven ppm. If any action level is exceeded, immediate action must be taken by the owners and operators to reduce concentrations to below the above-specified action level. Monitoring and mitigation must continue for as long as they are necessary as indicated by the remedial investigation and these action levels.

(iv) remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or cleanup activities. If these remedies include treatment or disposal of soils, owners and operators must comply with applicable state and local requirements. Soils heavily contaminated with leaded gasoline, waste oil, solvents, or hazardous substances must be tested for the presence of hazardous wastes. Treatment or disposal of all soils containing hazardous wastes must be approved by the department.

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(v) determine the extent and magnitude of contamination in soils, ground water, surface water or both, which contamination has resulted from the release at the PST or UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of backfill, depth to ground water, and other factors as appropriate for identifying the presence and source of the release. Samples must be collected and analyzed in accordance with ARM 17.56.504(1)(b); and

(vi) investigate surface water and ground water to determine if existing drinking water sources have been adversely impacted by the release. If so, immediately provide an alternate supply of safe drinking water to the impacted persons, residences or businesses.

(c) Investigate to determine the possible presence of free product, begin free product removal as soon as practicable, and:

(i) conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges, or disposes of recovery byproducts in compliance with applicable local, state, and federal regulations;

(ii) use abatement of free product migration as a minimum objective for the design of the free product removal system; and

(iii) handle any flammable products in a safe and competent manner to prevent fires or explosions in accordance with local and state fire codes.

(d) Within 30 days after release confirmation, submit a report to the department on a form designated by the department summarizing the initial response and abatement measures taken under (1)(a) through (c) and any resulting information or data. The report must include data on the nature, estimated quantity, and source of the release. If initial response and abatement measures extend beyond the 30-day time period, owners and operators must also submit an additional follow-up completion report according to a schedule established by the department. If free product is removed, the following information must also be provided in or with the report:

(i) the name of the person(s) responsible for implementing the free product removal measures;

(ii) the estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

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(iii) the type of free product recovery system used;

(iv) whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(v) the type of treatment applied to, and the effluent quality expected from, any discharge to sanitary sewers, surface water, ground water, or atmosphere and a copy of any current state or federal discharge permit;

(vi) the steps that have been or are being taken to obtain necessary permits for any discharge; and

(vii) the disposition of the recovered free product. (History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2004 MAR p. 1391, Eff. 6/18/04.)

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17.56.603 INITIAL SITE HISTORY (1) Unless directed to do otherwise by the department, owners and operators must assemble and provide to the department information about a site where a release has been confirmed which must include, but is not necessarily limited to the following:

(a) a legal description of the real property at which the release occurred;

(b) a history of the ownership and operation of the PST or UST from which the release occurred, since at least the time at which the release from the tank did or could have occurred at the site, including the following:

(i) the name, current address and telephone number of all current owners and operators;

(ii) the name, current address and telephone number (if known) of all past owners and operators;

(iii) the years of current and past ownership and/or operation;

(iv) a description of the activities conducted at the site by each current and past owner/operator; and

(v) a general construction history of site.

(c) a map or maps and descriptions or symbols appropriate in scale and scope showing the following within a 500 foot (unless otherwise noted) radius of the site:

(i) adjacent and nearby buildings;

(ii) owner/operator each building;

(iii) paved (concrete or asphalt) areas;

(iv) property line defining the site;

(v) location of above and underground tanks and associated lines, pumps, and dispensers;

(vi) location of former tanks on property;

(vii) soil boring locations (if done);

(viii) monitoring well locations (if done);

(ix) underground utilities on and adjacent to the property (sewer, water, telephone, electric);

(x) basements and tile drain and sump systems on and adjacent to the property;

(xi) street maps or named/numbered streets;

(xii) all wells and springs within a 1/2 mile radius of the site;

(xiii) water bodies (rivers, ponds, lakes, and irrigation diversion) within a 1/2 mile radius of the site;

(xiv) surface elevation of the site of the release as taken from surveys, topographic maps of city; and

(xv) north arrow and map legend (scale, such as 1 inch = 100 feet).

(d) the following information concerning the PST or UST systems on the property:

(i) date of installation of all the tank or tanks on the site;

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(ii) dates of installation and removal of all tanks previously located on the site;

(iii) size of all tanks on site (diameter, length, gallons);

(iv) tank construction material of all tanks on site;

(v) present contents of all tanks on site;

(vi) previous contents of all tanks on site;

(vii) type and locations of product pumps, piping, and dispensers;

(viii) method and results of product inventory reconciliation (describe and attach copies of product inventory charts);

(ix) corrosion protection on tanks and lines (yes/no and description);

(x) type and location of leak detectors;

(xi) type of fill under and around tanks and lines (clay, sand, or other material); and

(xii) type of tank anchors (if any).

(e) description of all leaks, spills, overfills, or other releases from the PST or UST systems located on the site:

(i) date of release;

(ii) date release was reported to the department and to the implementing agency;

(iii) product released;

(iv) quantity lost;

(v) quantity recovered;

(vi) location on site;

(vii) cleanup action taken; and

(viii) offsite effects.

(f) any tank or line test dates, methods used for conducting the tests, tester's name, address, and phone number, and results of the test (include data and worksheets or calculations).

(g) if the PST or UST system (tanks and lines) or any part of it has been removed from the ground, provide a description of the condition of it by answering the following questions and providing the other information called for below:

(i) Was corrosion present?

(ii) Was there a visible leak?

(iii) Were there any loose fittings?

(iv) Was the tank/line carefully examined for signs of leakage?

(v) Was an independent observer (fire marshal, city official, testing laboratory employee, etc. but not your employee) present when tank(s) were removed?

(A) name of the independent observer;

(B) organization;

(C) address; and

(D) telephone.

(vi) Provide pictures of removed tanks and lines if pictures are available;

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(vii) State the disposition of tank(s) (who took it, where was it disposed);

(viii) Provide a description of soil conditions in the area of the tank and line excavation, with an estimate of the volumes:

(A) odors present and method of measurement;

(B) visible product in soil;

(C) sheen on water mixed with soil;

(D) sheen on groundwater in excavation;

(E) product on groundwater in excavation;

(F) soil sampling descriptions; and

(G) instrument reading (if available).

(ix) State the disposition of the soil removed during the excavation or at any other time after the release.

(h) copies of all reports previously completed, such as reports on soil, groundwater, or other reports pertinent to the site.

(2) Within 30 days of release confirmation, owners and operators must submit the information collected in compliance with (1) of this rule to the department in a manner that demonstrates its applicability and technical adequacy. Owners and operators must provide an explanation to the department regarding any information requested in (1) of this rule that cannot be obtained. (History: 75-10-405, 75-11-319, MCA; IMP, 75-10-405, 75-11-309, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259.)

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17.56.604 REMEDIAL INVESTIGATION (1) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of free and dissolved product contamination in the surface water and in ground water, owners and operators must conduct a remedial investigation of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(a) there is evidence that ground water wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);

(b) free product is found to need recovery in compliance with ARM 17.56.602(1)(c);

(c) there is evidence that contaminated soils may be in contact with ground water (e.g., as found during conduct of the initial response measures required under ARM 17.56.602); or

(d) the department or the implementing agency requests a remedial investigation, based on the known or potential effects of contaminated soil or ground water on nearby surface water, ground water, and human health.

(2) After reviewing information required under ARM 17.56.602 and 17.56.603, the department may determine that no additional investigation or corrective action is necessary; however, the department may require the owners and operators to initiate and continue compliance monitoring as determined by the department.

(3) A remedial investigation generally is an expanded site assessment more detailed in scope than the initial response and abatement measures under ARM 17.56.602, which must define the nature, extent, and magnitude of contamination and identify threats to public health, welfare and to the environment. A remedial investigation work plan must be submitted to the department prior to implementation by the owners and operators. The department shall submit a copy of a work plan from any owner or operator who is or may be seeking reimbursement to the appropriate local government office with jurisdiction over corrective action of the release. The office shall respond with any comments within 15 days of receipt of the plan and the department shall approve or disapprove the plan within 15 days of receipt from the local government. The following information is required to complete the remedial investigation:

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(a) site map(s) showing all sampling locations, including the site(s) of:
(i) borings;
(ii) monitoring wells;
(iii) recovery wells;
(iv) vapor survey points; and
(v) sites where any other samples were taken.
(b) soil and bedrock technical information and map(s), including:
(i) soil type, thickness, and classification below the site of the release;
(ii) unconsolidated material and bedrock type, thickness, and formation name below the site of the release;
(iii) boring logs and monitoring well logs (description of well, well construction methods, sediment odors, and blow count);
(iv) soil characteristics (grain size, sorting, origin, texture, permeability, classification);
(v) observed contamination (visual, odors, and vapor survey results); and
(vi) laboratory analytical results.
(c) ground water technical information and map(s), including:
(i) general description and characteristics of aquifers and unsaturated zone below the site of the release, including:
(A) hydraulic characteristics;
(B) depth to water table;
(C) surveyed water elevations and contours (potentiometric surface);
(D) direction of ground water flow;
(E) rate of ground water flow;
(F) perched conditions; and
(G) connections to other aquifers.
(ii) location, ownership, use and construction of all municipal, domestic, irrigation, industrial and monitoring wells within ½ mile of the site;
(iii) sampling description;
(iv) results of laboratory analysis.
(d) surface water technical information and map(s), including:
(i) location and use of all surface water within one mile of site;
(ii) ground water/surface water discharge points;
(iii) sampling description; and
(iv) results of laboratory analysis.

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(e) description of and map(s) showing the extent of free product and vapors discovered, whether as a result of current or past vapors/seepage, in basements and other subsurface structures and utilities. The description must include a copy of the vapor survey.

(f) technical conclusions, which must be stated with reasonable professional certainty and under the standard of care applicable, must include at least:

(i) source of the release;

(ii) current extent of and potential for the release (determined with field or laboratory analytical detection equipment) in or through the following media:

(A) soil; lateral and vertical extent of fuel-soaked soil;

(B) free product; areal extent;

(C) water; dissolved phase (water soluble constituents);

(D) vapor;

(g) sampling summary charts, which clearly identify by the date on which the samples were taken, all of the following: sample ID#, sampling location, sample type, date analyzed, laboratory conducting the analysis, analytical method, and results of the analysis.

(h) laboratory report sheets.

(4) If a remedial investigation has been conducted, owners and operators must submit a report containing the information collected under (3) within 120 days of release confirmation. If investigation extends beyond the time for submission of the report, owners and operators must also submit an additional follow-up completion report according to a schedule established by the department. (History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2007 MAR p. 2124, Eff. 12/21/07.)

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17.56.605 CLEANUP PLAN (1) At any time after reviewing the information submitted pursuant to ARM 17.56.602, 17.56.603, and/or 17.56.604, the department may require owners and operators to submit additional information or to develop and submit a cleanup plan for responding to contaminated soils and groundwater. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the department. Alternatively, owners and operators may, after fulfilling the requirements of ARM 17.56.602 through 17.56.604, choose to submit a cleanup plan for responding to contaminated soil and groundwater. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health, safety, and the environment as determined by the department, and must modify their plan as necessary to meet this standard.

(2) In order to prepare the cleanup plan, owners and operators must properly evaluate and interpret the field and analytical results of the site or remedial investigation to define the extent and magnitude of free product, adsorbed phase product, dissolved phase plume and vapor phase product.

(3) The owners and operators must screen and select cleanup alternatives to develop a matrix evaluation of cleanup alternatives which considers cost, performance, reliability, implementation, safety, and effects on public health and the environment. Information on all cleanup alternatives, with an explanation of why any alternative was selected, must be included in the cleanup plan. Cleanup alternatives may include, but are not limited to, the following types of action:

(a) take no further action;
(b) excavate the contaminated soil and/or treat and/or dispose of the same;
(c) in-place soil treatment;
(d) product recovery;
(e) groundwater removal and treatment;
(f) groundwater gradient control (hydrodynamic);
(g) vapor control measures;
(h) enhanced biodegradation;
(i) drinking water supply replacement;
(j) relocation of affected residences and/or businesses; and
(k) establishment of a petroleum mixing zone in accordance with ARM 17.56.607.

(4) Upon receipt of a cleanup plan from any owner or operator who is or may be seeking reimbursement, the department shall submit a copy of the plan to the appropriate local government office with jurisdiction over corrective action of the release. The office shall respond with any comments within 15 days of receipt of the plan and the department shall approve or disapprove the plan within 15 days of receipt from the local government.

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(5) The department will approve the cleanup plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the department must consider the following factors as appropriate:

(a) the physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

(b) the hydrogeologic characteristics of the facility and the surrounding area;

(c) the proximity, quality, and current and future uses of nearby surface water and groundwater;

(d) the potential effects of residual contamination on nearby surface water and groundwater;

(e) an exposure assessment that identifies routes by which receptors may be exposed to contaminants and estimates contaminant concentrations to which receptors may be exposed; and

(f) any information assembled in compliance with this subchapter.

(6) Within 30 days of department approval of the cleanup plan or as directed by the department, owners and operators must implement the plan, including any modifications made by the department to the plan. Owners and operators must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the department. During implementation of the cleanup plan, a status letter shall be submitted quarterly to the department and to the implementing agency. The cleanup plan must contain a plan and schedule for compliance monitoring to evaluate the effectiveness of cleanup activities. Compliance monitoring must continue for a period of at least two years after completion of cleanup activities specified in the cleanup plan, or another reasonable time period approved by the department. Results of compliance monitoring will be evaluated by the department on a site-specific basis and compared to cleanup goals that should be outlined in the cleanup plan. Final completion of cleanup activities and compliance monitoring must be approved by the department.

(7) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the cleanup plan is approved provided that they:

(a) notify the department and the implementing agency of their intention to begin cleanup;

(b) comply with any conditions imposed by the department, including halting cleanup or mitigating adverse consequences from cleanup activities; and

(c) incorporate these self-initiated cleanup measures in the cleanup plan that is submitted to the department for approval.

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(8) As part of corrective action, owners and operators must conduct restoration activities as soon as the completion of any part of the cleanup plan will allow. Restoration activities must include:

(a) restoring utility services disrupted as a result of investigative or corrective action activities;

(b) properly abandon or reclaim recovery and monitoring systems, including any wells, in accordance with state law or rules, after recovery and monitoring operations are terminated. Proper abandonment and reclamation includes reclamation of recovery culverts, infiltration galleries, electrical systems and plumbing systems, and landscaping necessary to restore any disturbed property to its precorrective action state. (History: 75-11-319, 75-11-505, MCA; IMP, 75-11-319, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2011 MAR p. 2279, Eff. 10/28/11.)

17.56.606 PUBLIC PARTICIPATION (1) For each confirmed release that requires a cleanup plan under ARM 17.56.605, the department must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned cleanup activities. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, letters to individual households, or personal contacts by field staff.

(2) The department must ensure that site release information and decisions concerning the cleanup plan are made available to the public for inspection upon request.

(3) Before approving a cleanup plan, the department may hold a public meeting to consider comments on the proposed cleanup plan if there is sufficient public interest, or for any other reason.

(4) The department must give public notice that complies with (1) if implementation of an approved cleanup plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the department. (History: 75-10-405, 75-11-319, MCA; IMP, 75-10-405, 75-11-309, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259.)

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17.56.607 RELEASE CATEGORIZATION (1) The department shall categorize all releases from USTs and PSTs regulated under this chapter as active, transferred, resolved, ground water management, or resolved with a petroleum mixing zone releases.

(2) Releases that do not meet the criteria set forth in (3), (4), (7), or (10) must be categorized as active.

(3) The department may categorize a release as transferred if another state or federal program assumes jurisdiction over the facility and all releases and threatened releases of hazardous or deleterious substances from USTs or PSTs regulated under this chapter are to be addressed by that program at the facility. The department shall notify the owner or operator before categorizing the release as transferred. The notice must state which state or federal program has jurisdiction over the release.

(4) The department may categorize a release as resolved if the department has determined that all cleanup requirements have been met and that conditions at the site ensure present and long-term protection of human health, safety, and the environment. The following requirements must also be met before a release may be categorized as resolved:

(a) documented investigations, conducted in accordance with ARM 17.56.604, identify the extent or absence of contamination in the soil, ground water, surface water, and other environmental media relevant to the release;

(b) risks to human health, safety and the environment from residual contamination at the site have been evaluated using methods listed in (4)(b)(i) or (ii) and the evaluation indicates that unacceptable risks do not exist and are not expected to exist in the future. The department considers a total hazard index that does not exceed 1.0 for noncarcinogenic risks, and a total cancer risk that does not exceed 1×10^{-5}, to be an acceptable risk level. Owners or operators, or other persons may, with department approval, use either of the following methods to evaluate risks from a release:

(i) Montana Tier 1 Risk-based Correction Action Guidance for Petroleum Releases (RBCA) for evaluation of risks to human health, safety and the environment associated with surface and subsurface soil and ground water contamination; or

(ii) a site-specific risk assessment method approved by the department for evaluation of risks to human health, safety, and the environment associated with contamination, or likely contamination, that demonstrates to the department's satisfaction that current and potential future exposure pathways are incomplete;

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(c) all appropriate corrective actions associated with the release and required by the department, including compliance monitoring and confirmatory sampling, have been completed;

(d) all free product has been removed to the maximum extent practicable; and

(e) all applicable environmental laws associated with the release have been met. These applicable requirements may include, but are not limited to, air quality, drinking water and monitoring well requirements, solid waste management requirements, hazardous waste management requirements, national pollutant discharge elimination system (NPDES) and Montana pollutant discharge elimination system (MPDES) requirements, underground injection controls and standards, UST requirements, noxious weed control, ground water and surface water quality standards, nondegradation requirements, storm water requirements, and requirements for the protection of endangered species, historic sites, wetlands and floodplains.

(5) The department may recategorize a resolved or a resolved with a petroleum mixing zone release as active if the department receives information with which it determines that further corrective action is necessary. Such information may include, but is not limited to, changes in land use or site conditions, including removal, alteration, or failure to maintain department-approved institutional controls, engineering controls, or physical conditions, that may increase the potential for adverse impacts to human health, safety, or to the environment from residual contamination. The department shall notify the owner or operator of the department's determination to recategorize a resolved release as active.

(6) If a release is categorized as resolved, the department shall send a letter to the owner or operator that:

(a) states that, based on information available, no further corrective action will be required at that time;

(b) requires that all monitoring wells, piezometers, and other ground water sampling points either be abandoned or maintained by the owner or operator in accordance with applicable rules and requirements;

(c) describes the nature, extent, concentration, and location of any residual contamination;

(d) describes any institutional controls, engineering controls, or physical conditions that must be maintained to protect human health, safety, or the environment from residual contamination;

(e) states the reasons why the department believes the release does not pose a present or future risk to human health, safety, or to the environment; and

(f) states that the department reserves the right to conduct or to require further corrective action if a new release occurs or if the department receives new or different information related to the release.

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(7) The department may categorize a release as ground water management if:

(a) site conditions satisfy all criteria listed under (4)(a) and (d);

(b) risk evaluations conducted in accordance with (4)(b) demonstrate that there are no unacceptable risks to human health, safety, ecological receptors, surface water, or aquatic sediments from exposure or likely exposure to contamination;

(c) all cleanup actions required by the department have been completed except for continued monitoring required under (8);

(d) ground water quality parameters exceed:

(i) a water quality standard or nondegradation requirement;

(ii) a standard established as a drinking water maximum contaminant level published in 40 CFR Part 141; or

(iii) a risk-based screening level published in RBCA;

(e) ground water performance monitoring and natural attenuation data collected in accordance with U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response Directive 9200.4-17P indicate that the extent, magnitude, and concentration of the dissolved contaminant plume have been stable or decreasing under fluctuating hydrogeologic conditions for a period of monitoring that is determined by the department to be sufficient to detect unacceptable risks to human health, safety, or to the environment;

(f) the source area contamination has been eliminated, controlled, or reduced to the maximum extent practicable, in accordance with U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response Directive 9200.4-17P, and any remaining source area contamination presents a low long-term threat to human health, safety or to the environment;

(g) documented investigations demonstrate that taking additional or different cleanup action is not feasible and will not meet site corrective action objectives within a reasonable timeframe as compared to monitored natural attenuation; and

(h) institutional controls are in place to ensure that identified risks to human health and safety are reduced to acceptable levels. For the purposes of this rule, institutional controls must consist of:

(i) deed restrictions or restrictive covenants that run with the land and that have been approved by the department and duly recorded;

(ii) a designated controlled ground water area as provided for in 85-2-506, MCA;

(iii) environmental control easements created and approved in accordance with 76-7-101 through 76-7-213, MCA; or

(iv) another method approved by the department that has been shown to ensure that risk to human health has been reduced to acceptable levels.

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(8) If the department categorizes a release as ground water management, the owner or operator shall monitor ground water in accordance with a monitoring program developed for the site and approved by the department.

(a) The monitoring program must specify the location, frequency, and type of sampling required to evaluate site conditions and confirm that residual contamination at the site is either decreasing in extent and concentration or remaining stable.

(b) The frequency of monitoring must not be less often than one monitoring event every three years.

(c) Monitoring must continue until the corrective action objectives for the site are achieved and the release may be categorized as resolved in accordance with (4).

(d) In developing a ground water monitoring program, the department shall consider:

(i) the nature, extent, and concentration of the contaminant plume;

(ii) the locations of human health and environmental receptors relative to the predicted migration path of the plume;

(iii) historical or reasonably anticipated land use in the area; and

(iv) any other factors that the department determines may affect the risk from residual contamination to human health, safety, or the environment.

(9) If the department categorizes a release as ground water management, the department shall send a letter to the owner or operator that:

(a) states that contamination from the release will be addressed by monitored natural attenuation;

(b) contains the information in (6)(b), (c), and (e);

(c) states the reasons why the department believes that the release does not pose an unacceptable present or future risk to human health, safety, or ecological receptors;

(d) includes a monitoring program that complies with (8);

(e) includes a schedule for review of any institutional controls;

(f) states that the release is not categorized as resolved and documents all conditions that preclude the site from being categorized as resolved; and

(g) states that the department may require further remedial investigation or corrective action to determine whether the requirements in (4) are met if the owner, operator or department proposes to recategorize the release as resolved.

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(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) the petroleum mixing zone is included in a corrective action plan and all the conditions set forth in 75-11-508, MCA, are met;

(b) documented investigations, conducted in accordance with ARM 17.56.604, identify the extent or absence of contamination in the soil, ground water, surface water, or other environmental media;

(c) all free product has been removed to the maximum extent practicable;

(d) risk evaluations conducted in accordance with (4)(b) demonstrate that there are no unacceptable risks to human health, safety, ecological receptors, surface water, or aquatic sediments from exposure or likely exposure to contamination;

(e) all appropriate corrective actions associated with the release have been completed and no further corrective actions are reasonably required by the department;

(f) all applicable environmental laws listed in (4)(e) associated with the release have been met, except that ground water quality exceeds a water quality standard for petroleum or petroleum constituents. In addition, ground water quality may exceed a nondegradation requirement or a standard established as a drinking water maximum contaminant level published in 40 CFR Part 141 for petroleum or petroleum constituents;

(g) ground water performance monitoring indicates that the extent, magnitude, and concentration of the dissolved contaminant plume have been stable or decreasing under fluctuating hydrogeologic conditions for a period of monitoring that is determined by the department to be sufficient to detect unacceptable risks to human health and safety;

(h) the source area contamination has been removed to the maximum extent practicable, and any remaining source area contamination does not pose an unacceptable present or future risk to human health, safety, or the environment;

(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. 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;

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(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 distances not meeting the 500-foot criteria, as 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.

(l) department-approved institutional controls, engineering controls, or physical conditions are in place to ensure that identified risks to human health and safety are reduced to acceptable levels. For the purposes of this rule, institutional controls, engineering controls, or physical conditions may consist of:

(i) easements, deed restrictions, or restrictive covenants that run with the land and that have been approved by the department and duly recorded;

(ii) a designated controlled ground water area as provided for in 85-2-506, MCA;

(iii) environmental control easements created and approved in accordance with 76-7-101 through 76-7-213, MCA; and

(iv) an engineering control, physical condition, or other method or condition approved by the department and designed to ensure that risk to human health has been reduced to acceptable levels; and

(m) a notice is placed on the deed of all parcels of real property on which the facility that is the source of the 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) If the department categorizes a release as resolved with a petroleum mixing zone, the department shall send a no-further-action letter to the owner or operator. The letter must describe the following conditions required to maintain the petroleum mixing zone:

(a) no further corrective action will be required to address the release provided that all institutional controls, engineering controls, physical conditions, or other department-approved controls or conditions are maintained;

(b) residual contamination from the release will be addressed by natural attenuation processes designed to reduce residual concentrations of contaminants to levels that meet all applicable environmental laws, listed in (4)(e), at a point in the future;

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(c) all monitoring wells, piezometers, and other ground water sampling points either be abandoned or maintained by the owner or operator in accordance with applicable rules and requirements and as directed by the department. Monitoring well maintenance requirements include reasonable well maintenance necessary to avoid waste or contamination of ground water in accordance with Title 37, chapter 43, MCA. Maintenance does not include monitoring of ground water level, flow, or quality, unless there is a unique, overriding, site-specific, impact-related reason to require monitoring;

(d) the nature, extent, concentration, and location of any residual contamination is defined and will not expand or increase;

(e) the release does not pose an unacceptable present or future risk to human health, safety, or ecological receptors;

(f) there be a schedule for review of any institutional controls;

(g) a statement that the department may require further documentation of site conditions to determine whether the requirements in (4) are met if the owner, operator, or department proposes to recategorize the release as resolved; and

(h) a statement that the department reserves the right to conduct or to require further investigation or corrective action if a new release occurs or if the department receives new or different information related to the release.

(12) Institutional controls, engineering controls, physical conditions, and notices placed on deeds, required to categorize a release as resolved with a petroleum mixing zone under (10), may be removed when the department determines that residual petroleum contamination in ground water exceeding a parameter listed in (10)(f) is no longer present or when the release is categorized as resolved in accordance with (4). (History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 2005 MAR p. 87, Eff. 1/14/05; AMD, 2007 MAR p. 2124, Eff. 12/21/07; AMD, 2010 MAR p. 1502, Eff. 6/25/10; AMD, 2011 MAR p. 2279, Eff. 10/28/11; AMD, 2014 MAR p. 2774, Eff. 11/7/14.)

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

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (October 2012 edition);

(b) Drinking Water Maximum Contaminant Levels published at 40 CFR Part 141 (2009);

(c) Montana Tier 1 Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) (September 2009); and

(d) U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response Directive 9200.4-17P, "Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action, and Underground Storage Tank Sites" (April 1999).

(2) All references in this subchapter to the documents incorporated by reference in this rule are to the edition specified in this rule.

(3) Copies of the documents incorporated by reference in this rule may be obtained from the Department of Environmental Quality, Remediation Division, P.O. Box 200901, Helena, MT 59620-0901. (History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 2005 MAR p. 87, Eff. 1/14/05; AMD, 2007 MAR p. 2124, Eff. 12/21/07; AMD, 2008 MAR p. 946, Eff. 5/9/08; AMD, 2010 MAR p. 1502, Eff. 6/25/10; AMD, 2010 MAR p. 1796, Eff. 8/13/10; AMD, 2012 MAR p. 2060, Eff. 10/12/12.)

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ENVIRONMENTAL QUALITY

CHAPTER 56

UNDERGROUND STORAGE TANKS
PETROLEUM AND CHEMICAL SUBSTANCES

Subchapter 7

Out-of-Service UST Systems and Closure

Rule 17.56.701 Inactive and Out-of-Service UST Systems

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Subchapter 7

Out-of-Service UST Systems and Closure

17.56.701 INACTIVE AND OUT-OF-SERVICE UST SYSTEMS (1) An UST system is inactive when the owner or operator notifies the department, in writing, that the UST is no longer in use for dispensing, depositing, or storing regulated substances. The owner or operator shall continue operation and maintenance of corrosion protection on an out-of-service UST in accordance with ARM 17.56.302, and shall continue operation and maintenance of any release detection in accordance with subchapter 4. Subchapters 5 and 6 must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3% by weight of the total capacity of the UST system, remains in the system.

(2) When an UST system is inactive or out of service for three months or more, owners and operators shall also:

(a) empty the UST system;

(b) leave vent lines open and functioning; and

(c) cap and secure all other lines, pumps, manways, and ancillary equipment.

(3) Out-of-service UST system components that do not meet the corrosion protection requirements of ARM 17.56.201 or 17.56.202 must, within 12 months of being taken out of service or, in the case of a found tank, within 12 months of its discovery, be:

(a) permanently closed in accordance with ARM 17.56.702 through 17.56.706; or

(b) brought into compliance with ARM Title 17, chapter 56, subchapter 2.

(4) In order to return an inactive UST to active status, owners and operators, in addition to complying with all applicable UST requirements under this subchapter, shall:

(a) when an UST has a valid operating permit and is inactive for 12 months or less, provide the department with 30 days advance written notice of the owner or operator's intent to return the UST to active status;

(b) when an UST has a valid operating permit and is inactive for more than 12 months:

(i) provide the department with 30 days advance written notice of the owner or operator's intent to return the UST to active status; and

(ii) perform a precision tank tightness test, line tightness tests and functionality tests of all mechanical and electronic release detection equipment, and submit all test results to the department. The owner and operator may return the UST to active status only upon receipt of notice from the department indicating that the test results are satisfactory. All tests must be conducted in accordance with accepted industry standards and must meet the performance requirements in ARM 17.56.407 and 17.56.408;

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(c) when an UST does not have a valid operating permit, but no more than 12 months have passed since the expiration date of the last operating permit issued for the UST:

(i) provide the department with advance written notice as required in (4)(b)(i); and

(ii) obtain a conditional operating permit in accordance with ARM 17.56.310 and a compliance inspection in accordance with ARM 17.56.309;

(d) when an UST does not have a valid operating permit, and more than 12 months have passed since the expiration date of the last operating permit issued for the UST:

(i) provide the department with advance written notice as required in (4)(b)(i);

(ii) perform a precision tank tightness test, line tightness tests, and functionality tests of all mechanical and electronic release detection equipment, and submit test results to the department. The owner and operator may return the UST to active status only upon receipt of notice from the department indicating that the test results are satisfactory. All tests must be conducted in accordance with accepted industry standards and must meet the performance requirements in ARM 17.56.407 and 17.56.408; and

(iii) obtain a conditional operating permit in accordance with ARM 17.56.310 and a compliance inspection in accordance with ARM 17.56.309;

(e) when an UST does not have a valid operating permit, continuous operation and maintenance of corrosion protection in accordance with ARM 17.56.302 cannot be demonstrated, and more than three years have passed since the expiration date of the last operating permit issued for the UST:

(i) meet all the requirements in (4)(d)(i) through (4)(d)(iii); and

(ii) show that the UST is structurally sound based upon an internal inspection. (History: 75-11-505, 75-11-509, MCA; IMP, 75-11-505, 75-11-509, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 2759, Eff. 12/12/03; AMD, 2006 MAR p. 913, Eff. 4/7/06; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10.)

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17.56.702 PERMANENT CLOSURE AND CHANGES IN SERVICE (1) At least 30 days before beginning either permanent closure or a change in service under (2) and (3), the owner or operator shall notify the department and the implementing agency, in writing, of their intent to permanently close or make the change in service, unless such action is in response to corrective action already noticed to the department under subchapter 6. The required assessment of the excavation zone under ARM 17.56.703 must be performed after notifying the department and the implementing agency but before completion of the permanent closure or a change in service.

(2) To permanently close a tank or connected piping, the owner or operator shall empty and clean it by removing all liquids and accumulated sludges. All tanks or connected piping taken out of service permanently must also be either removed from the ground or, when approved by the department, filled with an inert solid material.

(3) Continued use of an UST system to store a nonregulated substance is considered a change in service. Before a change in service, the owner or operator shall empty and clean the UST system by removing all liquid, accumulated sludge, and all combustible and flammable vapors and conduct a site assessment in accordance with ARM 17.56.703.

(4) The cleaning and closure procedures in (5) must be used to comply with this rule.

(5) The department adopts and incorporates by reference the version in effect on July 1, 2006, of the following standards, specifications, and publications:

(a) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks," which sets forth closure practices for UST systems, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(b) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks," which sets forth cleaning standards for UST tanks, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(c) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," which sets forth entrance standards for UST tanks, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and

(d) The National Institute for Occupational Safety and Health publication No. 80-106, "Criteria for a Recommended Standard: Working in Confined Space," which sets forth standards for working inside an UST tank, a copy of which may be obtained from Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10.)

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17.56.703 ASSESSING THE SITE AT CLOSURE OR CHANGE IN SERVICE (1) Before permanent closure or a change in service is completed, the owner or operator shall measure for the presence of a release where contamination is most likely to be present at the UST site. When measuring for the presence of a release, the owner or operator:

(a) shall collect soil samples, as soon as possible after the tank or piping has been removed, at the base of the tank excavation and piping trench at suspected worst-case locations, which locations may include:

(i) areas around the tank and piping that record the highest concentrations of hydrocarbon vapor recorded with vapor monitoring instruments;

(ii) areas around the tank and piping that look stained or discolored;

(iii) the lowest point of the tank;

(iv) where the tank meets the piping; and

(v) beneath the fill lines. For each tank with a capacity of over 600 gallons that is being removed for closure, at least two soil samples, one at each end of the tank, or at suspected worst-case locations, must be taken. For a tank with a capacity of 600 gallons or less, one soil sample must be collected beneath the tank. Each sample must be take at least one-to-two feet below the base of the maximum excavation depth. If contaminated soil is removed from the excavation site, at least one composite sample of the contaminated soil must be collected for analysis. For piping removal, soil samples must be collected every 20 feet at the base of the piping trench, and at suspected worst-case locations. Up to five piping trench samples may be composited;

(b) if ground water is encountered in the tank excavation, shall measure the presence of free product and collect a sample of the water for analysis;

(c) in selecting sample types, sample locations, and measurement methods, shall consider the method of closure, the nature of the stored substance, type of backfill, depth to ground water, and other factors appropriate for identifying the presence of a release. The department and the implementing agency should be consulted to assist in determining sample types, sample locations, and measurement methods. The Montana Quality Assurance Plan for Investigation of Underground Storage Tank Releases should be used as a guide for the collection, preservation, and analysis of field samples; and

(d) may use field hydrocarbon vapor analyzers as screening tools to determine the presence of a release and to assist in determining the extent of contaminated soil to be removed. These analyzers, however, should not be used to confirm the absence of soil or water contamination. Only laboratory analysis of samples will be accepted by the department to confirm the absence of soil or water contamination.

(2) If sampling indicates contaminated soils, contaminated ground water, or if free product as a liquid or vapor is discovered under (1), or by any other manner, the owner or operator shall begin corrective action in accordance with subchapter 6. A release must be reported to the department and to the implementing agency by the owner or operator within 24 hours. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10.)

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17.56.704 APPLICABILITY TO PREVIOUSLY CLOSED UST SYSTEMS

(1) When directed by the department, the owner or operator of a permanently closed UST system shall access the excavation zone and close the UST system in accordance with this subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10.)

17.56.705 CLOSURE RECORDS (1) The owner or operator shall maintain records in accordance with ARM 17.56.305 that are capable of demonstrating compliance with closure requirements under this subchapter. Results of the excavation zone assessment required in ARM 17.56.703 must be maintained for at least three years after completion of permanent closure or change in service in one of the following ways:

(a) by the owners and operators who took the UST system out of service;

(b) by the current owners and operators of the UST system site; or

(c) by mailing these records to the department if the records cannot be maintained at the closed facility.

(2) The owner or operator shall submit a completed tank closure report to the department within 30 days of closure on a form designated by the department. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10.)

17.56.706 REQUIREMENT TO EMPTY NONCOMPLIANT USTS

(1) The department may require an owner or operator to immediately empty an UST system upon a finding that the UST system is not in compliance with any of the requirements in ARM Title 17, chapter 56, subchapters 2, 3, 4 or 7 and that allowing the contents to remain in the UST system poses a risk to public health or the environment. (History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 2003 MAR p. 2759, Eff. 12/12/03.)

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SIMPLIFIED RULES OF ORDER

Prepared for the Psychiatry Residents' Association of the University of British Columbia.

This revised edition is provided in Adobe .pdf format for distribution via the World Wide Web, in response to numerous requests that the pages available at http://www.psychiatry.ubc.ca/rules.htm be collated into a print-ready form.

This work derives from Robert's Rules of Order, and from a document also entitled "Simplified Rules of Order," that was produced by the British Columbia Teachers' Federation for its internal use.

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Preface

Group process, that is, the process of individuals interacting with each other in a group, is a richly complex and intriguing phenomenon. The shifting alliances and rivalries of subgroups and the emergence and clash of dominant personalities can be fascinating to study. Yet, as anyone who has attempted to work with a group to a practical end will attest, the emergence of some kinds of group dynamics can thwart, or completely sabotage, achievement of the group's goals.

Systematic rules of parliamentary procedure have gradually evolved over centuries. Their purpose is to facilitate the business of the group and to ensure an equal opportunity for all group members to contribute and participate in conducting the business.

Robert's Rules of Order, first published in 1876, is the most commonly used system of parliamentary procedure in North America. The current edition, on which this resource is based, runs to over 300 pages. An attempt has been made to extract the most important ideas and most commonly used procedures, and to package these in a short, simple, accessible and understandable form.

To successfully play a game, one needs to know the rules. These are the basic rules by which almost all committees and associations operate. After browsing this resource, the reader will hopefully feel comfortable to confidently participate in the intriguing process of the committees and assemblies of his or her association.

LDSM 1996

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Simplified Rules of Order

Principles of Parliamentary Procedure

1. The purpose of parliamentary procedure is to make it easier for people to work together effectively and to help groups accomplish their purposes. Rules of procedure should assist a meeting, not inhibit it.

2. A meeting can deal with only one matter at a time. The various kinds of motions have therefore been assigned an order of precedence (see Table 1).

3. All members have equal rights, privileges and obligations. One of the chairperson's main responsibilities is to use the authority of the chair to ensure that all people attending a meeting are treated equally—for example, not to permit a vocal few to dominate the debates.

4. A majority vote decides an issue. In any group, each member agrees to be governed by the vote of the majority. Parliamentary rules enable a meeting to determine the will of the majority of those attending a meeting.

5. The rights of the minority must be protected at all times. Although the ultimate decision rests with a majority, all members have such basic rights as the right to be heard and the right to oppose. The rights of all members—majority and minority—should be the concern of every member, for a person may be in a majority on one question, but in minority the on the next.

6. Every matter presented for decision should be discussed fully. The right of every member to speak on any issue is as important as each member's right to vote.

7. Every member has the right to understand the meaning of any question presented to a meeting, and to know what effect a decision will have. A member always has the right to request information on any motion he or she does not thoroughly understand. Moreover, all meetings must be characterized by fairness and by good faith. Parliamentary strategy is the art of using procedure legitimately to support or defeat a proposal.

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Preparing for a Meeting

Although a chairperson will use the various rules of order in conducting a meeting, there are things the chair can do prior to the meeting to help ensure that things will go smoothly.

One of the most fundamental ways to ensure a successful meeting is often overlooked because it is so obvious—ensuring that the room selected for the meeting is suitable and comfortable. The room should permit a seating arrangement in which no one's view is blocked. Moreover, careful attention should be paid to such matters as lighting, acoustics and ventilation, for such factors can play major roles in the success or failure of a meeting.

By far the most important thing a chairperson can do to ensure a successful meeting is to do his/her homework. The chair should become thoroughly familiar with all the business to be dealt with at the meeting, including any reports to be made by committees or task forces, any motions already submitted by members or groups of members, and insofar as is possible, any "new" business likely to be introduced. Such preparation will enable the person to "stay on top of things" while chairing the meeting, and to anticipate most of the questions likely to be asked, information needed, etc.

The chair should also ensure that key people needed by the meeting (for example, the treasurer, committee chairs) will attend the meeting.

Procedures Used in Meetings

Quorum of Members

Before a meeting can conduct business it requires a *quorum*—the minimum number of members who must be present at the meeting before business can be legally transacted. The requirement of a quorum is a protection against unrepresentative action in the name of the association by an unduly small number of people.

The by-laws of an association should specify the number of members that constitute the quorum. Ideally, that number should be the largest number that can be depended on to attend any meeting except in very bad weather or other extremely unfavourable conditions.

Robert's rules state that if the by-laws do not specify what the quorum shall be, it is a majority of the members of the association. In some organizations, however, it is often not possible to obtain the attendance of a majority of the membership at a meeting. Most associations should therefore have a provision in their by-laws for a relatively small quorum. An actual number can be listed, or a percentage of the membership can be specified. No single number or percentage will be suitable for all associations. A quorum should be a small enough number to permit the business of the association to proceed, but large enough to prevent a small minority from abusing the right of the majority of the members by passing motions that do not represent the thinking of the majority.

The quorum for a committee of the whole is the same as that for a regular meeting, unless the by-laws of the association specify otherwise. If a committee of the whole finds itself without a quorum, it can do nothing but rise and report to the regular meeting. In all other committees and task forces a quorum is a majority of the members of the committee or task force.

In any meeting of delegates, the quorum is a majority of the number of delegates who have been registered as attending, even if some of them have departed.

In the absence of a quorum, any business transacted is null and void. In such a case, however, it is that business that is illegal, not the meeting. If the association's rules require that the meeting be held, the absence of a quorum in no way detracts from the fact that the rules were complied with and the meeting held, even though it had to adjourn immediately.

The only actions that can legally be taken in the absence of a quorum are to fix the time in which to adjourn, recess, or take measures to obtain a quorum (for example, contacting members during a recess and asking them to attend). The prohibition against transacting business in the absence of a quorum cannot be waived even by unanimous consent. If an important opportunity would be lost unless acted upon immediately, the members present at the meeting can—at their own risk—act in the emergency in the hope that their actions will be ratified at a later meeting at which a quorum is present.

Before calling a meeting to order, the chair should be sure a quorum is present. If a quorum cannot be obtained, the chair should call the meeting

to order, announce the absence of a quorum and entertain a motion to adjourn or one of the other motions allowed, as described above.

If a meeting has a quorum to begin with, but members leave the meeting, the continued presence of a quorum is presumed unless the chair or a member notices that a quorum is no longer present. If the chair notices the absence of a quorum, it is his/her duty to declare the fact, at least before taking any vote or stating the question on any new motion. Any member noticing the apparent absence of a quorum can raise a point of order to that effect at any time so long as he or she does not interrupt a person who is speaking. A member must question the presence of a quorum at the time a vote on a motion is to be taken. A member may not at some later time question the validity of an action on the grounds that a quorum was not present when the vote was taken.

If a meeting has to be adjourned because of a lack of a quorum, either before it conducts any business or part way through the meeting, the association must call another meeting to complete the business of the meeting. The usual quorum requirements apply to any subsequent meeting unless the association has specified in its by-laws a procedure to be used in such a situation. (The by-laws could stipulate, for example, that if a meeting had to be terminated for lack of a quorum, another meeting will be held *x* days or weeks later, and that the number of members attending that meeting will constitute a quorum.)

If the by-laws do not provide for a special procedure, all the usual requirements for calling and holding meetings apply.

The Agenda

The *agenda* consists of the items of business to be discussed by a meeting. It is made up of “special” and “general” orders.

Usually the chair or another designated person is charged with the responsibility for preparing the agenda. The person preparing the agenda can, of course, seek assistance with the task.

The agenda can be amended either before or after it is adopted. Until the meeting adopts the proposed agenda, the latter is merely a proposal. When a motion to adopt the agenda is made, therefore, the meeting can, by

motions requiring simple majorities, add items to, delete items from, or rearrange the order of items on the proposed agenda.

Once the agenda has been adopted, the business items on it are the property of the meeting, not of the groups or individuals who submitted the items. Any change to the agenda, once it has been adopted, can be made by motion, but any such motions require two-thirds or larger majorities to pass.

If an individual has submitted a motion for debate by a meeting, but decides, after the agenda has been adopted, not to present the motion, the individual cannot simply withdraw the motion from the agenda; that action requires a two-thirds majority vote, because the effect is to amend the agenda. The individual may choose not to move the motion, but it is the right of any other person attending the meeting to move the motion if he or she wants to do so.

To expedite progress of the meeting, the chair may announce that the individual would like to withdraw the motion, and ask if there is any objection. If no one objects, the chair can go on to the next item of business, because a unanimous lack of objection is, in effect, a unanimous vote to delete the item from the agenda.

Once the agenda has been adopted, each item of business on the agenda will come before the meeting unless: (1) no one moves a motion, (2) no one objects to withdrawal suggested by the sponsoring individual or group, (3) a motion to delete an item from the agenda is made and passed with a two-thirds or larger majority, or (4) the meeting runs out of time before the item can be discussed.

In summary, the agenda can be changed before or after it has been adopted. *Before adoption of the agenda, motions to amend the agenda require simple majority votes. After adoption, motions to amend the agenda require two-thirds or larger majorities to pass.*

Debate on Motions

Business is accomplished in meetings by means of debating *motions*. The word “motion” refers to a formal proposal by two members (the mover and seconder) that the meeting take certain action.

Technically, a meeting should not consider any matter unless it has been placed before the meeting in the form of a motion. In practice, however, it is sometimes advantageous to permit limited discussion of a general topic before a motion is introduced. A preliminary discussion can sometimes indicate the precise type of action that is most advisable, whereas presentation of a motion first can result in a poorly worded motion, or a proposal for action that, in the light of subsequent discussion, seems inadvisable. This departure from strict parliamentary procedure must be used with caution, however. The chair must be careful not to let the meeting get out of control.

Normally, a member may speak only once on the same question, except for the mover of the main motion, who has the privilege of "closing" the debate (that is, of speaking last). If an important part of a member's speech has been misinterpreted by a later speaker, it is in order for the member to speak again to clarify the point, but no new material should be introduced. If two or more people want to speak at the same time, the chair should call first upon the one who has not yet spoken.

If the member who made the motion that is being discussed claims the floor and has already spoken on the question, he/she is entitled to be recognized before other members.

Associations may want to adopt rules limiting the time a member may speak in any one debate—for example, five minutes.

The mover of a motion may not speak against his or her own motion, although the mover may vote against it. The mover need not speak at all, but when speaking, it must be in favour of the motion. If, during the debate, the mover changes his or her mind, he or she can inform the meeting of the fact by asking the meeting's permission to withdraw the motion.

Proper Wording of a Motion

Much time can be wasted at meetings when a motion or resolution is carelessly worded. It is for this reason that a motion proposed at a meeting, unless it is very short and simple, should always be in writing. The requirement of having to write the motion out forces more careful wording.

Determining Results of a Vote

Most motions are decided by a *majority* vote—more than half the votes actually cast, excluding blanks or abstentions. For example, if 29 votes are cast, a majority (more than 14½) is 15. If 30 votes are cast, a majority (more than 15) is 16. If 31 votes are cast, a majority (more than 15½) is 16.

Some motions (see Table 1) require a *two-thirds majority* as a compromise between the rights of the individual and the rights of the meeting. To pass, such motions require that at least two-thirds of the votes actually cast (excluding blanks and abstentions) are in the affirmative. If 60 votes are cast, for example, a two-thirds vote is 40. If 61 votes are cast, a two-thirds vote is 41. If 62 votes are cast, a two-thirds vote is 42. If 63 votes are cast, a two-thirds vote is 42.

A *plurality* vote is the largest number of votes when three or more choices are possible. Unless the association has adopted special rules to the contrary, a plurality vote does not decide an issue unless it is also a majority vote. In a three-way contest, one candidate might have a larger vote than either of the other two, but unless he/she receives more than half of the votes cast, he/she is not declared elected.

The Society Act specifies that the majority required on all "special resolutions" is *three-quarters.* All amendments to by-laws are "special resolutions," and therefore require the three-quarters majority vote.

Roll Call Vote

A *roll call vote* places on the record how each member votes. It has the opposite effect, therefore, of a *ballot vote*, which keeps each vote secret. Roll call votes are usually used only in representative bodies that publish their minutes or proceedings, since such votes enable the constituents to know how their representatives voted on their behalf. Roll call votes should not be used in a mass meeting or in any group whose members are not responsible to a constituency.

If a representative body is going to use roll call votes, the organization of which it is a part should include in its by-laws or procedures a statement of what size of minority is required to call a roll call vote. If the organization has no provisions in its by-laws or procedures, a majority vote is required to

order that a roll call vote be taken. (In such instances a vote to have a roll call vote would probably be useless, because its purpose would be to force the majority to go on record.)

Roll call votes cannot be ordered in committee of the whole.

The procedure for taking roll call votes is to call the names of the representatives or delegates alphabetically, and to have each person indicate orally his/her vote.

When the roll call vote has been concluded, the chair should ask if anyone entered the room after his or her name was called. Any such people are permitted to vote then. Individuals may also change their votes at this time. After all additions and changes have been made, the secretary will give to the chairperson the final number of those voting on each side, and the number answering present (abstaining). The chairperson will announce the figures and declare the result of the vote.

The name of each delegate or representative is included in the minutes of the meeting, together with his or her vote.

Challenging a Ruling of the Chair

Any ruling of the chair can be challenged, but such appeals must be made immediately after the ruling. If debate has progressed, a challenge is not in order. Although Robert's Rules of Order allow debate under certain circumstances, the practice of some groups is to allow no debate.

Robert calls a challenge to the chair an "appeal" from the chair's decision. When a member wishes to appeal from the decision of the chair, the member rises as soon as the decision is made, even if another has the floor, and without waiting to be recognised by the chair, says, "Mr. Chairman, I appeal from the decision of the chair." The chair should state clearly the question at issue, and if necessary the reasons for the decision, and then state the question this way: "The question is, 'Shall the decision of the chair be sustained?'" If two members (mover and seconder) appeal a decision of the chair, the effect is to take the final decision on the matter from the chair and vest it in the meeting.

Such a motion is in order when another speaker has the floor, but it must be made at the time of the chair's ruling. As noted above, if any debate or business has intervened, it is too late to challenge. The motion must be seconded, is not amendable, but can be reconsidered. A majority or tie vote sustains the decision of the chair, on the principle that the chair's decision stands until reversed by a majority of the meeting. If the presiding officer is a member of the meeting, he or she can vote to create a tie and thus sustain the ruling. (See also the section on Voting Rights of the Chairperson.)

It should be noted that members have no right to criticize a ruling of the chair unless they appeal it.

Committee of the Whole

The *committee of the whole house* ("committee of the whole" is the commonly used term) is a procedure used occasionally by meetings. When a meeting resolves itself into a committee, discussion can be much more free.

Robert distinguishes three versions of committee of the whole, each appropriate for a meeting of a particular size.

1) In a formal *committee of the whole*, suited to large meetings, the results of votes taken are not final decisions of the meeting, but have the status of recommendations that the meeting itself must vote on under its regular rules. Moreover, a chairperson of the committee of the whole is appointed, and the regular presiding officer of the meeting leaves the chair. The purpose for this move is to disengage the presiding officer from any difficulties that may arise during the committee's session, so that he/she can be in a better position to preside effectively during the final consideration of the matter by the regular meeting.

2) The *quasi committee of the whole* is particularly suitable for meetings of medium size (about 50-100 members). The results of votes taken in committee are reported to the meeting for final consideration under the regular rules, as with a committee of the whole. In this form, however, the presiding officer of the meeting remains in the chair and presides over the committee's session.

3) *Informal consideration* is suited to small meetings. The procedure simply removes the normal limitations on the number of times

members can speak in debate. The regular presiding officer remains in the chair, and the results of the votes taken during informal consideration are decisions of the meeting, and are not voted on again.

The procedure is for a member to rise and move: “That this meeting go into committee of the whole to consider...” A seconder is required.

In forming a committee of the whole, the meeting elects a chairperson, or the chair appoints another person to preside over the committee session and then vacates the chair. (When the president has been chairperson, the vice-president is usually named to chair the committee session.) Any guests who are present may then be asked to leave the meeting. If the meeting wants to discuss a matter without the presence of visitors, it can decide formally or informally to ask the chair to request guests to leave temporarily, and that the meeting proceed *in camera*.

Regular rules of order apply as in a meeting, except that members may speak more than once to the same question and that motions made in committee do not require seconders. The committee may consider only the matters referred to it by the meeting (in the motion forming the committee of the whole). No minutes are kept of the committee’s session, although notes should be kept for the purpose of reporting to the meeting.

Calls for orders of the day are not in order in a committee of the whole.

When the committee of the whole has fully considered the matter referred to it, a member will move: “That the committee now rise and report.” If this motion carries, the chairperson of the meeting resumes the chair and calls upon the chairperson of the committee to report. A report usually takes the form: “The committee of the whole considered the matter of ... and makes the following recommendations ...”

A mover and seconder are required for each recommendation. Amendments may be proposed in the usual manner. Because the only minutes kept are those of the regular meeting, it is important that any action wanted be correctly reported to the meeting from the committee session and that proposed motions be made regarding the action required.

If the committee of the whole wants additional time to consider the matter referred to it, it may decide to ask the regular meeting for permission to sit again. A time will then be established by a regular motion.

Voting Rights of the Chair

Robert's rules state that if the presiding officer is a member of the group concerned, he or she has the same voting rights as any other member. The chair protects impartiality by exercising voting rights only when his or her vote would affect the outcome. In such cases the chair can either vote and thereby change the result, or can abstain. If the chair abstains, he/she announces the result of the vote with no mention of his/her own vote.

The outcome of any motion requiring a majority vote will be determined by the chair's action in cases in which, without his/her vote, there is either a tie vote or one more vote in the affirmative than in the negative. Because a majority of affirmative votes is necessary to adopt a motion, a tie vote rejects the motion. If there is a tie without the chair's vote, the chair can vote in the affirmative, thereby creating a majority for the motion. If the chair abstains from voting in such a case, however, the motion is lost (because it did not receive a majority).

If there is one more affirmative vote than negative votes without the chair's vote, the motion is adopted if the chair abstains. If he/she votes in the negative, however, the result is a tie and the motion is therefore lost.

In short, the chairperson can vote either to break or to cause a tie; or, when a two-thirds vote is required, can vote either to cause or to block the attainment of the necessary two-thirds.

The chair cannot vote twice, once as a member, then again in his/her capacity as presiding officer.

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How Motions are Classified

For convenience, motions can be classified into five groups:

1. main motions
2. subsidiary motions
3. privileged motions
4. incidental motions

} known as secondary motions

5. motions that bring a question again before a meeting

The motions in the second, third and fourth classes (subsidiary, privileged and incidental motions) are often called *secondary* motions, to distinguish them from *main* motions.

Secondary motions are ones that are in order when a main motion is being debated; ones that assist a meeting to deal with the main motion.

Before examining each of the five types of motions, one should understand the concept *of order of precedence of motions.* This concept is based on the principle that a meeting can deal with only one question at a time. Once a motion is before a meeting, it must be adopted or rejected by a vote, or the meeting must dispose of the question in some other way, before any other business can be introduced. Under this principle, a main motion can be made only when no other motion is pending. However, a meeting can deal with a main motion in several ways other than just passing or defeating it. These other ways are the purpose of the various secondary motions, the motions in categories two, three and four of the five categories of motions listed above.

The rules under which secondary motions take precedence over one another have evolved gradually through experience. If two motions, A and B, are related in such a way that motion B can be made while motion A is pending, motion B *takes precedence over* motion A and motion A *yields* to motion B.

A secondary motion thus takes precedence over a main motion; a main motion takes precedence over nothing, yielding to all secondary motions. When a secondary motion is placed before a meeting, it becomes the immediately pending question; the main motion remains pending while the secondary motion is dealt with.

Certain secondary motions also take precedence over others, so that it is possible for more than one secondary motion to be pending at any one time (together with the main motion). In such a case, the motion most recently accepted by the chair is the immediately pending question—that is, it takes precedence over all the others.

The main motion, the subsidiary motions, and the privileged motions fall into a definite *order of precedence,* which gives a particular rank to each. The main motion—which does not take precedence over anything—ranks lowest. Each of the other motions has its proper position in the rank order, taking precedence over the motions that rank below and yielding to those that rank above it.

For ease of reference, the order of precedence is presented in Table 1.

When a motion is on the floor, a motion of higher precedence may be proposed, but no motion of lower precedence is in order.

At any given time there can be pending only one motion of any one rank. This means that other motions proposed during consideration of a motion can be accepted by the chair *only* if they are of higher precedence. In voting, the meeting proceeds with the various motions in inverse order—the last one proposed, being of highest precedence, is the first one to be decided.

It should be noted that “precedence” and “importance” are not synonyms. Indeed, the most important motion—the main motion—is the lowest in precedence.

The Main Motion

A main motion is a motion that brings business before a meeting. Because a meeting can consider only one subject at a time, a main motion can be made only when no other motion is pending. A main motion ranks lowest in the order of precedence.

When a main motion has been stated by one member, seconded by another member, and repeated for the meeting by the chair, the meeting cannot consider any other business until that motion has been disposed of, or until some other motion of higher precedence has been proposed, seconded and accepted by the chair.

Table 1. Order of Precedence of Motions

	Rank	Motion	may interrupt speaker	second required	debatable	amendable	may be reconsidered	majority required	2/3 majority required
privileged motions	1.	Fix time to adjourn		✗		✗	✗	✗	
	2.	Adjourn		✗				✗	
	3.	Recess		✗		✗		✗	
	4.	Question of privilege	✗	✗[1]	✗	✗	✗	✗	
	5.	Orders of the day	✗						✗[2]
subsidiary motions	6.	Table		✗				✗	
	7.	Previous question		✗			✗[3]		✗
	8.	Limit/extend limits of debate		✗		✗	✗		✗
	9.	Postpone to a certain time		✗	✗[4]		✗	✗[5]	✗[5]
	10.	Refer		✗	✗[6]	✗	✗[7]	✗	
	11.	Amend		✗	✗	✗[8]	✗	✗	✗[9]
	12.	Postpone indefinitely		✗	✗		✗[10]	✗	
	13.	Main motion		✗	✗	✗	✗	✗	

1. If a formal motion is made.
2. Must be enforced on the demand of any member unless the orders of the day (agenda) are set aside by two-thirds vote. If chair's ruling is challenged, majority vote required.
3. Can be reconsidered but only before the previous question has been put.
4. Only as to propriety or advisability of postponing and of postponing to a certain time.
5. Requires two-thirds majority if postponed to a later time in the same meeting (amends the agenda). If postponed to a subsequent meeting, then only a simple majority required.
6. Only as to propriety or advisability of referral.
7. Can be reconsidered if the group to which the matter has been referred has not started work on the matter.
8. An amendment to an amendment is not itself amendable.
9. A motion to amend the agenda requires a two-thirds majority.
10. Can be reconsidered only if the motion is passed.

Unless the main motion is very short and simple, the mover should hand it in writing to the secretary.

A main motion must not interrupt another speaker, requires a seconder, is debatable, is lowest in rank or precedence, can be amended, cannot be applied to any other motion, may be reconsidered, and requires a majority vote.

When a motion has been made by a member and seconded by another, it becomes the property of the meeting. The mover and seconder cannot withdraw the motion unless the meeting agrees. (Usually the chair will ask if the meeting objects to the motion's being withdrawn. If no one objects, the chair will announce: "The motion is withdrawn." See section on agenda.)

Subsidiary Motions

Subsidiary motions assist a meeting in treating or disposing of a main motion (and sometimes other motions). The subsidiary motions are listed below in ascending order of rank. Each of the motions takes precedence over the main motion and any or all of the motions listed before it.

The seven subsidiary motions are:

1. postpone indefinitely
2. amend
3. refer
4. postpone to a certain time
5. limit or extend limits of debate
6. previous question
7. table

Postpone Indefinitely

Despite its name, this motion is not one to postpone, but one to suppress or kill a pending main motion.

If an embarrassing main motion is brought before a meeting, a member can propose to dispose of the question (without bringing it to a direct vote) by moving to postpone indefinitely. Such a motion can be made at any time

except when a speaker has the floor. If passed, the motion kills the matter under consideration. It requires a seconder, may be debated (including debate on the main motion), cannot be amended, can be reconsidered only if the motion is passed, and requires a majority vote. (See also “Postpone to a Certain Time”.)

Amend

An *amendment* is a motion to change, to add words to, or to omit words from, an original motion. The change is usually to clarify or improve the wording of the original motion and must, of course, be germane to that motion.

An amendment cannot interrupt another speaker, must be seconded, is debatable if the motion to be amended is debatable, may itself be amended by an *amendment to the amendment*, can be reconsidered, and requires a majority vote, even if the motion to be amended requires a two-thirds vote to be adopted.

The chair should allow full discussion of the amendment (being careful to restrict debate to the amendment, not the original motion) and should then have a vote taken on the amendment only, making sure the members know they are voting on the amendment, but not on the original motion.

If the amendment is defeated, another amendment may be proposed, or discussion will proceed on the original motion.

If the amendment carries, the meeting does not necessarily vote immediately on the “motion as amended.” Because the discussion of the principle of the original motion was not permitted during debate on the amendment, there may be members who want to speak now on the issue raised in the original motion.

Other amendments may also be proposed, provided that they do not alter or nullify the amendments already passed. Finally, the meeting will vote on the “motion as amended” or, if all amendments are defeated, on the original motion.

An amendment to an amendment is a motion to change, to add words to, or omit words from, the first amendment. The rules for an amendment

(above) apply here, except that the amendment to an amendment is not itself amendable and that it takes precedence over the first amendment.

Debate proceeds and a vote is taken on the amendment to the amendment, then on the first amendment, and finally on the original motion ("as amended," if the amendment has been carried). Only one amendment to an amendment is permissible.

Sometimes a main motion is worded poorly, and several amendments may be presented to improve the wording. In such cases it is sometimes better to have a substitute motion rather than to try to solve the wording problem with amendments.

An individual (or a group of two or three) can be asked to prepare a substitute wording for the original motion. If there is unanimous agreement, the meeting can agree to the withdrawal of the original motion (together with any amendments passed or pending) and the substitution of the new motion for debate.

Refer

When it is obvious that a meeting does not have enough information to make a wise decision, or when it seems advisable to have a small group work out details that would take too much time in a large meeting, a member may move: "That the question be referred to the _____ committee" (or "to a committee"—not named).

A motion to refer cannot interrupt another speaker, must be seconded, is debatable only as to the propriety or advisability of referral, can be amended, can be reconsidered if the group to which the question has been referred has not begun work on the matter, and requires a majority vote.

If a motion to refer is passed, the committee to which the matter is referred should report on the question at a subsequent meeting. Sometimes the motion to refer will state the time at which a report will be required.

Postpone to a Certain Time

If a meeting prefers to consider a main motion later in the same meeting or at a subsequent one, it can move to postpone a motion to a certain time, which is specified in the motion to postpone. Such a motion can be moved

regardless of how much debate there has been on the motion it proposes to postpone.

A motion may be postponed definitely to a specific time or until after some other item of business has been dealt with.

When the time to which a motion has been postponed has arrived, the chairperson should state the postponed motion to the meeting for its consideration immediately. If another item of business is being discussed at that time, the chairperson should present the postponed motion immediately after the other business has been concluded. If the meeting, in postponing the original motion has instructed that it be given priority at the time to which it has been postponed (that is, issued a "special order"), the postponed motion interrupts any item of business on the floor at that time. For this reason, any "special order" requires a two-thirds majority vote.

A motion to postpone to a definite time may not interrupt another speaker, must be seconded, is debatable only as to the propriety or advisability of postponing and of postponing to the particular time, can be amended, can be reconsidered, and requires a majority vote if the postponement is to a subsequent meeting. However, if the postponement is to a later time in the same meeting, the effect is to amend the agenda of that meeting, and the motion therefore requires a two-thirds majority vote.

Limit or Extend Limits of Debate

A motion to limit debate changes the normal rules of debate. It could, for example, limit the time of the whole debate (such as, "I move that debate on this motion be limited to 15 minutes"), or it might limit the time taken by each speaker ("I move that debate on this motion be limited to two minutes per speaker").

A motion to extend debate permits greater participation and time than usual.

A motion to limit or extend the time of debate (on one matter or for the entire meeting) may not interrupt a speaker, must be seconded, is not debatable, can be amended, can be reconsidered, and requires a two-thirds majority vote.

Previous Question (To Vote Immediately)

This is a tactic to close debate on a question. It is usually made at a time when the debate has been long and repetitious. A member rises and says: “I move that the question be now put.”

A motion to put the previous question (that is, to vote immediately on the motion being debated) cannot interrupt another speaker, must be seconded, is not debatable, and is not amendable, and requires a two-thirds majority vote. This requirement is important in protecting the democratic process. Without it, a momentary majority of only one vote could deny to the other members all opportunity to discuss any measure the “majority” wanted to adopt or to defeat. Such a motion can be reconsidered, but if the vote was affirmative, it can be reconsidered only before any vote has been taken under it—that is, only before the previous question has been put.

A motion to put the previous question has precedence over all other motions listed in this section except the motion to table (see next subsection). If the motion to put the question passes, the chair immediately proceeds to call a vote on the question that was being debated. The means *that the mover of the motion loses his/her right to close debate.* If the motion is defeated, debate on the motion before the meeting continues as if there had been no interruption.

The motion to put the previous question is the only proper method of securing an immediate vote. Members who call, “Question!” in an attempt to get the chairperson to call the question immediately should be ruled out of order. The only situation in which members may properly call, “Question!” is in reply to the chairperson when he/she asks the meeting, “Are you ready for the question?”

Table (Lay on the Table)

Sometimes a meeting wants to lay a main motion aside temporarily without setting a time for resuming its consideration but with the provision that the motion can be taken up again whenever the majority so decides. This is accomplished by a motion to table or to lay on the table.

The motion has the effect of delaying action on a main motion. If a subsequent meeting does not lift the question from the table, the effect of the

motion to table is to prevent action from being taken on the main motion. Indeed, rather than either pass or defeat a motion, a meeting will sometimes choose to "bury" it by tabling.

Robert's rules say, "No motion or motions can be laid on the table apart from motions which adhere to them, or to which they adhere; and if any one of them is laid on the table, all such motions go to the table together." For example, a main motion may have been made and an amendment proposed to it. The proposed amendment "adheres" to the main motion. If the meeting wants to table either of the motions, it must table both of them. In this example, if the meeting did not like the proposed amendment, but wanted to deal with the main motion, the correct procedure would be not to table, but to defeat the amendment. Debate could then resume on the main motion.

A motion to table may not interrupt another speaker, must be seconded, is not debatable, is not amendable, may not be reconsidered, and requires a majority vote.

Privileged Motions

Unlike either subsidiary or incidental motions, *privileged* motions do not relate to the pending business, but have to do with special matters of immediate and overriding importance that, without debate, should be allowed to interrupt the consideration of anything else.

The privileged motions are listed below in ascending order of rank. Each of the succeeding motions takes precedence over the main motion, any subsidiary motions, and any or all of the privileged motions listed before it.

The five privileged motions are:

1. orders of the day
2. question (point) of privilege
3. recess
4. adjourn
5. fix time to which to adjourn.

The five privileged motions fit into an order of precedence. All of them take precedence over motions of any other class (except when the immediately

pending question may be a motion to amend or a motion to put the previous question).

Orders of the Day

The *orders of the day* means the agenda or the order of business. If the order of business is not being followed, or if consideration of a question has been set for the present time and is therefore now in order, but the matter is not being taken up, a member may call for the orders of the day, and can thereby require the order of business to be followed, unless the meeting decides by a two-thirds vote to set the orders of the day aside.

Such a motion can interrupt another speaker, does not require a seconder, is not debatable, is not amendable, and cannot be reconsidered.

If the chair admits that the order of business has been violated and returns to the correct order, no vote is required. If the chair maintains that the order of business has not been violated, his/her ruling stands unless a member challenges the ruling. A motion to sustain the chair is decided by a simple majority vote.

Sometimes the chair will admit that the agenda has been violated, but will rule that the debate will continue on the matter before the meeting. In such a case, a vote must be taken and the chair needs a two-thirds majority to sustain the ruling. (The effect of such a vote is to set aside the orders of the day, i.e., amend the agenda, a move that requires a two-thirds majority vote.)

Calls for orders of the day are not in order in committee of the whole.

The orders of the day—that is, the agenda items to be discussed, are either *special orders* or *general orders*.

A *special order* specifies a time for the item, usually by postponement. Any rules interfering with its consideration at the specified time are suspended. (The four exceptions are rules relating to: (1) adjournment or recess, (2) questions of privilege, (3) special orders made before this special order was made, and (4) a question that has been assigned priority over all other business at a meeting by being made *the* special order for the meeting.) A special order for a particular time therefore interrupts any business that is pending when that time arrives.

Because a special order has the effect of suspending any interfering rules, making an item a special order requires a two-thirds vote, except where such action is included in the adoption of the agenda.

A *general order* is any question that has been made an order of the day (placed on the agenda) without being made a special order.

When a time is assigned to a particular subject on an agenda, either at the time the agenda is adopted, or by an agenda amendment later, the subject is made a special order. When the assigned time for taking up the topic arrives, the chairperson should announce that fact, then put to a vote any pending questions without allowing further debate, unless someone immediately moves to lay the question on the table, postpone it or refer it to a committee. Any of those three motions is likewise put to a vote without debate.

Also permissible is a motion to extend the time for considering the pending question. Although an extension of time is sometimes undesirable, and may be unfair to the next topic on the agenda, it is sometimes necessary. The motion requires a two-thirds majority to pass (in effect, it amends the agenda), and is put without debate.

As soon as any pending motions have been decided, the meeting proceeds to the topic of the special order.

Question or Point of Privilege

If a situation is affecting the comfort, convenience, integrity, rights or privileges of a meeting or of an individual member (for example, noise, inadequate ventilation, introduction of a confidential subject in the presence of guests, etc.), a member can *raise a point of privilege*, which permits him/her to interrupt pending business to make an urgent statement, request or motion. (If a motion is made, it must be seconded.) The motion might also concern the reputation of a member, a group of members, the assembly, or the association as a whole.

If the matter is not simple enough to be taken care of informally, the chair rules as to whether it is admitted as a question of privilege and whether it requires consideration before the pending business is resumed.

A point of privilege may also be used to seek permission of the meeting to present a motion of an urgent nature.

Recess

A member can propose a short intermission in a meeting, even while business is pending, by moving to recess for a specified length of time.

A motion to take a recess may not interrupt another speaker, must be seconded, is not debatable, can be amended (for example, to change the length of the recess), cannot be reconsidered, and requires a majority vote.

Adjourn

A member can propose to close the meeting entirely by moving to adjourn. This motion can be made and the meeting can adjourn even while business is pending, providing that the time for the next meeting is established by a rule of the association or has been set by the meeting. In such a case, unfinished business is carried over to the next meeting.

A motion to adjourn may not interrupt another speaker, must be seconded, is not debatable, is not amendable, cannot be reconsidered, and requires a majority vote.

If the motion to adjourn has been made, but important matters remain for discussion, the chair may request that the motion to adjourn be withdrawn. A motion can be withdrawn only with the consent of the meeting.

The motions to recess and to adjourn have quite different purposes. The motion to recess suspends the meeting until a later time; the motion to adjourn terminates the meeting. The motion to adjourn should, however, be followed by a declaration from the chairperson that the meeting is adjourned.

Fix Time to Which to Adjourn

This is the highest-ranking of all motions. Under certain conditions while business is pending, a meeting—before adjourning or postponing the business—may wish to fix a date, an hour, and sometimes the place, for another meeting or for another meeting before the next regular meeting. A

motion *to fix the time to which to adjourn* can be made even while a matter is pending, unless another meeting is already scheduled for the same or the next day.

The usual form is: "I move that the meeting adjourn to Thursday, October 23, at 19:30 at _____." The motion may not interrupt a speaker, must be seconded, is not debatable, is amendable (for example, to change the time and/or place of the next meeting), can be reconsidered, and requires a majority vote.

Incidental Motions

These motions are incidental to the motions or matters out of which they arise. Because they arise incidentally out of the immediately pending business, they must be decided immediately, before business can proceed. Most incidental motions are not debatable.

Because incidental motions must be decided immediately, they do not have an order or precedence. An incidental motion is in order only when it is legitimately incidental to another pending motion or when it is legitimately incidental in some other way to business at hand. It then takes precedence over any other motions that are pending—that is, it must be decided immediately.

The eight most common incidental motions are:

1. point of order
2. suspension of the rules
3. objection to consideration
4. consideration seriatim
5. division of the meeting
6. motions related to methods of voting
7. motions related to nominations
8. requests and inquiries

Point of Order

This motion permits a member to draw the chair's attention to what he/she believes to be an error in procedure or a lack of decorum in debate. The

member will rise and say: “I rise to a point of order,” or simply “Point of order.” The chair should recognize the member, who will then state the point of order. The effect is to require the chair to make an immediate ruling on the question involved. The chair will usually give his/her reasons for making the ruling. If the ruling is thought to be wrong, the chair can be challenged.

A point of order can interrupt another speaker, does not require a seconder, is not debatable, is not amendable, and cannot be reconsidered.

Suspension of the Rules

Sometimes a meeting wants to take an action, but is prevented from doing so by one or more of its rules of procedure. In such cases the meeting may vote (two-thirds majority required) to suspend the rules that are preventing the meeting from taking the action it wants to take.

Such a motion cannot interrupt a speaker, must be seconded, is not debatable, is not amendable, cannot be reconsidered and requires a two-thirds majority.

Please note that only rules of procedure can be suspended. A meeting may not suspend by-laws. After the meeting has taken the action it wants to take, the rules that were suspended come into force again automatically.

Objection to the Consideration of a Question

If a member believes that it would be harmful for a meeting even to discuss a main motion, he/she can raise an *objection to the consideration of the question;* provided debate on the main motion has not begun or any subsidiary motion has not been stated.

The motion can be made when another member has been assigned the floor, but only if debate has not begun or a subsidiary motion has not been accepted by the chair. A member rises, even if another has been assigned the floor, and without waiting to be recognized, says, “Mr. Chairman, I object to the consideration of the question (or resolution or motion, etc.).” The motion does not need a seconder, is not debatable, and is not amendable.

The chair responds, “The consideration of the question is objected to. Shall the question be considered?”

A two-thirds vote against consideration sustains the member's objection. (The two-thirds vote is required because the decision in effect amends the agenda.) The motion can be reconsidered, but only if the objection has been sustained.

Consideration by Paragraph or Seriatim

If a main motion contains several paragraphs or sections that, although not separate questions, could be most efficiently handled by opening the paragraphs or sections to amendment one at a time (before the whole is finally voted on), a member can propose a motion *to consider by paragraph or seriatim.* Such a motion may not interrupt another speaker, must be seconded, is not debatable, is amendable, cannot be reconsidered, and requires a majority vote.

Division of the Meeting (Standing Vote)

If a member doubts the accuracy of the chair's announcement of the results of a vote by show of hands, he/she can demand a division of the meeting—that is, a standing vote. Such a demand can interrupt the speaker, does not require a seconder, is not debatable, is not amendable, and cannot be reconsidered. No vote is taken; the demand of a single member compels the standing vote.

Motions Related to Methods of Voting

A member can move that a vote be taken by roll call, by ballot or that the standing votes be counted if a division of the meeting appears to be inconclusive and the chair neglects to order a count. Such motions may not interrupt another speaker, must be seconded, are not debatable, are amendable, can be reconsidered, and require majority votes. (Note: By-laws may specify a secret ballot for such votes as the election of officers.)

Motions Related to Nominations

If the by-laws or rules of the association do not prescribe how nominations are to be made and if a meeting has taken no action to do so prior to an election, any member can move while the election is pending to specify one

of various methods by which candidates shall be nominated or, if the need arises, to close nominations or to re-open them. Such motions may not interrupt another speaker, must be seconded, are not debatable, are amendable, can be reconsidered, and require majority votes.

Requests and Inquiries

a. *Parliamentary Inquiry*—a request for the chair's opinion (not a ruling) on a matter of parliamentary procedure as it relates to the business at hand.

b. *Point of Information*—a question about facts affecting the business at hand, directed to the chair or, through the chair, to a member.

c. *Request for Permission to Withdraw or Modify a Motion.* Although Robert's Rules of Order specify that until a motion has been accepted by the chair it is the property of the mover, who can withdraw it or modify it as he/she chooses, a common practice is that once the agenda has been adopted, the items on it become the property of the meeting. A person may not, therefore, withdraw a motion unilaterally; he or she may do so only with the consent of the meeting, which has adopted an agenda indicating that the motion is to be debated.

Similarly, a person cannot, without the consent of the meeting, change the wording of any motion that has been given ahead of time to those attending the meeting—for example, distributed in printed form in advance, printed on the agenda, a motion of which notice has been given at a previous meeting, etc.

The usual way in which consent of a meeting to withdraw a motion is obtained is for the mover to ask the consent of the meeting to withdraw (or change the wording). If no one objects, the chairperson announces that there being no objections, that the motion is withdrawn or that the modified wording is the motion to be debated.

If anyone objects, the chair can put a motion permitting the member to withdraw (or modify) or any two members may move and second that permission be granted. A majority vote decides the question of modifying a motion—similar to amending the motion. A two-thirds majority is needed for permission to withdraw a motion, as this has the effect of amending the agenda.

d. *Request to Read Papers*.

e. *Request to be Excused from a Duty*.

f. *Request for Any Other Privilege*.

The first two types of inquiry are responded to by the chair, or by a member at the direction of the chair; the other requests can be granted only by the meeting.

Motions That Bring a Question Again Before the Assembly

There are four motions that can bring business back to a meeting. The four are:

1. Take from the Table
2. Rescind
3. Reconsider, and
4. Discharge a Committee

The order in which the four motions are listed are no relation to the order of precedence of motions.

Take from the Table

Before a meeting can consider a matter that has been tabled, a member must move: "That the question concerning _____ be taken from the table." Such a motion may not interrupt another speaker, must be seconded, is not debatable, is not amendable, cannot be reconsidered, and requires a majority vote.

If a motion to take from the tables passes, the meeting resumes debate on the original question (or on any amendments to it). If a considerable period of time has elapsed since the matter was tabled, it is often helpful for the first speaker to review the previous debate before proceeding to make any new points.

Rescind

A meeting, like an individual, has a right to change its mind. There are two ways a meeting can do so—rescind or reconsider.

A motion to rescind means a proposal to cancel or annul an earlier decision. A motion to reconsider, if passed, enables a meeting to debate again the earlier motion and eventually vote again on it. However, a motion to rescind, if passed, cancels the earlier motion and makes it possible for a new motion to be placed before the meeting.

Another form of the same motion—a motion to *amend something previously adopted*—can be proposed to modify only a part of the wording or text previously adopted, or to substitute a different version.

Such motions cannot interrupt another speaker, must be seconded, are debatable, and are amendable. Because such motions would change action already taken by the meeting, they require:

- a two-thirds vote, or
- a majority vote when notice of intent to make the motion has been given at the previous meeting or in the call of the present meeting, or
- a vote of the majority of the entire membership—whichever is the most practical to obtain.

Negative votes on such motions can be reconsidered, but not affirmative ones.

Reconsider

A motion to reconsider enables the majority in a meeting within a limited time and without notice, to bring back for further consideration a motion that has already been put to a vote. The purpose of reconsideration is to permit a meeting to correct a hasty, ill-advised, or erroneous action, or to take into account added information or a changed situation that has developed since the taking of the vote.

If the motion to reconsider is passed, the effect is to cancel the original vote on the motion to be reconsidered and reopen the matter for debate as if the original vote had never occurred.

A motion to reconsider has the following unique characteristics:

a) It can be made only by a member who voted with the prevailing side—that is, voted in favour if the motion involved was adopted, or voted contrary if the motion was defeated. This requirement is a protection against a defeated minority's using a motion to reconsider as a dilatory tactic. If a member who cannot move a reconsideration believes there are valid reasons for one, he/she should try to persuade someone who voted with the prevailing side to make such a motion.

b) The motion is subject to time limits. In a session of one day, a motion to reconsider can be made only on the same day the vote to be reconsidered was taken. In a convention or session of more than one day, reconsideration can be moved only on the same or the next succeeding day after the original vote was taken. These time limitations do not apply to standing or special committees.

c) The motion can be made and seconded at times when it is not in order for it to come before the assembly for debate or vote. In such a case it can be taken up later, at a time when it would otherwise be too late to make the motion.

Making a motion to reconsider (as distinguished from *debating* such a motion) takes precedence over any other motion whatever and yields to nothing. Making such a motion is in order at any time, even after the assembly has voted to adjourn—if the member rose and addressed the chair before the chair declared the meeting adjourned. In terms of debate of the motion, a motion to reconsider has only the same rank as that of the motion to be reconsidered.

A motion to reconsider can be made when another person has been assigned the floor, but not after he/she has begun to speak. The motion must be seconded, is debatable provided that the motion to be reconsidered is debatable (in which case debate can go into the original question), is not amendable, and cannot be reconsidered.

Robert's Rules of Order specify that a motion to reconsider requires only a majority vote, regardless of the vote necessary to adopt the motion to be reconsidered, except in meetings of standing or special committees. However, some groups follow the practice of requiring a two-thirds majority for any vote that amends an agenda once that agenda has been adopted. The

motion to reconsider has the effect of amending the agenda, because if it passes, the original motion must be debated again—that is, it must be placed on the agenda again. To simplify matters, therefore, some groups require a two-thirds majority vote on all motions to reconsider.

In regular meetings the motion to reconsider may be made (only by someone who voted with the prevailing side) at any time—in fact, it takes precedence over any other motion—but its rank as far as debate is concerned is the same as the motion it seeks to reconsider. In other words, the motion to reconsider may be *made* at any time, but *debate* on it may have to be postponed until later.

Moreover, as indicated earlier, in regular meetings a motion to reconsider is subject to time limits. In a one-day meeting it can be made only on the same day. In a two- or more day meeting, the motion must be made on the same day as the motion it wants to reconsider, or on the next day.

Discharge a Committee (From Further Consideration)

If a question has been referred, or a task assigned, to a committee that has not yet made its final report, and if a meeting wants to take the matter out of the committee's hands (either so that the meeting itself can deal with the matter or so that the matter can be dropped), such action can be proposed by means of a motion to discharge the committee from further consideration of a topic or subject.

Such a motion cannot interrupt another speaker, must be seconded, is debatable (including the question that is in the hands of the committee), and is amendable. Because the motion would change action already taken by the meeting, it requires:

- a two-thirds vote, or
- a majority vote when notice of intent to make the motion has been given at the previous meeting or in the call of the present meeting, or
- a vote of the majority of the entire membership—whichever is the most practical to obtain.

A negative vote on this motion can be reconsidered, but not an affirmative one.

Sample Order of Business

This section details a sample order of business for a regular business meeting and indicates how the chair should handle each item. The order is not intended to be prescriptive; each chairperson should follow an order that is satisfactory to him/her and to the association.

The Order of Business

The chairperson of a meeting should prepare in advance a list of the order of business or agenda for the meeting. A sample order of business follows:

- Call to Order
- Adoption of the Agenda
- Minutes
- Executive Minutes
- Treasurer's Report
- Correspondence (listed)
- Unfinished Business (listed)
- Committee Reports (listed)
- New Business (listed)
- Announcements (listed)
- Program (An alternative is to have a guest speaker make his/her comments before the business meeting begins so that he/she does not have to sit through the meeting.)
- Adjournment

Call to Order

The chairperson calls the meeting to order with such a statement as: "The meeting will now come to order." If the president is not present, the meeting may be called to order by the vice president, or by any person those attending are willing to accept as chairperson or acting-chairperson.

Adoption of the Agenda

In some associations it is the practice to circulate copies of the agenda of the meeting in advance. Alternatively, the proposed agenda may be written on a chalkboard before the meeting begins. In either case the meeting should begin with the consideration of the agenda. The chairperson will ask if any of the members have additional matters that should be placed on the agenda. After these have been taken care of, the chairperson should call for a motion to adopt the agenda.

A member should then move: "That the agenda be adopted." (Or "adopted as amended.") A seconder is required. Passage of the motion (requiring a simple majority) restricts the business of the meeting to items listed on the agenda.

Many of the less formal associations do not bother with consideration of the agenda in this way. However, the procedure outlined above protects the membership from the introduction, without prior warning, of new, and perhaps controversial, matters of business. If a meeting does adopt an agenda, it can change that agenda only by a formal motion to do so. A member might move, for example, that an item be added to the agenda or deleted from the agenda or that the order in which the items are to be discussed be changed. Such a motion must be seconded and requires a two-thirds majority vote. (See "Orders of the Day".)

Minutes

If the minutes have been duplicated and circulated to members before the meeting (a desirable procedure), they need not be read at the meeting. The chairperson asks if there are any errors in or omissions from the minutes.

Some organizations prefer to have a formal motion to approve the minutes. A member should move: "That the minutes of the (*date*) meeting be approved as printed (or circulated)." In less formal meetings it is sufficient for the chairperson, if no one answers his/her call for errors or omissions, to say, "There being no errors or omissions, I declare the minutes of the (*date*) meeting approved as printed." Should there be a mistake in the minutes, it is proper for any member to rise and point out the error. The secretary

should then make an appropriate correction or addition. The motion will then read: "...approved as amended."

Executive Minutes

Sometimes the minutes of the previous executive meeting are read or summarized by the secretary. One purpose is to give information to the membership on the disposition of less important items of business that have been handled by the executive. Occasionally a member will ask for more information regarding the matters disposed of by the executive, and sometimes the general meeting will want to change the action taken by the executive. Such cases are usually rare, but they are indications of the necessary subservience of the executive committee to the membership as a whole.

On important matters of business the executive committee may have been able to arrive at recommendations that can later be considered by the general meeting. The reading or summarizing of the executive minutes can therefore prepare the membership for the discussion of important business on the agenda of the general meeting.

The executive minutes are not adopted or amended until the next executive meeting (having been read to the general meeting for information only).

Treasurer

The chairperson will call upon the treasurer to present a report on the finances of the association. For a regular meeting this need be only a simple statement of the receipts and disbursements since the last financial report, the balance of money held in the account of the association, and some information about bills that need to be paid.

At the annual meeting the treasurer should submit a detailed record of the financial business of the year and this report should be audited (that is, checked thoroughly by at least one person other than the treasurer, to ensure that they present fairly the final financial position of the association and the results of its operations for the year).

Although it is not necessary to have a motion to "adopt" the treasurer's report at a monthly meeting, it is advisable to adopt the audited annual report. The treasurer should move: "That this report be adopted."

Correspondence

Before the meeting, the secretary, in consultation with the chairperson, should separate the letters received into two groups—those requiring action and the others. Those letters that will probably require no action are summarized by the secretary. Usually it is sufficient to have one motion—"That the correspondence be received and filed."

Those letters that require action by the meeting will be read or summarized one at a time. The chairperson may state, after each has been read, that action on this letter will be delayed until "New Business," or he/she may prefer to have discussion of each letter immediately after it has been read. Each letter in this group will require a separate motion to dispose of it.

Unfinished Business

Any business that has been postponed from a previous meeting, or that was pending when the last meeting adjourned, is called "old" or "unfinished" business or "business arising from the minutes." It is usually advisable for the chairperson to remind the meeting of the history of this business before discussion begins (or he/she may call upon someone with special information to do this).

Committee Reports

Before the meeting, the chairperson should check with committee chairs to determine which committees or task forces have reports ready for the meeting and the importance of the material to be presented. All reports must be listed on the agenda.

In establishing the order in which committees should be heard, the chairperson should give priority to those with the most important reports. If none of the reports is of particular importance, any committee report that is pending from the previous meeting should be heard first. Usually, standing committees are given precedence over task forces (a standing committee is one that functions over an extended period of time; a task force or *ad hoc* committee is set up to deal with a special problem and is discharged when its task is completed).

Committee reports should be in written form, so that a copy can be placed in the association's files.

There is no need for a motion to receive a committee or task force report. The adoption of the agenda has guaranteed that the report will be heard.

If the report has been duplicated, the committee or task force chairperson should not read the report. He/she may want to make a few comments, however, before answering questions from the meeting.

After all questions have been answered, the committee or task force chairperson will move any recommendations on behalf of the committee or task force. Robert's rules indicate that a seconder is unnecessary for such motions, because the motion is being made on behalf of a committee.

Amendments to the recommendations may be proposed by any member at the meeting. After all the recommendations have been dealt with, motions may be received from the floor dealing with the substance of the report or the work of the committee or task force concerned.

Note: A committee or task force report need not be adopted. On rare occasions, says *Robert's Rules of Order,* a meeting may have occasion to adopt the entire report. An affirmative vote on such a motion has the effect of the meeting's endorsing every word of the report—including the indicated facts and the reasoning—as its own. The treasurer's audited annual report should be adopted.

Occasionally it becomes evident that the report of a committee, or one of the recommendations, is not acceptable to a large proportion of the membership present at the meeting. The committee can be directed to review its work in the light of the discussion heard.

New Business

When all unfinished business has been disposed of, the chairperson will say: "New business is now in order." Items not included on the agenda may not be discussed unless the agenda is amended. (The motion to amend the agenda requires a two-thirds majority.)

Announcements

The chairperson should give committee chairs and others an opportunity to make special announcements as well as making any of his/her own.

Program

When the association is to hear a special speaker, it may be advisable to have the speaker before the official business (from “Adoption of the Agenda” on) begins. In other cases the program occurs after pending new business has been disposed of. The chair of the meeting may ask a separate program chairperson to take charge at this point.

Adjournment

In organisations with a regular schedule of meetings a motion to adjourn is a “privileged” motion that is neither amendable nor debatable. A seconder is required and the motion should be put. If it is passed, the chair should announce formally that the meeting is adjourned.

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