

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.610, 17.8.612, 17.8.613, 17.8.614,)
17.8.615, 17.8.749, and 17.8.1210)
pertaining to major open burning source)
restrictions, conditional air quality open)
burning permits, Christmas tree waste)
open burning permits, commercial film)
production open burning permits,)
firefighter training, conditions for)
issuance or denial of permit, and general)
requirements for air quality operating)
permit content)

NOTICE OF PROPOSED
AMENDMENT

(AIR QUALITY)

NO PUBLIC HEARING
CONTEMPLATED

TO: All Concerned Persons

1. On June 3, 2016, the Board of Environmental Review proposes to amend the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Denise Hartman, no later than 5:00 p.m., April 18, 2016, to advise us of the nature of the accommodation that you need. Denise may be contacted at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov.

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

17.8.610 MAJOR OPEN BURNING SOURCE RESTRICTIONS (1) through (2) remain the same.

(3) When the department approves or denies the application for a permit under this rule, a person who is ~~jointly or severally~~ directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. ~~The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.~~

(4) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

17.8.612 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS

(1) through (9) remain the same.

(10) When the department approves or denies the application for a permit under this rule, a person who is ~~jointly or severally~~ directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. ~~The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(11) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

17.8.613 CHRISTMAS TREE WASTE OPEN BURNING PERMITS

(1) through (7)(b)(iii) remain the same.

(8) When the department approves or denies the application for a permit under this rule, a person who is ~~jointly or severally~~ directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. ~~The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(9) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.614 COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS

~~(1) through (7) remain the same.~~

~~(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(9) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.615 FIREFIGHTER TRAINING (1) through (5) remain the same.

~~(6) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision.~~

~~The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(7) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.749 CONDITIONS FOR ISSUANCE OR DENIAL OF PERMIT

(1) through (6) remain the same.

(7) If the department denies an application for a Montana air quality permit it shall notify the applicant in writing of the reasons for the permit denial and advise the applicant of the right to appeal the department's decision to the board as provided in 75-2-211 or 75-2-213, MCA, as applicable.

(8) remains the same.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, 75-2-213, MCA

17.8.1210 GENERAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT (1) through (1)(e) remain the same.

(2) The following standard terms and conditions are applicable to each air quality operating permit issued pursuant to this subchapter:

(a) through (i) remain the same.

(j) The department's final decision regarding issuance, renewal, revision, denial, revocation, reissuance, or termination of a permit is not effective until 30 days have elapsed from the date of the decision. The decision may be appealed to the board by filing a request for hearing within 30 days after the date of the decision. A copy of the request shall be served on the department. The filing of a ~~timely~~ request for ~~a hearing postpones~~ does not stay the effective date of the department's decision ~~until the board issues a final decision.~~ However, the board may order a stay as provided in 75-2-218, MCA. If effective, the permit shield, or application shield, as appropriate, shall remain in effect until such time as the board has rendered a final decision.

(k) through (5)(c) remain the same.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

REASON: Sections 75-2-211, 75-2-213, and 75-2-218, MCA, contain the procedures for appeals of permits for construction, installation, alteration, use, and operation of facilities under the Clean Air Act of Montana. As currently written, those statutes provide:

(1) that a person who is directly and adversely affected by the issuance or denial of a permit may request a hearing;

(2) that a request for hearing does not stay the department's decision on an application unless the board orders a stay;

(3) that depending on the applicable statute, an appellant must file an affidavit supporting the request for hearing either with the request or within 30 days after the issuance or denial of the permit; and

(4) that a separate process is available for challenges to energy development projects in 75-2-213, MCA.

The proposed amendments would modify the rules to incorporate these provisions and remove provisions implementing previous statutory procedures.

In addition, the proposed amendments would strike paragraphs of rule text that were lifted verbatim from 75-2-211, MCA. The Montana Administrative Procedure Act at 2-4-305(2), MCA, states that rules should not unnecessarily repeat statutory language. Doing so creates situations where rules must be amended whenever even the smallest changes are made to statute. The proposed amendments instead refer to the appeal process provided in 75-2-211, MCA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov, no later than May 6, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov, no later than May 6, 2016.

6. If the board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been

determined to be 25, based on the more than 250 persons who potentially could wish to appeal air quality permits and therefore could be affected by this rulemaking.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, email, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Denise Hartman, Administrative Rules Coordinator, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to dhartman2@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled by sending a letter by U.S. Mail to the bill sponsor on January 8, 2016.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the proposed amendment of the above-stated rules will not significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

BY: /s/ Joan Miles
JOAN MILES, CHAIRMAN

Certified to the Secretary of State, March 28, 2016.