

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I ) NOTICE OF PUBLIC HEARING ON  
through XIV pertaining to Wind Generation ) PROPOSED ADOPTION  
Facility Decommissioning and Bonding )  
) (ENERGY)

TO: All Concerned Persons

1. On November 29, 2017, at 2:00 p.m., in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the department will hold a public hearing to consider the proposed adoption of the above-stated rules. Before the hearing, on the same day, at 1:00 p.m., the department will conduct an informal public meeting to discuss the proposed rules and answer questions pertaining to these rules.

2. The department will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., November 22, 2017, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

3. The rules proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS In this subchapter, the following definitions apply:

(1) "Abandon" or "abandonment" means generating 10 percent or less of the cumulative nameplate capacity of the facility's turbines each month for 12 consecutive months.

(2) "Board" means the Board of Environmental Review as defined in 75-26-301, MCA.

(3) "Collateral bond" means an indemnity agreement for a fixed amount, payable to the department, executed by the owner and supported by the deposit with the department of cash, negotiable bonds of the United States (not treasury certificates), state or municipalities of the United States, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized or authorized to transact business in the United States or other surety acceptable to the department.

(4) "Commenced commercial operation" means the date the turbine commissioning completion certification is signed for the specific turbine whose nameplate rated capacity first brings the facility's cumulative nameplate rated generating capacity to 25 megawatts or more.

(5) "Decommission" or "decommissioning" has the meaning as defined in 75-26-301, MCA.

(6) "Department" means the Department of Environmental Quality as defined in 75-26-301, MCA.

(7) "Landowner" means the person or persons who hold legal title to the property.

(8) "Owner" has the meaning as defined in 75-26-301, MCA.

(9) "Owns a 10 percent or greater share of the wind generation facility" means at commencement of commercial operation and thereafter, having ownership of 10 percent or greater in capital stock of the corporation that owns the facility or having a 10 percent or greater ownership interest in a partnership, or limited liability corporation that owns the facility.

(10) "Person" has the meaning as defined in 75-26-301, MCA.

(11) "Repurposed" has the meaning as defined in 75-26-301, MCA.

(12) "Significant investment" means a capital equipment investment of 50 percent or greater of the initial capital equipment investment. The equipment project must be completed in three years or less. Should a facility remove all wind turbines and existing pads and install new wind turbines on new pads, the facility is a new facility and not a repurposed facility.

(13) "Surety bond" means an indemnity agreement in a certain sum, payable to the department, executed by the owner which is supported by the performance guarantee of a corporation licensed to do business as a surety in Montana.

(14) "Wind generation facility" or "facility" has the meaning as defined in 75-26-301, MCA.

AUTH: 75-26-310, MCA

IMP: 75-26-301, 304, MCA

**REASON:** The proposed New Rule I is a set of definitions that are necessary to clarify the meaning of specific terms used by the new rules and set by statute.

New Rule I(1) defines the terms "abandon" and "abandonment" to clarify when an owner is no longer productively operating a wind generation facility. This is a triggering event to require an owner to commence decommissioning. The 10 percent of the cumulative nameplate capacity of the facility's turbines threshold is well below the typical 40 percent capacity factor of wind generating facilities. Since there is seasonal variation of electric generation from facilities, requiring a facility to be at or below a 10 percent capacity factor for each of 12 consecutive months will differentiate the facilities that are no longer being maintained for optimal commercial operations from those experiencing unseasonably low winds or temporary repair concerns.

In New Rule I(3), the term "collateral bond" is defined to ensure the owner has secured an acceptable form of collateral that ensures that funding would be available if the state of Montana must perform the decommissioning of the facility. This definition is taken from the department's reclamation rules and reflects the requirements that have been determined to be acceptable bonding mechanisms under state and federal reclamation laws.

New Rule I(4) defines the term "commenced commercial operation" that establishes the date from which an owner in 15 or 16 years must have bonding secured, per 75-26-304(6), MCA. The department is proposing to set the date as to when the facility first operates with a nameplate capacity sufficient to meet the minimum threshold to make it subject to Title 75, chapter 26, part 3, MCA, and to

ensure the bonding period does not commence until the facility is covered under the statute.

In New Rule I(7), the term "landowner" is defined to include the title holder(s) to the property. That is the commonly accepted meaning of the term, and it is this person or persons who control the property.

In New Rule I(9), the definition of "owns a 10 percent or greater share of the wind generation facility" is proposed to make clear how the department will apply the statute that exempts facilities from bonding if they meet this ownership requirement. The definition requires the landowner to own shares continuously from the time the facility commences commercial operation to ensure the exemption is available to those landowners who initially have a vested interest in the wind generation facility, while precluding scenarios that allow owners to avoid bonding by selling or giving landowners shares of the facility in the final years before bonding is required. This definition ensures the intent of the legislation is maintained which is to have bonding on wind generation facilities for decommissioning at the end of their useful life.

In New Rule I(12), "significant investment" is defined because it is necessary for facilities to have a definition established so they know when improvements made to their facility can qualify them to have a bond released for five years. The department is proposing to allow an owner up to three years to complete a significant investment project because a large facility may have many turbines requiring upgrades and three years allows the facility to avoid working during poor weather conditions. The department is proposing that a project of significant investment is a capital equipment investment equal to half or more of the initial capital equipment investment costs of the wind turbines and have the impact of extending the useful life of the equipment replaced such that the owner will once again have the facility bonded before it reaches the end of its useful life.

This definition also provides clarity for situations when an owner chooses to rebuild all the wind turbines at the facility on new foundations with new towers and new turbine equipment after removing all existing foundations, towers and turbines, such that the wind generation facility is really a new facility on the same location, and only using existing ancillary infrastructure from the previous facility. This scenario would allow the facility to wait 15 years from its new commencement of commercial operation to be bonded.

In New Rule I(13), "surety bond" is defined to provide criteria to ensure that the owner secures an acceptable form of surety bond that ensures funding would be available if the state of Montana must decommission the facility. This definition is taken from the department's reclamation rules and reflects the requirements that have been determined to be acceptable bonding mechanisms under state and federal reclamation laws.

NEW RULE II OWNER RESPONSIBILITIES (1) An owner is responsible for decommissioning its facility and for all costs associated with decommissioning. Decommissioning must be completed within 24 months of abandonment, or according to a reasonable alternative schedule proposed by the owner and approved by the department upon a showing of good cause for the extension.

(2) The owner of a facility must notify the department in writing within 30 days of abandonment.

(3) An owner shall notify the department in writing within 30 days after beginning onsite decommissioning activities.

(4) The owner of a wind generation facility that commenced commercial operation on or before July 1, 2018, shall submit in writing the following to the department on or before July 1, 2018, although the department is not required to review these initial decommissioning plans and information or set a bond amount at this time:

(a) the date that the facility commenced commercial operation; and

(b) a decommissioning plan in accordance with the requirements of [New Rule III].

(5) The owner of a facility that commences commercial operation after July 1, 2018, shall submit to the department the information required in (2) within six months of commencing commercial operation. The department is not required to review these initial submissions, or set bond amounts at this time.

(6) The owner of a facility shall submit an updated decommissioning plan 12 months before a bond is required by [New Rule V](2) or (3), and 12 months before a bond is reviewed by the department in [New Rule VIII](2). Updated plans must include an updated cost estimate and address expansions and modification, if any. Within 90 days of receipt, the department shall notify the owner of any deficiencies in the decommissioning plan. Within 90 days of receiving the deficiency notice, the owner shall address all deficiencies and resubmit the decommissioning plan.

(7) The owner shall allow access in a timely manner and accompany the department for an inspection of the facility to verify the adequacy of a new or updated decommissioning plan for purposes of determining the bond amount. The department shall propose the scope and schedule of any such inspection at least two weeks in advance of the inspection. Department representatives shall comply with site safety and general access restrictions while at the facility.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: New Rule II(1) establishes that owners are responsible for decommissioning any wind generating facility they build and the rule sets a time limit for completing the decommissioning activities. The department has determined that most facilities can be decommissioned within 24 months. The proposed rule allows the department to set another deadline if the owner demonstrates good cause. For example, 24 months may not be adequate for decommissioning for reasons beyond the control of the owner or the owner may be engaged in negotiations to sell the facility to a person who wishes to operate it.

New Rule II(2) is necessary for the department to receive notification which establishes the date for decommissioning a facility within 24 months. The facility will have experienced 12 months of low to no operation before the facility is deemed abandoned and then the facility will still have 30 more days which should be ample time to send the department the required written notification.

New Rule II(3) is a notification requirement that is necessary for the department to be aware of decommissioning activities by an owner. The facility may start decommissioning prior to abandonment and this notification could be the only

notification to the department. This rule creates the opportunity for the department to have knowledge of the decommissioning activities before the owner may request release of the bond. Early communication can facilitate the parties reaching the intended goal of ensuring the most efficient decommissioning activities and release of bond monies.

New Rule II(4) places in the rule the requirements contained in 75-26-304, MCA. It establishes when and what information an owner of existing facilities shall submit to the department. This information is necessary because it will both establish the date for when an owner must have a bond in place and the information submitted is essential for determining the bond amount.

New Rule II(5) requires facilities built after July 1, 2018, to submit the same information as required in New Rule II(4) for facilities built before July 1, 2018. The requirement is proposed for the same reasons as the requirement is imposed for facilities subject to New Rule II(4).

New Rule II(6) ensures the department receives updated decommissioning plans reflecting any changes, including expansions, to facilities and economic changes that should be considered by the department when setting bond amounts.

New Rule II(7) ensures the department can access a site for purposes of verifying information an owner submits in their decommissioning plan and ensures that the determined bond amount accurately reflects the site characteristics and other facility components.

NEW RULE III DECOMMISSIONING PLAN (1) A decommissioning plan must include:

- (a) a commitment to remove all aboveground wind turbines and towers;
- (b) as-built plans, including general structural and electrical information, relative to the calculation of the bond for all facilities and all disturbances associated with the facility. The as-built plans must include an affidavit signed by an owner or any person authorized to act on the owner's behalf attesting to the completeness and accuracy of the as-built plans or be certified by a professional engineer that the as-built plans are complete and accurate;
- (c) any agreement(s) signed by all landowners and facility owners providing for alternative reclamation or the non-removal of buildings, cabling, electrical components, roads or any associated facilities;
- (d) a description of the manner in which the facility will be decommissioned and a proposed decommissioning schedule, which, except as provided in (1)(c), must include:
  - (i) dismantling and removal of all overhead electrical transmission lines and structures, transformers, buildings, and all other ancillary equipment and debris from operation of the facility;
  - (ii) removal of all underground cables and pipelines to a depth of 24 inches or deeper if necessary for the post operation land use;
  - (iii) removal of wind turbine foundations and other concrete foundations and slabs to a minimum depth of 48 inches below natural grade or deeper if required for the post operation land use;
  - (iv) reclamation of the facility site to the approximate original surface topography that existed prior to the start of construction of the facility with grading,

topsoil application over the disturbed areas at a depth similar to that in existence prior to the disturbance, and reseeded to achieve the same utility as the surrounding area at the time of decommissioning to prevent adverse hydrological effects;

(v) repair and reconstruction from damage to public roads, culverts and natural drainage ways resulting directly from operation of or decommissioning of the facility; and

(vi) removal and grading all access roads;

(e) a detailed estimate of the current salvageable value of the facility by an evaluator who is not an employee of the owner; and

(f) an estimate of all other expenses related to decommissioning that are the responsibility of the owner.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: This rule ensures that all necessary information to estimate the bond amount is included in the decommissioning plan. The rule also establishes what infrastructure must be removed when decommissioning a facility. It is essential for the department to obtain as-built plans should the department be required to complete the decommissioning. Not only do the as-built plans ensure a safe decommissioning event, but the plans would ensure all underground infrastructure and cables are removed. The decommissioning plan is the only resource for the department to learn about what landowners want remaining after the end of the facility's useful life. Information in the plan allows the owner to bond for only decommissioning of infrastructure to be removed. This rule also establishes standard depths to which foundations and underground cables should be removed so as not to interfere with future land use activities.

NEW RULE IV DETERMINATION OF BOND AMOUNT (1) The department shall set the bond amount at the estimated amount for the department to perform the decommissioning and reclamation work required of an owner.

(2) The bond amount must be based on:

(a) estimated costs submitted by the owner in accordance with [New Rule III] with such costs estimated by using current machinery production handbooks and publications or other documented or substantiated cost estimates acceptable to the department;

(b) estimated costs to the department that may arise from applicable public contracting requirements or the need to bring personnel and equipment to the facility after its abandonment by the owner to perform decommissioning and reclamation work;

(c) estimated costs to the department that may arise from management and maintenance of the facility upon owner insolvency or abandonment, until full bond liquidation can be effected; and

(d) other cost information as may be required by or available to the department.

(3) In determining the amount of a bond required in accordance with [New Rule V], the department shall consider:

(a) the character and nature of the site where the facility is located; and  
(b) the current market salvage value of the wind generation facility, as determined by an evaluator who is not an employee of the owner.

(4) The line items in the bond calculations are estimates only and are not limits on spending of any part of the bond to complete any particular task subsequent to forfeiture of the bond or settlement in the context of bond forfeiture proceedings.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: For New Rule IV(1), 75-26-304, MCA, requires that the department set a bond amount for each facility and this rule establishes that ability.

New Rule IV(2) and (3) establish acceptable resources that must be used to determine the necessary bond amount for each facility. Section 75-26-304(4), MCA, requires the department to consider the character and nature of the site along with salvage costs to establish the bond amount as stated in these rules.

New Rule IV(4) gives the department the necessary flexibility to use the bond monies as needed to complete decommissioning activities without restricting the use to only the amount determined for each activity within the cost estimate of the decommissioning plan. This is necessary because the cost of each activity cannot be predicted with absolute certainty.

NEW RULE V BONDING DEADLINE (1) Except as provided in (3) and (4), and in accordance with [New Rule VI], the owner shall submit to the department a bond payable to the state of Montana in a form acceptable by the department as provided in [New Rule IX] and in a sum determined by the department in accordance with [New Rule IV], conditioned on the faithful decommissioning of the facility.

(2) Except as provided in (3) and (4):

(a) if a wind generation facility commenced commercial operation on or before January 1, 2007, the owner shall submit the decommissioning bond to the department prior to the conclusion of the 16th year after commencing commercial operation; or

(b) if a wind generation facility commenced commercial operation after January 1, 2007, the owner shall submit the decommissioning bond to the department prior to the conclusion of the 15th year of commencing commercial operation.

(3) If a wind generation facility is repurposed, as determined by the department in consultation with the owner, the owner is not required to provide a bond and any existing bond must be released until the repurposed facility reaches its fifth year of operation. The owner shall submit all revised information required in [New Rule II](4)(b) within six months of finishing repurposing activities. Within five years of repurposing a facility, the facility shall submit to the department a bond payable to the state of Montana in a form acceptable by the department as provided in [New Rule IX] and in a sum determined by the department in accordance with [New Rule IV], conditioned on the faithful decommissioning of the facility.

(4) The owner is exempt from the requirements of this rule if:

(a) the owner posts a bond with a federal agency, with a state agency for the lease of state land, or with a tribal, county, or local government; or

(b) a private landowner on whose land the wind generation facility is located owns a 10 percent or greater share of the wind generation facility, as determined by the department.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: New Rule V(1) is required by statute in 75-26-304(5), MCA, which establishes that a bond shall be payable to the state of Montana so it can be used by the department if the department must decommission the facility.

New Rule V(2) is required by statute in 75-26-304(6), MCA, and establishes the date when a facility must have its bonding in place.

New Rule V(3) is required by statute in 75-26-304(7), MCA, to allow a repurposed facility a five-year reprieve from bonding.

New Rule V(4) is required by statute in 75-26-304(8), MCA, to allow for specific situations when facilities are exempt from bonding.

NEW RULE VI PENALTIES FOR FAILURE TO SUBMIT BOND (1) If an owner does not submit the full bond amount required by the department within the timeframe required by [New Rule V], the department may assess an administrative penalty in an amount provided in 75-26-304(9)(a), MCA.

(2) An owner may appeal the department's penalty assessment to the board within 20 days after receipt of written notice of the penalty.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: New Rule VI places in rule the enforcement provisions contained in 75-26-304(9), MCA. It is proposed to provide the public with notice of the statutory provisions.

NEW RULE VII REPLACEMENT OF BOND (1) If the owner transfers ownership to a successor owner, the department shall release the bond posted by the owner in accordance with this rule within 90 calendar days if the successor owner posts a bond with the department in an amount equal to, or greater than, the bond posted by the incumbent owner.

(2) The owner must receive approval from the department prior to replacing any bond.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: New Rule VII is proposed to place in rule the requirements of 75-26-304(10), MCA. It is proposed to provide the public with notice of the statutory provisions.

New Rule VII(2) is necessary to allow for the flexibility to replace a bond upon approval of the department, because bond replacement can occur for varying reasons such as a change of ownership, a change in the bond instrument itself, or a change in the bonding company. The proposed rule requires department approval to ensure that the replacement bonds meet the requirements of these rules.

NEW RULE VIII ADJUSTMENT OF BOND AMOUNT (1) Once every five years an owner may request a reduction of the required bond amount upon submission of evidence to the department proving that decommissioning work, reclamation, or other circumstances will reduce the maximum estimated cost to the department to complete decommissioning and therefore warrant a reduction of the bond amount.

(2) The department shall review each decommissioning plan and bond amount every five years. The department may increase the amount of the bond if the facility has expanded or the cost to decommission a facility otherwise increases. The department shall notify the owner of any proposed bond increase and provide the owner an opportunity for an informal conference on the proposal. The owner shall increase the bond within 90 days of receiving the department's revised bond amount.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: New Rule VIII(1) places in the rule the provisions of 75-26-304(11), MCA. It is proposed to provide the public with notice of the statutory provisions.

New Rule VIII(2) is necessary for the department to ensure the bond amount is adequate to complete decommissioning of a facility with regard to expansions or changing economic conditions.

NEW RULE IX FORM OF BOND (1) The form for the bond must be as provided by the department. The department shall allow for a surety bond or a collateral bond.

(2) Liability under any bond, including separate bond increments and indemnity agreements applicable to a single facility, must extend to the entire facility.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: New Rule IX(1) is necessary to ensure that the bond instrument used is adequate to provide funding when needed. Other bond instruments such as self or parent guarantee bonding are not sufficiently reliable. New Rule IX(2) is proposed to ensure that the department has adequate funds to decommission facilities. Allowing bond increments to apply to certain portions of the facility could provide inadequate funding if estimates are inaccurate with regard to portions of the facility. Allowing use of all bond increments to all portions of the facility will offer greater flexibility as needed.

NEW RULE X SURETY BONDS (1) Surety bonds are subject to the following requirements:

- (a) the department may not accept a surety bond in excess of 10 percent of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant;
- (b) the department may not accept a surety bond from a surety company for any owner in excess of three times the surety's maximum single obligation;
- (c) the department may not accept a surety bond from a surety company for any owner unless that surety is registered with the Montana state auditor and is listed in the United States Department of the Treasury Circular 570 as revised;
- (d) a power of attorney must be attached to the surety bond;
- (e) the surety bond must provide a requirement and a mechanism for the surety company to give prompt notice to the department and the owner of:
  - (i) any action alleging bankruptcy or insolvency of the surety or violation that would result in suspension or revocation of the license of the surety;
  - (ii) cancellation by the owner; and
  - (iii) cancellation or pending cancellation by the surety; and
- (f) upon a determination by the department that a surety is unable to comply with the terms of the bond, the owner of a facility must be deemed to be without bond coverage. The owner shall replace the bond coverage within 90 days of notice from the department.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: New Rule X establishes the criteria for an acceptable surety bond, so that the bond is not subject to undue risk from a surety company that could prevent full payment of the bond if needed for decommissioning. The rule establishes required notifications from the surety company to the department should the bond be jeopardized. The requirements are taken from the department's reclamation rules, and they reflect the requirements that have been determined necessary for acceptable bonds under state and federal reclamation laws.

NEW RULE XI LETTERS OF CREDIT (1) The department may accept as a bond a letter of credit subject to the following conditions:

- (a) the letter must be issued by a bank organized or authorized to do business in the United States;
- (b) the letter must be irrevocable prior to the release by the department;
- (c) the letter must be payable to the department in part or in full upon demand and receipt from the department of a notice of forfeiture issued in accordance with [New Rule XIV];
- (d) the letter of credit must provide that, upon expiration, if the department has not notified the bank in writing that a substitute bond has been provided or is not required, the bank shall immediately pay the department the full amount of the letter less any previous drafts;
- (e) the letter must not be for an amount in excess of 10 percent of the bank's

capital surplus account as shown on a balance sheet certified by a certified public accountant;

(f) the amount of the letter of credit may not exceed three times the bank's maximum single obligation; and

(g) the bank's qualifications must be reviewed by the department yearly prior to the time the letter of credit is renewed. If the department determines that the bank has become unable to fulfill its obligations under the letter of credit, the department shall, in writing, notify the owner and specify a reasonable period, not to exceed 90 days, to replace bond coverage.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: New Rule XI(1)(a) through (f) establishes the bond criteria for an acceptable letter of credit, so that the bond is not subject to undue risk from a bank or person that could prevent full payment of the bond should the department need to use the bond for decommissioning. New Rule XI(1)(g) is necessary for the department to have the ability to require an owner to obtain new bonding if the bank issuing the letter of credit may not be able to fulfill the obligation. Without this rule, the department may not have sufficient bonding available should the department be required to decommission the facility. The requirements are taken from the department's reclamation rules, and they reflect the requirements that have been determined necessary for acceptable letters of credit under state and federal reclamation laws.

NEW RULE XII CERTIFICATES OF DEPOSIT (1) The department may accept as bond an assignment of a certificate of deposit from a single institution in a denomination not in excess of \$250,000, or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation (FDIC), whichever is less. The department may not accept a combination of certificates of deposit from a facility in excess of that limit from a single institution.

(2) The department may only accept automatically renewable certificates of deposit issued by a bank insured by the FDIC or a credit union insured by the National Credit Union Administration (NCAU).

(3) The department shall require the owner to deposit sufficient amounts of certificates of deposit, to assure that the department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by [New Rules IV and VIII].

(4) The department shall require that each certificate of deposit be made payable to or assigned to the department, both in writing and in the records of the bank or credit union issuing the certificate. The certificate of deposit assignment must expressly prohibit the owner from withdrawing funds until the department has released the assignment.

(5) The department shall require banks or credit unions issuing these certificates to waive all rights of setoff or liens against these certificates.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: New Rule XII is necessary for the department to have the ability to allow an owner to use a certificate of deposit. The requirements are taken from the department's reclamation rules, and they reflect the requirements that have been determined necessary for certificate of deposit assignments under state and federal reclamation laws.

NEW RULE XIII FORFEITURE OF BOND (1) The department may forfeit any or all bonds deposited for an entire facility. Liability under any bond, including separate bond increments or indemnity agreements applicable to a single owner must extend to the owner's entire facility.

(2) A written determination to forfeit all or part of the bond, including the reasons for forfeiture and the amount to be forfeited, is a final decision by the department.

AUTH: 75-26-310, MCA

IMP: 75-26-309, MCA

REASON: New Rule XIII(1) and (2) give the department the authority to forfeit any and all bonds as it deems necessary to decommission an abandoned facility that an owner is not decommissioning. This rule establishes language in a bond that gives the department full control of using a bond for decommissioning without concurrence from an owner. This is necessary for the department to perform the decommissioning required by the statute.

NEW RULE XIV RELEASE OF BOND; USE OF BOND BY DEPARTMENT

(1) The department shall release a bond if the department is satisfied that an owner has properly decommissioned a facility in accordance with the decommissioning plan or as otherwise agreed to by the department in consultation with the land owner.

(2) At any time, an owner or any person authorized to act on behalf of the facility may petition the department for release of the bond or a portion thereof, and the department shall reply with a determination within 90 days unless the weather does not permit access to the facility or a representative of the owner is not available within the 90-day period. The owner must allow and accompany the department in an inspection of the facility to verify the adequacy of decommissioning and reclamation proposed for bond release.

(3) An owner shall commence decommissioning and reclamation activities within 90 days of abandonment, unless the owner receives department approval of an alternative written plan for decommissioning and reclamation.

(4) The department may forfeit a bond in part or in full if the department finds that the owner fails to decommission the facility in accordance with the decommissioning plan and has not commenced action to rectify deficiencies within 90 days after notification by the department.

(5) Upon bond forfeiture for an abandoned facility, the department, with staff, equipment, and material under its control or by contract with others, may take any

necessary action to decommission the facility.

(6) Before decommissioning is considered complete, each owner shall file a map with the local county recorder showing the location of any remaining wind turbine foundation and its depth. A copy of the map and associated documents shall be sent to the department.

AUTH: 75-26-310, MCA

IMP: 75-26-308, 75-26-309, MCA

REASON: New Rule XIV(1) places into the rules the provisions of 75-26-309(1)(a), MCA. It is proposed to provide the public with notice of the statutory provisions.

New Rule XIV(2) places into the rules the provision of 75-26-309(1)(b), MCA. It is proposed to provide the public with notice of the statutory provisions.

New Rule XIV(3) is necessary for the department to be certain that owners commence decommissioning and remediation activities timely, while allowing the department flexibility to allow reasonable decommissioning that differs from the plan.

New Rule XIV(4) places into the rules the provision of 75-26,309(2), MCA. It is proposed to provide the public with notice of the statutory provisions.

New Rule XIV(5) places into the rules the provisions of 75-26-309(2), MCA. It is proposed to provide the public with notice of the statutory provisions.

New Rule XIV(6) makes a public record of all concrete foundations not removed during decommissioning so that future projects on the property can consider the impact of the remaining foundations.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [sscherer@mt.gov](mailto:sscherer@mt.gov), no later than 5:00 p.m., December 7, 2017. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy bonding, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality,

1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

6. Julie Ackerlund, Air Quality Planner for the Department of Environmental Quality, has been designated to preside over and conduct the hearing.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply. The department notified the primary sponsor of Chapter 247, Laws of 2017, by sending him a letter on September 1, 2017.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

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

BY: /s/ Tom Livers  
TOM LIVERS  
Director

Certified to the Secretary of State, October 30, 2017.