

ENVIRONMENTAL QUALITY

CHAPTER 50

SOLID WASTE MANAGEMENT

Subchapter 5

Refuse Disposal

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|------|-----------|--|
| Rule | 17.50.501 | Purpose and Applicability |
| | 17.50.502 | Definitions |
| | 17.50.503 | Waste Groups |
| | 17.50.504 | Disposal Facility Classifications |
| | 17.50.505 | Standards for Solid Waste Management Facilities (REPEALED) |
| | 17.50.506 | Design Criteria for Landfills (REPEALED) |
| | 17.50.507 | Class II Landfill Unit Research, Development, and Demonstration Plans |
| Rule | 17.50.508 | Application for Solid Waste Management System License |
| | 17.50.509 | Operation and Maintenance Plan Requirements |
| | 17.50.510 | General Operational and Maintenance Requirements--Solid Waste Management Systems (REPEALED) |
| | 17.50.511 | Specific Operational and Maintenance Requirements--Solid Waste Management Systems (REPEALED) |
| | | Rule 17.50.512 reserved |
| | 17.50.513 | Processing of Solid Waste Management System License Application |
| | 17.50.514 | Appeal of Denial or Revocation |
| | 17.50.515 | Duration of License |
| | | Rules 17.50.516 through 17.50.522 reserved |
| | 17.50.523 | Transportation |
| | | Rule 17.50.524 reserved |

- 17.50.525 Inspections
- 17.50.526 Enforcement (REPEALED)
Rules 17.50.527 through 17.50.529 reserved
- 17.50.530 Closure Requirements for Landfills (REPEALED)
- 17.50.531 Post-Closure Care Requirements for Class II Landfills (REPEALED)
Rules 17.50.532 through 17.50.539 reserved
- 17.50.540 Financial Assurance Requirements for Class II Landfills
Rule 17.50.541 reserved
- 17.50.542 Financial Assurance Requirements for Class IV Landfills (REPEALED)

Subchapter 5

Refuse Disposal

17.50.501 PURPOSE AND APPLICABILITY (1) The purpose of this subchapter is to provide uniform standards governing the storage, treatment, recycling, recovery, and disposal of solid waste.

(2) The rules in this subchapter are adopted to discharge the department's responsibilities under Title 75, chapter 10, part 2, MCA, "The Montana Solid Waste Management Act," by adopting rules governing solid waste management systems.

(3) All applicants, licensees, owners, and operators of solid waste management systems and facilities shall comply with this subchapter, except as otherwise specifically provided in this subchapter. Wherever there is a requirement imposed on an owner or operator in this subchapter, the licensee also shall comply with that requirement.

(4) Whenever a person, including an applicant or owner or operator, is required by this subchapter to submit a document for department approval of an action, the person may not take that action unless the person first submits a document containing all information necessary for the department to determine whether the action complies with the requirements of this subchapter and obtains department approval.

(5) When authorized by a court order or an agreement between the department and a landowner on whose property a violation of Title 75, chapter 10, part 2, MCA, or this subchapter has occurred, the department may act, either directly or through a third party, to physically remediate a violation of Title 75, chapter 10, part 2, MCA, or this subchapter. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; AMD, 1993 MAR p. 2672, Eff. 11/11/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 2010 MAR p. 317, Eff. 2/12/10.)

17.50.502 DEFINITIONS In addition to the definitions in 75-10-203, MCA, the following definitions apply to this subchapter:

(1) "Act" means the Montana Solid Waste Management Act, 75-10-201 through 75-10-233, MCA.

(2) "Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with subchapter 14.

(3) "Airport" means a public use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(4) "Clean fill" means soil, dirt, sand, gravel, rocks, and rebar-free concrete, emplaced free of charge to the person placing the fill, in order to adjust or create topographic irregularities for agricultural or construction purposes.

(5) "Closure" means the process by which an owner or operator of a facility closes all or part of a facility in accordance with a department-approved closure plan and all applicable closure requirements specified in subchapter 14.

(6) "Construction and demolition waste" means the waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures, once municipal, household, commercial, and industrial wastes have been removed.

(7) "Container site" means a solid waste management facility, generally open to the public, for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards.

(8) "Contaminated soil" means soil, rocks, dirt, or earth that has been made impure by contact, commingling, or consolidation with organic compounds such as petroleum hydrocarbons. This definition does not include soils contaminated solely by inorganic metals, soils that meet the definition of hazardous waste under ARM Title 17, chapter 53, or regulated PCB (polychlorinated biphenyls) contaminated soils.

(9) "Department" means the Department of Environmental Quality provided for in 2-15-3501, MCA.

(10) "Existing," when used in conjunction with "unit" or a type of unit, means a unit that was licensed as a solid waste management system and was receiving solid waste as of October 9, 1993.

(11) "Facility" means property where solid waste management is occurring or has occurred. It includes all contiguous land and structures, other appurtenances, and improvements on the land used for management of solid waste.

(12) "Floodplain" means the lowland and relatively flat areas adjoining inland waters, including flood-prone areas, that are inundated by the 100-year flood.

(13) "Generation" means the act or process of producing waste materials.

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

(15) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of the federal Resource Conservation and Recovery Act of 1976 (RCRA). The definition includes, but is not limited to, waste resulting from the following manufacturing or industrial processes:

- (a) electric power generation;
- (b) fertilizer/agricultural chemicals;
- (c) food and related products/byproducts;
- (d) inorganic chemicals;
- (e) iron and steel manufacturing;
- (f) leather and leather products;
- (g) nonferrous metals manufacturing/foundries;
- (h) organic chemicals;
- (i) plastics and resins manufacturing;
- (j) pulp and paper industry;
- (k) rubber and miscellaneous plastic products;
- (l) stone, glass, clay, and concrete products;
- (m) textile manufacturing;
- (n) transportation equipment; and
- (o) water treatment.

(16) "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal. The definition does not include manure spreading operations.

(17) "Landfill" means an area of land or an excavation where wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

(18) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing disposal unit.

(19) "Leachate" means a liquid which has contacted, passed through, or emerged from solid waste and contains soluble, suspended, or miscible materials removed from the waste.

(20) "Leachate collection system" means an engineered structure, located above a liner and below the refuse in a landfill unit, designed to collect leachate.

(21) "Leachate removal system" means an engineered structure that allows for the removal of leachate from a landfill unit. A leachate removal system may be, but is not necessarily, used in conjunction with a leachate collection system.

(22) "Licensed boundary" means the perimeter of the area within a solid waste management facility that the department has approved for solid waste management under ARM 17.50.513.

(23) "Licensee" means a person who has, or persons who have, been issued a license by the department to operate a solid waste management system.

(24) "Liquid waste" means any waste material that is determined to contain "free liquids" as defined by Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846).

(25) "Maximum horizontal acceleration" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(26) "New," when used in conjunction with "unit" or a type of unit, means a unit that is not an existing unit.

(27) "Operator" means the person responsible for the overall operation of a facility or part of a facility.

(28) "Owner" means the person who owns a facility or part of a facility.

(29) "PCB wastes" means those polychlorinated byphenyls or PCB items subject to regulation under 40 CFR Part 761.

(30) "Person" has the meaning given in 75-10-203, MCA.

(31) "Post-closure care" means the activities required at a landfill after the completion of closure in which all aspects of the landfill containment, extraction, control, and monitoring systems must be inspected, operated, and maintained in accordance with a department-approved post-closure plan and all applicable requirements in subchapter 14.

(32) "RCRA" means the federal Solid Waste Disposal Act, as amended by and hereinafter referred to as the Resource Conservation and Recovery Act of 1976 and subsequent amendments, codified at 42 USC 6901 through 6992k.

(33) "Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in 40 CFR 261.3, that is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) or was not generated by a conditionally exempt small quantity generator as defined in 40 CFR 261.5.

(34) "Residue" means the waste material remaining after processing, incineration, composting, recovery, or recycling have been completed. Residues are usually disposed of in landfills.

(35) "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

(36) "Solid waste" has the meaning given in 75-10-203, MCA.

(37) "Solid waste management system," as defined in 75-10-203, MCA, means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste. In addition, for the purposes of this definition, the department does not consider a container site to be a component of a solid waste management system.

(38) "Special waste" has the meaning given in 75-10-802, MCA.

(39) "Surface impoundment" means a facility or part of a facility that is a natural topographic depression, human made excavation, or diked area formed primarily of earthen materials (although it may be lined with human made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(40) "Unit" means a discrete area of land or an excavation used for the landfilling or other disposal of solid waste.

(41) "Waste" means useless, unwanted, or discarded materials in any physical form, i.e., solid, semi-solid, liquid, or gaseous. The term is not intended to apply to by-products or materials which have economic value and may be used by the person producing the material or sold to another person for resource recovery or use in a beneficial manner.

(42) "Waste pile" or "pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; AMD, 1993 MAR p. 2784, Eff. 11/25/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 1031, Eff. 6/24/97; AMD, 2010 MAR p. 317, Eff. 2/12/10.)

17.50.503 WASTE GROUPS (1) Solid wastes are grouped based on physical and chemical characteristics which determine the degree of care required in handling and disposal and the potential of the wastes for causing environmental degradation or public health hazards. Solid wastes are categorized into three groups:

(a) Group II wastes include decomposable wastes and mixed solid wastes containing decomposable material but exclude regulated hazardous wastes. Examples include, but are not limited to, the following:

(i) municipal and household solid wastes such as garbage and putrescible organic materials, paper, cardboard, cloth, glass, metal, plastics, street sweepings, yard and garden wastes, digested sewage treatment sludges, water treatment sludges, ashes, dead animals, offal, discarded appliances, abandoned automobiles, and hospital and medical facility wastes, provided that infectious wastes have been rendered non-infectious to prevent the danger of disease; and

(ii) commercial and industrial solid wastes such as packaging materials, liquid or solid industrial process wastes that are chemically or biologically decomposable, contaminated soils, crop residues, manure, chemical fertilizers, and emptied pesticide containers that have been triple rinsed or processed by methods approved by the department.

(b) Group III wastes include wood wastes and non-water soluble solids. These wastes are characterized by their general inert nature and low potential for adverse environmental impacts. Examples include, but are not limited to, the following:

(i) inert solid waste such as unpainted brick, dirt, rock, and concrete;

(ii) clean, untreated, unglued wood materials, brush, unpainted or untreated lumber, and vehicle tires; and

(iii) industrial mineral wastes which are essentially inert and non-water soluble and do not contain hazardous waste constituents.

(c) Group IV wastes include construction and demolition wastes, and asphalt, except regulated hazardous wastes.

(2) Clean fill is not regulated under this subchapter. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 1031, Eff. 6/24/97; AMD, 2010 MAR p. 317, Eff. 2/12/10.)

17.50.504 DISPOSAL FACILITY CLASSIFICATIONS (1) Disposal facilities are classified according to their respective abilities to handle various types of solid waste. Systems of acceptable disposal may entail containment of waste with assured protection against leachate migration or may take advantage of natural treatment processes such as evaporation, chemical and microbiological degradation, filtration, adsorption, and attenuation. Solid waste management facilities may involve ponds, pits, lagoons, land spreading areas, impoundments, or landfills. Although facilities are broadly classified as to the solid waste groups they may accept, specific restrictions may be placed by the department on individual disposal units or disposal areas. As an example, many Class II landfills may not be acceptable places for the disposal of Group II liquids or sludges. Such restrictions, if any are warranted, shall be specified on the solid waste management system license.

(2) There are three types of disposal facilities: Class II, Class III, and Class IV.

(a) Generally, facilities licensed to operate as Class II solid waste management systems are capable of receiving Group II, Group III, and Group IV wastes but not regulated hazardous wastes. Group III and Group IV waste may be managed in Class II units or separate units at the facility. Household waste, although it may contain some household hazardous waste or other non-regulated hazardous waste, may be disposed of at Class II landfills.

(b) Facilities licensed as Class III landfills may accept only Group III wastes.

(c) Facilities licensed as Class IV landfills may accept only Group III or Group IV wastes. Conditionally exempt small quantity generator hazardous waste that is generated as a part of a construction or demolition project and that cannot practicably be removed from the construction and demolition waste may be included in waste disposed of in Class IV units. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 1031, Eff. 6/24/97.)

17.50.505 STANDARDS FOR SOLID WASTE MANAGEMENT FACILITIES (REPEALED) (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 1031, Eff. 6/24/97; REP, 2010 MAR p. 317, Eff. 2/12/10.)

17.50.506 DESIGN CRITERIA FOR LANDFILLS (REPEALED) (History: 75-10-204, MCA; IMP, 75-10-204, MCA; NEW, 1993 MAR p. 1645, Eff. 10/9/93; AMD, 1993 MAR p. 2672, Eff. 11/11/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 1031, Eff. 6/24/97; REP, 2010 MAR p. 317, Eff. 2/12/10.)

17.50.507 CLASS II LANDFILL UNIT RESEARCH, DEVELOPMENT, AND DEMONSTRATION PLANS (1) Except as provided in (6), the department may approve a research, development, and demonstration plan included as a condition in the license for a new Class II landfill unit, existing Class II landfill unit, or lateral expansion of an existing Class II landfill unit, for which the licensee proposes to utilize innovative and new methods that vary from either or both of the following criteria if the Class II landfill unit has a leachate collection system designed and constructed to maintain less than a 30-centimeter depth of leachate on the liner:

- (a) the run-on control systems in ARM 17.50.1109(1); and
- (b) the liquids restrictions in ARM 17.50.1111(1).

(2) The department may approve a research, development, or demonstration plan for a new Class II landfill unit, existing Class II landfill unit, or lateral expansion of an existing Class II landfill unit, for which the licensee proposes to utilize innovative and new methods which vary from the final cover criteria of ARM 17.50.1403(1)(a), (1)(b), and (2)(a), provided the licensee demonstrates that the infiltration of liquid through the alternative cover system will not cause contamination of ground water or surface water, or cause leachate depth on the liner to exceed 30 centimeters.

(3) Any plan approved under this rule must include terms and conditions that are at least as protective as the criteria for Class II landfill units to assure protection of human health and the environment. Such plans must:

- (a) provide for the construction and operation of such landfill units for not longer than three years, unless renewed pursuant to (5);
- (b) provide that the Class II landfill unit may receive only those types and quantities of municipal solid waste and nonhazardous wastes that the department determines appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;
- (c) include requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the department with respect to the operation of the landfill facility;
- (d) require the owner or operator of a Class II landfill unit licensed under this rule to submit an annual report to the department showing whether and to what extent the site is progressing in attaining project goals. The report must include a summary of all monitoring and testing results, and any other operating information required by the department in the license; and
- (e) require compliance with all applicable criteria in ARM Title 17, chapter 50, subchapters 4 through 14, except as approved under this rule.

(4) The department may order an immediate termination of all operations at the facility allowed under this rule or other corrective measures at any time the department determines that the overall goals of the project are not being attained, including protection of human health or the environment.

(5) An applicant for renewal of a plan approved under this rule shall include with its application for renewal a detailed assessment of the progress in achieving project goals, a list of problems and status with respect to problem resolution, and any other information or submittal that the department determines necessary to protect human health or the environment.

(6) The term of a plan approved under this rule may not exceed three years, and that of a renewal of an approved plan may not exceed three years.

(7) The total term for an approved plan for a project including renewals may not exceed 12 years.

(8) A licensee of a Class II facility operating under the small community exemption pursuant to ARM 17.50.1203 is not eligible for a variance, as provided by this rule, from ARM 17.50.1109(1) and ARM 17.50.1111(1).

(9) A licensee of a Class II facility that disposes of 20 tons of municipal solid waste per day or less, based on an annual average, is not eligible for a variance from ARM 17.50.1403(2)(a), except in accordance with ARM 17.50.1403(3). (History: 75-10-204, MCA; IMP, 75-10-204, MCA; NEW, 2010 MAR p. 317, Eff. 2/12/10.)

17.50.508 APPLICATION FOR SOLID WASTE MANAGEMENT SYSTEM

LICENSE (1) Prior to disposing of solid waste or operating a solid waste management system or expanding a licensed boundary, a person shall submit to the department for approval an application for a license to construct and operate a solid waste management system. The applicant shall use the application form provided by the department. The applicant shall provide at least the following information:

- (a) name and business address of applicant;
- (b) legal and general description and ownership status of the proposed locations, including the land owner's name and address;
- (c) documentation of ownership of the property or documentation demonstrating that the applicant has the right to operate a solid waste management system on the property;
- (d) total acreage of proposed facility;
- (e) population size and centers to be served by the proposed facility;
- (f) name, address, and location of any public airports within five miles of the proposed facility;
- (g) location of any lakes, rivers, streams, springs, or bogs, onsite or within two miles of the facility boundary;
- (h) facility location in relation to the base floodplain of nearby drainages;
- (i) pertinent water quality information;
- (j) geological, hydrological, and soils information and plans required in ARM 17.50.1311;
- (k) for a Class II or Class IV disposal facility, a ground water monitoring plan or a demonstration meeting the requirements of ARM 17.50.1303;
- (l) present uses of adjacent lands and the owner's name and current address;
- (m) zoning information;
- (n) regional map(s), with a recommended minimum scale of 1:62,500 and a minimum size of 8 1/2 inches by 11 inches, that delineate(s) the following:
 - (i) existing and proposed collection, processing, and disposal systems;
 - (ii) the location of the closest population centers; and
 - (iii) the local transportation systems, including highways, airports, and railways;
- (o) vicinity map(s), with a recommended minimum scale of 1:24,000 and a minimum size of 8 1/2 inches by 11 inches, that delineate(s) the following within one mile of the facility boundaries:
 - (i) zoning and existing and allowed land use;
 - (ii) residences;
 - (iii) surface waters;
 - (iv) access roads;
 - (v) bridges;
 - (vi) railroads;
 - (vii) airports;
 - (viii) historic sites; and
 - (ix) other existing and proposed artificial or natural features relating to the project;

(p) site plan(s), with a recommended minimum scale of 1:24,000 with five foot contour intervals and a recommended minimum size of 8 1/2 inches by 11 inches, that delineate(s) the following within, or associated with, the facility:

- (i) property ownership boundaries within one mile of the proposed licensed boundary;
- (ii) proposed waste and licensed boundaries;
- (iii) the location of existing and proposed:
 - (A) soil borings;
 - (B) monitoring wells;
 - (C) buildings and appurtenances;
 - (D) fences;
 - (E) gates;
 - (F) roads;
 - (G) parking areas;
 - (H) drainages;
 - (I) culverts;
 - (J) storage facilities or areas; and
 - (K) loading areas;
- (iv) existing and proposed elevation contours;
- (v) direction of prevailing winds; and
- (vi) the location, within one mile of the proposed licensed boundary, of:
 - (A) residences;
 - (B) potable wells;
 - (C) surface water bodies; and
 - (D) drainage swales;
- (q) map(s), within 1,000 feet of the proposed licensed boundary, indicating:
 - (i) state waters;
 - (ii) wetlands; and
 - (iii) floodplains;
- (r) a landfill design plan pursuant to ARM 17.50.1205;
- (s) other maps, drawings related to the design or environmental impact of the proposed facility;
 - (t) name and address of individual operator;
 - (u) proposed operation and maintenance plan;
 - (v) other information necessary for the department to comply with the Montana Environmental Policy Act (MEPA), Title 75, chapter 1, parts 1 through 3, MCA;
 - (w) closure and post-closure care plans;
 - (x) for a Class II or Class IV solid waste management facility, or a waste tire facility subject to 75-10-216, MCA, a copy of the proposed financial assurance required by ARM 17.50.540 or 75-10-216, MCA;
 - (y) a copy of a proposed deed notation that meets the requirements in subchapter 11; and
 - (z) a demonstration required in ARM 17.50.1003 through 17.50.1008, if applicable.

(2) An applicant shall submit with the application a copy of a proposed policy of general liability insurance to cover bodily injury or property damage to third persons caused by sudden accidental occurrences at the facility that meets the requirements of ARM 17.50.1114. (History: 75-10-204, 75-10-221, MCA; IMP, 75-10-204, 75-10-221, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 1031, Eff. 6/24/97; AMD, 2010 MAR p. 317, Eff. 2/12/10.)

17.50.509 OPERATION AND MAINTENANCE PLAN REQUIREMENTS

(1) Each proposed solid waste management system will be evaluated on a case-by-case basis, taking into consideration the physical characteristics of the system, the types and amounts of wastes, and the operation and maintenance plan for that system.

(2) The operation and maintenance plan required in ARM 17.50.508 must include:

(a) if for use by the public, what days and times the components of the system will be open;

(b) how access and traffic will be restricted or controlled;

(c) proposed equipment the system will utilize;

(d) general description of the proposed solid waste management system;

(e) maintenance schedule concerning solid waste handling and disposal;

(f) provision for litter control, if applicable;

(g) types of waste the proposed facility will accept;

(h) a plan for closure of the disposal facility and the land's ultimate use as required under ARM Title 17, chapter 50, subchapter 14;

(i) any methane monitoring plans required under ARM Title 17, chapter 50, subchapter 11;

(j) any ground water monitoring plan required under ARM Title 17, chapter 50, subchapter 13;

(k) any plans required for handling of special waste streams including, but not limited to:

(i) compostable materials;

(ii) contaminated soil;

(iii) asbestos-contaminated material;

(iv) biosolids;

(v) infectious wastes; or

(vi) any other special waste determined by the department to require a handling plan to protect human health or the environment;

(l) any other plans or information on alternative daily cover required in ARM Title 17, chapter 50, subchapter 11; and

(m) any other plans or information determined by the department to be necessary to protect human health or the environment.

(3) An owner, operator, or licensee of a solid waste management system shall review the operation and maintenance plan every five years after the date of the issuance of the solid waste management system license to determine if significant changes in conditions or requirements have occurred. If the review indicates that significant changes have occurred, the owner, operator, or licensee shall update the operation and maintenance plan to reflect changed conditions and requirements, and submit the update to the department for approval. If the review indicates that significant changes have not occurred, the owner, operator, or licensee shall notify the department in writing that an update of the operation and maintenance plan is not necessary.

(4) An owner, operator, or licensee of a solid waste management system shall update the operation and maintenance plan to reflect changed conditions and requirements, and submit the update to the department for approval within 45 days after the department has mailed written notice that an update is necessary to protect human health or the environment. The department may approve a longer period to submit the update if requested by the owner, operator, or licensee. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 2010 MAR p. 317, Eff. 2/12/10.)

17.50.510 GENERAL OPERATIONAL AND MAINTENANCE REQUIREMENTS --SOLID WASTE MANAGEMENT SYSTEMS (REPEALED)
(History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253; REP, 2010 MAR p. 317, Eff. 2/12/10.)

17.50.511 SPECIFIC OPERATIONAL AND MAINTENANCE REQUIREMENTS --SOLID WASTE MANAGEMENT SYSTEMS (REPEALED)
(History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; AMD, 1993 MAR p. 2672, Eff. 11/11/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 1031, Eff. 6/24/97; REP, 2010 MAR p. 317, Eff. 2/12/10.)

Rule 17.50.512 reserved

17.50.513 PROCESSING OF SOLID WASTE MANAGEMENT SYSTEM LICENSE APPLICATION

(1) The department shall review each submitted license application within 60 days to ensure that it is complete, as defined in Title 75, chapter 1, part 2, MCA. The department shall notify the local health officer of an application, as required in 75-10-222, MCA.

(2) If an application submitted pursuant to ARM 17.50.508 is incomplete, the department shall notify the applicant in writing within 15 days after the initial review is completed and shall postpone processing the application until the material necessary to complete the application is received and the application is determined to be complete. If the requested additional information is not received within 90 days after the applicant has been notified, a new application and application fee must be submitted. The department shall notify the applicant when an application is determined to be complete.

(3) The department shall review a complete application and other relevant information and make a proposed decision based on the applicant's apparent ability to comply with the applicable laws and rules, and determine the need for an environmental impact statement (EIS). To ensure a timely completion of the environmental review process, the department shall follow the time limits listed in (3)(a) through (c). All time limits are measured from the date the department receives a complete application. The department has:

(a) 60 days to complete a public scoping process, if any;

(b) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201, MCA, is required; and

(c) 180 days to complete a detailed statement pursuant to 75-1-201, MCA.

(4) If the department is unable to complete an environmental review within the time provided in (3), it may extend the time limits in (3) by notifying the applicant in writing that an extension is necessary and stating the basis for the extension. The department may extend the time limit one time, and the extension may not exceed 50% of the original time period listed in (3). After one extension, the department may not extend the time limit unless the department and the applicant mutually agree to the extension.

(5) The department has adopted rules relating to the Montana Environmental Policy Act (MEPA) in ARM Title 17, chapter 4, subchapter 6. The environmental review process for the department's proposed action must follow these rules.

(6) Interested persons may obtain copies of the complete application and the department's environmental assessment or EIS, proposed decision, and final decision upon request and payment of copying costs. The requirements of ARM Title 17, chapter 4, subchapter 6, apply to any public notice or public meetings concerning an environmental assessment or EIS.

(7) Within 30 days after completing its environmental review under (3), the department shall make its final decision and then notify in writing the applicant, the local health officer, and any other interested persons who have requested to be notified. If the department decides to issue the license, the requirements of 75-10-222 and 75-10-223, MCA, apply to validation of the license by the local health officer. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; TRANS, from DHES, 1995 MAR p. 2253; AMD, 2010 MAR p. 317, Eff. 2/12/10.)

17.50.514 APPEAL OF DENIAL OR REVOCATION (1) If the department's final decision is to deny the license application or to revoke an existing license to operate a solid waste management system, the applicant (or licensee) and the local health officer have an opportunity to appeal the decision to the board. The department shall inform them of this right in the letter of denial or revocation. An appeal, if one is sought, must be filed with the board within 30 days after the notice of denial or revocation of license is received.

(2) If the department issues a license but the local health officer refuses to validate it, the applicant or any person aggrieved by the local health officer's decision may appeal the local health officer's decision to the board. An appeal must be filed within 30 days after receipt of written notice of the local health officer's decision.

(3) The act does not provide third parties with the right of appeal to the board from a decision made by the department to issue, revoke, or deny a license. (History: 75-10-204, MCA; IMP, 75-10-204, 75-10-223, 75-10-224, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253.)

17.50.515 DURATION OF LICENSE (1) Solid waste management system licenses are valid through June 30 following the date of issuance, unless earlier surrendered by the licensee or revoked by the department in accordance with 75-10-224, MCA.

(2) Licenses may be renewed on an annual basis by submission of an application for renewal and payment of fees as specified in ARM 17.50.410.

(3) Licenses are not transferable to other locations.

(4) Facilities must be constructed and operated within five years of the original date of license issuance or else must be subject to review and reapproval by the department prior to construction or operation, regardless of whether license renewal fees have been paid. (History: 75-10-204, MCA; IMP, 75-10-204, 75-10-221, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253.)

Rules 17.50.516 through 17.50.522 reserved

17.50.523 TRANSPORTATION (1) Solid waste must be transported in such a manner so as to prevent its discharge, dumping, spilling, or leaking from the transport vehicle.

(2) Waste haulers transporting oilfield exploration and production waste must cover and secure loads and keep loads covered and secure while in transit in a manner that prevents discharge, dumping, spilling, or leaking from the transport vehicle. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; TRANS, Eff. 7/28/78; TRANS, from DHES, 1995 MAR p. 2253; AMD, 2016 MAR p. 725, Eff. 4/23/16.)

Rule 17.50.524 reserved

17.50.525 INSPECTIONS (1) The department has authority under 75-10-205, MCA, to conduct inspections of solid waste management systems at reasonable hours upon presentation of appropriate credentials. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; TRANS, Eff. 7/28/78; TRANS, from DHES, 1995 MAR p. 2253.)

17.50.526 ENFORCEMENT (REPEALED) (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; TRANS, Eff. 7/28/78; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253; REP, 2010 MAR p. 317, Eff. 2/12/10.)

Rules 17.50.527 through 17.50.529 reserved

17.50.530 CLOSURE REQUIREMENTS FOR LANDFILLS (REPEALED) (History: 75-10-204, MCA; IMP, 75-10-204, MCA; NEW, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 689, Eff. 4/22/97; AMD, 1997 MAR p. 1031, Eff. 6/24/97; REP, 2010 MAR p. 317, Eff. 2/12/10.)

17.50.531 POST-CLOSURE CARE REQUIREMENTS FOR CLASS II LANDFILLS (REPEALED) (History: 75-10-204, MCA; IMP, 75-10-204, MCA; NEW, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253; REP, 2010 MAR p. 317, Eff. 2/12/10.)

Rules 17.50.532 through 17.50.539 reserved

17.50.540 FINANCIAL ASSURANCE REQUIREMENTS FOR CLASS II LANDFILLS (1) The requirements of this rule apply to owners and operators of all Class II landfill units, except owners or operators who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States. Subdivisions of state government, such as counties, cities, or towns, whose debts and liabilities are not directly the debts and liabilities of the state, are subject to this rule.

(a) The requirements of this rule are effective April 9, 1997, except:

(i) small, dry, or remote landfills which meet the "small community exemption" criteria set forth in ARM 17.50.506, have until October 9, 1997, to comply; and

(ii) the department may waive financial assurance requirements for up to one year until April 9, 1998, for cause, if the owner or operator demonstrates to the department's satisfaction:

(A) that the April 9, 1997, effective date does not provide sufficient time to comply with the requirements of this rule; and

(B) that such a waiver will not adversely affect human health and the environment.

(2) The following financial assurance for closure is required:

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the area of the Class II landfill that the department determines to be the largest active portion in the facility requiring a final cover as required under ARM 17.50.530 during the active life of the facility in accordance with the closure plan. The owner or operator must submit a copy to the department and place the estimate in the operating record.

(i) The cost estimate must equal the cost of closing the largest active portion during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see ARM 17.50.530(1)(c)(ii)).

(ii) During the active life of the Class II landfill unit, the owner or operator must annually adjust the closure cost estimate for inflation and any other changes and submit this information to the department as part of the annual report required under ARM 17.50.412.

(iii) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under (2)(b) if changes to the closure plan or Class II landfill unit conditions increase the maximum cost of closure at any time during the remaining active life.

(iv) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under (2)(b) if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the Class II landfill unit. The owner or operator must obtain the approval of the department for the reduction of the closure cost estimate and the amount of financial assurance required. Copies of the demonstration and department approval must be placed in the operating record.

(b) The owner or operator of each Class II landfill unit must establish financial assurance for closure of the Class II landfill unit in compliance with (5). The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with ARM 17.50.530(1)(h) and (i).

(3) The following financial assurance for post-closure care must be provided:

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the Class II landfill unit in compliance with the post-closure plan developed under ARM 17.50.531. The post-closure cost estimate used to demonstrate financial assurance in (b) must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator must submit a copy of the estimate to the department and place a copy in the operating record. Estimates must meet the following requirements:

(i) The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the post-closure care period.

(ii) During the active life of the Class II landfill unit and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation.

(iii) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided under (b) if changes in the post-closure plan or Class II landfill unit conditions increase the maximum costs of post-closure care.

(iv) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under (b) if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator must obtain approval from the department for the reduction of the post-closure cost estimate and the amount of financial assurance and place a copy of the justification in the operating record.

(v) Any changes required above under (ii), (iii), or (iv) must be reported to the department as part of the report required under ARM 17.50.412.

(b) The owner or operator of each Class II landfill unit must establish, in a manner in accordance with (5), financial assurance for the costs of post-closure care as required under ARM 17.50.531. The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with ARM 17.50.531(1)(e).

(4) The following financial assurance for corrective action must be provided:

(a) An owner or operator of a Class II landfill unit required to undertake a corrective action program under ARM 17.50.710 must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under ARM 17.50.710. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must submit the estimate to the department for approval and place a copy in the operating record. The estimate must meet the following requirements:

(i) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with ARM 17.50.710(8)(f).

(ii) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided under (b) if changes in the corrective action program or Class II landfill unit conditions increase the maximum costs of corrective action.

(iii) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under (b) if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator must receive approval from the department for the reduction of the corrective action cost estimate and the reduction in the amount of financial assurance. The justification for the reduction of the corrective action cost estimate and the amount of financial assurance must be placed in the operating record.

(b) The owner or operator of each Class II landfill unit required to undertake a corrective action program under ARM 17.50.710, must establish, in a manner in accordance with this rule, financial assurance for the most recent corrective action program. The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with ARM 17.50.710(8)(f) and (g).

(5) The mechanisms used to demonstrate financial assurance under this rule must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators must choose from the options specified in (a) through (g).

(a)(i) An owner or operator may satisfy the requirements of this rule by establishing a trust fund which conforms to the requirements of this rule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be placed in the facility's operating record.

(ii) Payments into the trust fund must be made annually by the owner or operator over the remaining life of the Class II landfill facility, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. These periods are referred to as the pay-in periods.

(iii) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, divided by the number of years in the pay-in period as defined in (ii). The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = (\text{CE}-\text{CV})/\text{Y}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(iv) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action, divided by the number of years in the corrective action pay-in period as defined in (ii). The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = (\text{RB}-\text{CV})/\text{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining on the pay-in period.

(v) The initial payment into the trust fund must be made before the initial receipt of waste or before the applicable effective date of this section, as specified in (1)(b), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 17.50.710.

(vi) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in (5)(f), the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of (5)(a), as applicable.

(vii) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is approved by the department. The owner or operator must provide the department with the documentation of the justification for reimbursement for approval and records of any reimbursement.

(viii) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this section or if he is no longer required to demonstrate financial responsibility in accordance with the requirements of (2)(b), (3)(b), or (4)(b).

(b) A surety bond may be used to guarantee payment or performance under the following circumstances:

(i) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond must be effective before the initial receipt of waste or before the applicable effective date of this section, as specified in (1)(b), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 17.50.710. The owner or operator must submit a copy of the bond to the department and place a copy in the operating record. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and licensed to do business in Montana.

(ii) The penal sum of the bond must be in an amount at least equal to the current closure, post-closure care, or corrective action cost estimate, whichever is applicable, except as provided in (5)(g).

(iii) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(iv) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of (5)(a) except the requirements for initial payment and subsequent annual payments specified in (5)(a)(ii) through (v).

(v) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee.

(vi) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance as specified in this section.

(vii) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with (2)(b), (3)(b), or (4)(b).

(c)(i) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this section. The letter of credit must be effective before the initial receipt of waste or before the effective date of this section, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 17.50.710. The owner or operator must supply the department with a copy of the letter of credit and place a copy of the letter of credit in the operating record. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(ii) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit in the operating record.

(iii) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever is applicable, except as provided in (5)(a). The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator must obtain alternate financial assurance.

(iv) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this rule or if the owner or operator is released from the requirements of this rule in accordance with (2)(b), (3)(b), or (4)(b).

(d)(i) An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this subsection (d). The insurance must be effective before the initial receipt of waste or before the effective date of this rule (April 9, 1994), whichever is later. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, specifically including Montana. Proof of insurance must be supplied to the department.

(ii) The closure or post-closure care insurance policy must guarantee that funds will be available to close the Class II landfill unit whenever final closure occurs or to provide post-closure care for the Class II landfill unit whenever the post-closure care period begins, whichever is applicable. The policy must also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(iii) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable, except as provided in (5)(a). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(iv) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record and written approval is received from the department in advance. The owner or operator must file the documentation of the justification for reimbursement with the department and place it in the operating record. Notice that reimbursement has been received must also be filed with the department and placed in the operating record.

(v) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(vi) The insurance policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance as specified in this section.

(vii) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85% of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. treasury for 26-week treasury securities.

(viii) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this subsection (d) or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of (2)(b), (3)(b), or (4)(b).

(e) Local governmental entities who are owners or operators may satisfy the requirements of this subsection (e) through their taxing and bonding authority as long as there is a commitment by local governmental entity or entities, approved by the department, that meets criteria specified in (5)(h). A demonstration must be made to the department and placed in the operating record, of the ability of the governmental entity or entities to fully fund liabilities under this section. Such a demonstration should include, but is not limited to:

- (i) excess bonding capability available;
- (ii) bond rating of the entity or entities;
- (iii) excess taxation capability available under any governmental tax limitation laws;
- (iv) voter prior approval of any tax increases, if required; and
- (v) any other information that will make it possible for the department to accurately assess the ability to meet the criteria specified in (5)(h).

(f) An owner or operator may satisfy the requirements of this rule by obtaining any other mechanism that meets the criteria specified in (5)(h), and that is approved by the department.

(g) An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. The mechanisms must be as specified in (5)(a) through (f), except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling, or grandparent may not be combined if the financial statements of the two firms are consolidated.

(h) The language of the mechanisms listed in (5)(a) through (f) must ensure that the instruments satisfy the following criteria:

(i) the financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;

(ii) the financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(iii) the financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 17.50.710, until the owner or operator is released from the financial assurance requirements under (2)(b), (3)(b), or (4)(b).

(iv) The financial assurance mechanisms must be legally valid, binding, and enforceable under state and federal law. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; NEW, 1993 MAR p. 1645, Eff. 4/9/94; AMD, 1993 MAR p. 2672, Eff. 11/11/93; AMD, 1995 MAR p. 665, Eff. 4/28/95; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 689, Eff. 4/22/97.)

Rule 17.50.541 reserved

17.50.542 FINANCIAL ASSURANCE REQUIREMENTS FOR CLASS IV LANDFILLS (REPEALED) (History: 75-10-204, MCA; IMP, 75-10-204, MCA; NEW, 1997 MAR p. 1031, Eff. 6/24/97; REP, 2010 MAR p. 317, Eff. 2/12/10.)

