

ENVIRONMENTAL QUALITY

CHAPTER 53

HAZARDOUS WASTE

Subchapter 1

General Provisions

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Subchapter 1

General Provisions

17.53.101 PURPOSE (1) The purpose of the rules in this chapter is to provide for the control of all hazardous wastes that are generated within, or transported to Montana for the purposes of storage, treatment, and disposal or for the purposes of resource conservation or recovery.

(2) The rules in this chapter are adopted to discharge the department's responsibilities under Title 75, chapter 10, part 4, Montana Code Annotated (MCA), the Montana Hazardous Waste Act (Act), by establishing a management control system including permitting which assures the safe and proper management of hazardous wastes from the moment of their generation through each stage of management until their ultimate destruction or disposal. (History: 75-10-404, 75-10-405, MCA; IMP, 75-10-405, 75-10-406, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01.)

17.53.102 SCOPE OF RULES (1) In the Administrative Rules of Montana (ARM) the terms "waste" and "solid waste" are used differently than in regulations promulgated by the U.S. Environmental Protection Agency (EPA). EPA uses the term "solid waste" to mean all waste materials subject to the Resource Conservation and Recovery Act (RCRA). In the ARM, the term "waste" means all waste materials subject to RCRA. EPA uses the term "non-hazardous solid waste" to indicate those "solid waste" materials that are not covered under EPA's hazardous waste regulations. In the ARM, the term "solid waste" refers only to non-hazardous wastes. Therefore, "solid waste" and "hazardous waste" are mutually exclusive terms in the ARM and refer to the two subsets of all "waste" materials.

(a) Hazardous wastes are regulated under this chapter; and

(b) Solid wastes are regulated under ARM Title 17, chapter 50, subchapter 5 entitled "Refuse Disposal".

(2) This chapter establishes standards for identifying hazardous waste as well as standards for hazardous waste management procedures for generators, transporters, and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(3) Injection wells are subject to the following requirements:

(a) injection wells that are used to dispose of hazardous waste are not regulated under the Montana hazardous waste program, but are subject to requirements under the federal hazardous waste program. Specifically, these wells are subject to the permit-by-rule requirements of 40 CFR 270.1(c)(1)(i) and 270.60(b), and the owner or operator must have a permit issued by EPA under the underground injection control program to the extent the permit is required by 40 CFR 144.14. An interim status facility that disposes of hazardous waste by underground injection is subject to the requirements of 40 CFR 265, subparts A through E and R.

(b) Where surface facilities that treat, store, or dispose of hazardous waste are associated with injection wells, such associated surface facilities are subject to the permitting requirements of this chapter. (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01; AMD, 2002 MAR p. 789, Eff. 3/15/02; AMD, 2005 MAR p. 442, Eff. 4/1/05.)

Rule 17.53.103 reserved

17.53.104 ADMINISTRATIVE PENALTY (1) Assessment of an administrative penalty under this rule must be made in conjunction with an administrative order, notice of violation, or other administrative action authorized under Title 75, chapter 10, part 4, MCA.

(a) The order, notice of violation, or notice of other administrative action may be served upon the violator or the violator's agent either by personal service or by certified mail. Service by mail is complete on the date of mailing.

(b) Each order, notice of violation, or notice of other administrative action that assesses an administrative penalty must include the following:

- (i) a statement of the statutory or rule section(s) violated;
- (ii) a statement of the facts constituting the violation(s) for which the penalty is assessed;
- (iii) a statement of the amount of the penalty assessed; and
- (iv) notice of opportunity to request a hearing before the board in accordance with (2).

(2) A person named in an order, notice of violation, or notice of other administrative action that assesses an administrative penalty may request a hearing before the board. A request for hearing must be made in writing and filed with the board within 30 days after the order, notice of violation, or notice of other administrative action is served upon the person requesting the hearing. The order or notice becomes final unless a hearing is requested within the 30-day period.

(History: 75-10-405, MCA; IMP, 75-10-424, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01.)

17.53.105 INCORPORATION BY REFERENCE (1) In accordance with the Act, these rules establish a hazardous waste management program that is the equivalent of the federal hazardous waste management program established by the United States Congress under the Resource Conservation and Recovery Act of 1976 (42 USC 6901-6987), as amended and administered by the EPA.

(2) In view of the Act's requirement of equivalency with the federal RCRA program and in order to simplify the rulemaking process and make the rules less cumbersome, in these rules, the department relies heavily upon adoption and incorporation by reference of federal requirements as set forth in Title 40 of the Code of Federal Regulations (CFR).

(3) References in this chapter that incorporate 40 CFR 60, 61, 63, 124, 260 through 268, 270, 273, or 279 refer to the version of that publication revised as of July 1, 2008. References in this chapter to 40 CFR 124, 260 through 268, 270, 273, or 279 that incorporate publications refer to the version of the publication as specified at 40 CFR 260.11. Provisions within 40 CFR 60, 61, and 63 that are referenced in 40 CFR 124, 260 through 268, 270, 273, or 279 are also incorporated by reference.

(4) For the purposes of this chapter, the department adopts and incorporates by reference the final rules published in the Federal Register at 73 FR 72912 on December 1, 2008, "Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated With Colleges and Universities," to be codified at 40 CFR 261 and 262.

(5) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at "<http://www.access.gpo.gov/nara/cfr/index.html>". Materials adopted and incorporated by reference in this chapter are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

(6) Where exceptions to incorporated federal regulations are necessary, these exceptions are noted in the rules.

(7) Cross-references within federal regulations adopted and incorporated by reference in these rules refer to the cross-referenced provision as adopted and incorporated by reference in this chapter with any indicated additions and exceptions.

(8) The adoption and incorporation by reference of federal regulations as state rules does not negate the requirement to comply with federal regulations that are not incorporated in this chapter and that are retained as federal authority. (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01; AMD, 2002 MAR p. 789, Eff. 3/15/02; AMD, 2002 MAR p. 3044, Eff. 11/1/02; AMD, 2005 MAR p. 442, Eff. 4/1/05; AMD, 2006 MAR p. 3074, Eff. 12/22/06; AMD, 2009 MAR p. 2461, Eff. 12/25/09.)

17.53.106 SUBSTITUTION OF STATE PERMITTING PROCEDURES
(REPEALED) (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01; REP, 2005 MAR p. 442, Eff. 4/1/05.)

17.53.107 SUBSTITUTION OF STATE TERMS FOR FEDERAL TERMS

(1) The following terms used in 40 CFR 124, 261, 262, 264 through 266, 268, 270, 273, or 279, as adopted and incorporated by reference in this chapter, have the meanings specified below, unless otherwise indicated in these rules:

(a) "Act" means the Montana Hazardous Waste Act, Title 75, chapter 10, part 4, MCA.

(b) "Administrator" means the director of the Montana Department of Environmental Quality.

(c) "Agency" means the Montana Department of Environmental Quality.

(d) "Director" means the director of the Montana Department of Environmental Quality.

(e) "Environmental Protection Agency", "U.S. Environmental Protection Agency", or "EPA" means the Montana Department of Environmental Quality, except for:

(i) any references to "EPA form", "EPA identification number", "EPA hazardous waste number", "EPA publication", "EPA acknowledgement of consent"; and

(ii) any reference to EPA in 40 CFR 273.32(a)(3).

(f) "Non-hazardous solid waste" means solid waste (see ARM 17.53.102(1)).

(g) "He" means he, she, or it, without regard to gender.

(h) "Notification requirements of section 3010" means the notification requirements of this chapter.

(i) "RCRA permit" means state hazardous waste permit.

(j) "Regional administrator" means the director of the Montana Department of Environmental Quality.

(k) "She" means he, she, or it, without regard to gender.

(l) "Solid waste" means waste (see ARM 17.53.102(1)).

(m) "State", "authorized state", "approved state", and "approved program" mean Montana, except at:

(i) 40 CFR 124.2 in the definitions of "director," "interstate agency," "person," and "state";

(ii) 40 CFR 260.10 in the definitions of "person," "state," and "United States";

(iii) 40 CFR 262;

(iv) 40 CFR 264.143(e)(1), 264.145(e)(1), 264.147(a)(1)(ii), 264.147(b)(1)(ii), 264.147(g)(2), 264.147(i)(4), 265.143(d)(1), 265.145(d)(1), 265.147(a)(1)(ii), 265.147(g)(2), and 265.147(i)(4); and

(v) 40 CFR 270.2 in the definitions of "approved program" or "approved state," "director," "final authorization," "person," and "state".

(n) Any reference to the "Department of Transportation" or "DOT" shall mean the U.S. Department of Transportation.

(2) The definitions of the following terms found in 40 CFR 260.10 are excluded from substitution pursuant to (1)(b) and (j):

- (a) administrator; and
- (b) regional administrator.

(3) The definitions of the following terms found in 40 CFR 260.10 are excluded from substitution pursuant to (1)(b), (e) and (j):

- (a) administrator;
- (b) EPA region; and
- (c) regional administrator.

(4) The substitution of terms in (1) does not apply in the following portions of 40 CFR 260 through 40 CFR 270, as adopted and incorporated by reference in this chapter:

- (a) 40 CFR 261.4(b)(11)(ii);
- (b) 40 CFR 261.6(a)(3)(i)(A);
- (c) 40 CFR 261.6(a)(3)(i)(B);
- (d) 40 CFR 261.10;
- (e) 40 CFR 261.11;
- (f) 40 CFR 262.10(g);
- (g) 40 CFR 262.11;
- (h) 40 CFR 262.51;
- (i) 40 CFR 262.52;
- (j) 40 CFR 262.53. See ARM 17.53.602 for more information;
- (k) 40 CFR 262.54. See ARM 17.53.602 for more information;
- (l) 40 CFR 262.55. See ARM 17.53.602 for more information;
- (m) 40 CFR 262.56. See ARM 17.53.602 for more information;
- (n) 40 CFR 262.57. See ARM 17.53.602 for more information;
- (o) 40 CFR 262, subpart H;
- (p) 40 CFR 264.12(a)(1);
- (q) 40 CFR 265.12(a)(1);
- (r) 40 CFR 268.2(j);

- (s) the following 40 CFR 270.2 definitions:
 - (i) "administrator";
 - (ii) "approved program or approved State";
 - (iii) "director";
 - (iv) "Environmental Protection Agency";
 - (v) "EPA";
 - (vi) "final authorization";
 - (vii) "interim authorization";
 - (viii) "major facility";
 - (ix) "permit";
 - (x) "regional administrator"; and
 - (xi) "state/EPA agreement";
- (t) 40 CFR 270.10(e)(2) and (3);
- (u) 40 CFR 270.10(f)(2) and (3);
- (v) 40 CFR 270.10(g)(1)(i) and (ii);
- (w) 40 CFR 270.11(a)(3);
- (x) 40 CFR 270.32(b)(2);
- (y) 40 CFR 270.32(c);
- (z) 40 CFR 270.72(a)(5);
- (aa) 40 CFR 270.72(b)(5); and
- (ab) 40 CFR 279.43(c)(3)(ii). (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01; AMD, 2002 MAR p. 789, Eff. 3/15/02; AMD, 2005 MAR p. 442, Eff. 4/1/05.)

Rules 17.53.108 through 17.53.110 reserved

17.53.111 REGISTRATION OF GENERATORS AND TRANSPORTERS

(1) Hazardous waste generators who accumulate, treat, store, dispose, transport, or offer for transportation hazardous waste shall register with the department, except as provided otherwise in (2).

(2) The following persons are not required to register as hazardous waste generators:

(a) conditionally exempt small quantity generators who are subject to the exclusionary provisions of 40 CFR 261.5;

(b) persons whose only hazardous wastes are recyclable materials as defined in 40 CFR 261.6;

(c) persons whose wastes are excluded from regulation as hazardous wastes under 40 CFR 261.4; and

(d) farmers who generate hazardous wastes and who dispose of all such wastes on their own farm property in accordance with 40 CFR 262.70.

(3) A hazardous waste generator shall complete and submit the registration form provided by the department or the EPA to register with the department.

(4) Registration is complete when the department approves the registration form and receives the registration fee required by ARM 17.53.113.

(5) A hazardous waste generator must inform the department of any changes to the information contained on the original registration form.

(6) Hazardous waste transporters must register with the department pursuant to ARM 17.53.703. (History: 75-10-204, 75-10-404, 75-10-405, MCA; IMP, 75-10-204, 75-10-212, 75-10-214, 75-10-221, 75-10-405, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01; AMD, 2002 MAR p. 789, Eff. 3/15/02; AMD, 2002 MAR p. 3397, Eff. 12/13/02; AMD, 2009 MAR p. 2371, Eff. 12/11/09.)

17.53.112 FACILITY PERMIT FEES: APPLICATION, REISSUANCE, MODIFICATION, AND MAINTENANCE FEES (1) For the purposes of this rule, the following definitions apply:

(a) "Class I facility" means a hazardous waste management facility that:

(i) contains one or more regulated landfill units, surface impoundments, land treatment units, incinerators, boilers, or industrial furnaces; and

(ii) receives more than 50% of its hazardous waste from off-site sources not owned, controlled, or operated by the facility owner or operator.

(b) "Class II facility" means a hazardous waste management facility that is not a Class I facility or a Class III facility.

(c) "Class III facility" means a hazardous waste management facility that:

(i) does not contain a regulated landfill unit, surface impoundment, land treatment unit, incinerator, boiler, or industrial furnace; and

(ii) generates more than 50% of its hazardous waste on-site or receives more than 50% of its hazardous waste from off-site sources that are owned, controlled, or operated by the facility owner or operator.

(2) The department shall assess to an applicant for a hazardous waste management permit, including a standardized permit, under this subchapter a filing and review fee based upon the following schedule:

(a) For Class I facilities, a maximum fee of \$150,000, payable as follows:

(i) a nonrefundable payment of \$50,000 due when the applicant files for a permit;

(ii) a payment of \$50,000 due when the department notifies the applicant that the application is complete; and

(iii) an additional payment of up to \$50,000 for the department's actual costs of review that exceed \$100,000. This payment is due within 30 days after the department's final decision on the application.

(b) For Class II facilities, a maximum fee of \$90,000, payable as follows:

(i) a nonrefundable payment of \$40,000 due when the applicant files for a permit; and

(ii) an additional payment of up to \$50,000 for the department's actual costs of review that exceed \$40,000. This payment is due within 30 days after the department's final decision on the application.

(c) For Class III facilities, a maximum fee of \$25,000, payable as follows:

(i) a nonrefundable payment of \$10,000 due when the applicant files for a permit; and

(ii) an additional payment of up to \$15,000 for the department's actual costs of review that exceed \$10,000. This payment is due within 30 days after the department's final decision on the application.

(d) If, after receipt of the payment required in (2)(a)(ii), the applicant notifies the department in writing of its intent to withdraw the application, the department shall return to the applicant any portion of the payment received pursuant to (2)(a)(ii) that exceeds the department's actual costs of permit review.

(3) At the time the permit reissuance process is initiated, the department shall assess a permit reissuance fee. The fees are as follows:

(a) \$15,000 for a Class I facility;

(b) \$7,000 for a Class II facility; and

(c) \$3,000 for a Class III facility.

(4) If payment for permit reissuance is not received by the department within ten days after initial billing, the department may suspend all work on the permit reissuance until the fee has been received.

(5) The department shall assess a permit modification fee for all permit modifications, at the time the modification process is initiated, regardless of whether the modification is requested by the permittee or initiated by the department.

(6) The fees for permit modifications at the request of the permittee are as follows:

- (a) \$7,200 for Class 3 modifications, as listed in 40 CFR 270.42, Appendix I;
- (b) \$3,600 for Class 2 modifications, as listed in 40 CFR 270.42, Appendix I;

and

- (c) for Class 1 modifications listed in 40 CFR 270.42, Appendix I:
 - (i) \$240 for Class 1 modifications listed in A through E of Appendix I; and
 - (ii) \$1,200 for Class 1 modifications listed in F through L of Appendix I; and
- (d) for "other modifications," as provided in 40 CFR 270.42(d), the fees will

be assessed as set forth in this section pursuant to a modification class as determined by the department.

(7) The fees for permit modifications initiated by the department, pursuant to 40 CFR 270.41, are as follows:

(a) for modifications, for causes described in 40 CFR 270.41, the fees are as follows:

- (i) \$7,200 for Class 3 modifications, as listed in 40 CFR 270.42, Appendix I;
- (ii) \$3,600 for Class 2 modifications, as listed in 40 CFR 270.42, Appendix I;

and

- (iii) for Class 1 modifications listed in 40 CFR 270.42, Appendix I:
 - (A) \$240 for Class 1 modifications listed in A through E of Appendix I; and
 - (B) \$1,200 for Class 1 modifications listed in F through L of Appendix I; and
- (b) for causes to revoke and reissue a permit as described in 40 CFR 270.41,

the fees are as provided in the schedule set forth in (3).

(8) If a Class 1 permit modification is very minor (e.g., changing only a name or an address on the permit documents), the department may waive the fee.

(9) If payment for a permit modification is not received by the department within ten days after initial billing, the department may suspend all work on the permit modification until the permit modification fee has been received.

(10) A hazardous waste management facility that receives more than 50% of its hazardous wastes from off-site generators that are not owned or operated by the facility owner or operator or site owner shall pay to the department hazardous waste management fees based upon the amount of waste received, as follows:

(a) \$8 per ton of hazardous waste received at the facility or site for management in regulated landfill units, surface impoundments, land treatment units, incinerators, boilers or industrial furnaces; and

(b) \$4 per ton of hazardous wastes received at the facility or site for management in any regulated unit or units other than those described in (10)(a).

(c) The fees established in (10)(a) and (b) may be prorated for amounts of hazardous waste received that are less than one ton in weight.

(d) Payment of the fees established in (10)(a) and (b) shall be submitted to the department quarterly, with payments due on March 31, June 30, September 30, and December 31 of each year. (History: 75-10-404, 75-10-405, 17-10-406, MCA; IMP, 75-10-405, 75-10-406, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01; AMD, 2002 MAR p. 789, Eff. 3/15/02; AMD, 2009 MAR p. 2371, Eff. 12/11/09; AMD, 2009 MAR p. 2461, 12/25/09.)

17.53.113 REGISTRATION AND REGISTRATION MAINTENANCE FEES:
FEE ASSESSMENT (1) Concurrent with the submittal of a registration form, a generator shall submit to the department a registration fee of \$225.

(2) The department shall assess an annual registration maintenance fee, as provided in (3), for the following hazardous waste generators:

(a) a person who generates more than 100 kilograms (220 pounds) of hazardous waste, or more than one kilogram (2.2 pounds) of acute hazardous waste, in any calendar month;

(b) a person who accumulates more than 1,000 kilograms (2,200 pounds) of hazardous waste, or more than one kilogram (2.2 pounds) of acute hazardous waste at any time in a calendar year; and

(c) A conditionally exempt small quantity generator, as defined in ARM 17.53.301(2), that has registered with the department and desires to remain registered.

(3) The annual registration maintenance fee for a calendar year is \$200 plus a per-ton fee for all regulated hazardous waste generated during the previous calendar year of:

(a) \$5 per ton for all regulated hazardous waste generated during the 2009 calendar year;

(b) \$10 per ton for all regulated hazardous waste generated during the 2010 calendar year;

(c) \$15 per ton for all regulated hazardous waste generated during the 2011 calendar year; and

(d) \$20 per ton for all regulated hazardous waste generated during the 2012 calendar year, and each year thereafter.

(4) The per-ton fee in (3)(a) through (d) is assessed only if the amount of regulated hazardous waste generated during the previous calendar year is equal to or greater than 1.3 tons.

(5) For purposes of determining the registration maintenance fee, any part of a ton of generated hazardous waste, greater than 1.3 tons, must be rounded up to the next tenth of a ton.

(6) Hazardous waste generators exempt from registration, pursuant to ARM 17.53.111(2), for the entire previous calendar year are not required to pay the registration or registration maintenance fees, except as provided in ARM 17.53.113(2)(c).

(7) Persons are not required to pay the registration or registration maintenance fees if they are registered only for the purpose of:

(a) transporting hazardous waste;

(b) handling universal waste;

(c) handling used oil; or

(d) conducting a treatability study.

(8) The department shall provide a written notice of the amount of the registration maintenance fee, the basis for the fee assessment, and the date the fee is due to each hazardous waste generator required to pay an annual registration maintenance fee.

(9) If a hazardous waste generator that was assessed an annual registration maintenance fee fails to pay the required fee within 60 days after the billing date, the department may impose a late payment charge of 10% of the fee, plus interest on the fee computed at the interest rate established under 75-2-220(5)(a)(i), MCA. (History: 75-10-404, 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01; AMD, 2002 MAR p. 1315, Eff. 3/15/02; AMD, 2002 MAR p. 3397, Eff. 12/13/02; AMD, 2009 MAR p. 2371, Eff. 12/11/09.)

