

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM  
EXECUTIVE SUMMARY FOR RULE AMENDMENT**

**AGENDA # III.A.2.**

**AGENDA ITEM SUMMARY** - The Department requests initiation of rulemaking to amend an administrative rule promulgated under the Montana Strip and Underground Mine Reclamation Act. The administrative rule provides conditions that a bank must satisfy in order for the Department to accept a letter of credit issued by the bank as a reclamation bonding instrument. The financial condition set forth in 17.24.1109(1)(e)(iii) is amended to define "stockholders' equity" in terms more commonly used in the banking industry; no substantive change is intended. The financial condition set forth in 17.24.1109(1)(f) is deleted because that condition has been difficult to apply, precludes acceptance of letters of credit issued by state chartered banks, and is superfluous in assessing the financial strength of a bank issuing a letter of credit.

**LIST OF AFFECTED RULES** - ARM 17.24.1109

**AFFECTED PARTIES SUMMARY** – Operators of strip and underground mines (coal and uranium) that are submitting a reclamation bond in the form of an irrevocable letter of credit.

**SCOPE OF PROPOSED PROCEEDING** - The Department is requesting initiation of rulemaking.

**BACKGROUND** – Under 17.24.1109(1)(e)(iii), a bank's stockholders' equity must be at least 5.5% of total assets in order for the Department to accept a letter of credit issued by that bank. The proposed amendment substitutes "capital stock" for "shareholders equity" in the parenthetical definition of "stockholders' equity." "Capital stock" is used as a component of stockholders' equity on the balance sheet of a bank instead of "shareholders equity."

Under 17.24.1109(1)(f), a bank must have a b+ or better rating from one of three listed national credit rating services in order for the Department to accept a letter of credit issued by the bank. Application of this provision has proved difficult for a number of reasons. First, the national credit rating services that the U.S. Securities and Exchange Commission (SEC) considers as reliable and credible change over time. One of the listed services no longer provides ratings and the SEC has recognized other credit rating services as reliable and credible. In addition, not all credit rating services use the rating scale that includes the b+ rating referred to in this provision. Finally, the credit rating services rate national banks, not state chartered banks. Thus, this provision precludes acceptance of letters of credit issued by state chartered banks. The remaining three financial conditions set forth in 17.24.1109(1)(e)(i), (ii) and (iii) are sufficient to assess the financial strength of a bank in determining whether to accept a letter of credit issued by that bank as a bonding instrument.

**HEARING INFORMATION** – The Department does not believe that the proposed rulemaking warrants a public hearing.

**BOARD OPTIONS** - The Board may:

1. Initiate rulemaking, appoint a hearing officer, and schedule a hearing;
2. Determine that the adoption of rules is not appropriate and decline to initiate rulemaking; or
3. Direct the Department to modify the rulemaking and proceed.

**DEQ RECOMMENDATION** – The Department recommends initiation of rulemaking and appointment of a hearing officer for a public hearing.

**ENCLOSURES** - Notice of public hearing on proposed amendment of ARM 17.38.101 pertaining to public water and sewage system requirements.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF PROPOSED
17.24.1109 pertaining to bonding letters )	AMENDMENT
of credit )	
)	(MONTANA STRIP AND
)	UNDERGROUND MINE
)	RECLAMATION ACT)
)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On \_\_\_\_\_, 2010, the Board of Environmental Review proposes to amend the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., \_\_\_\_\_, 2010, to advise us of the nature of the accommodation you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

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

17.24.1109 BONDING: LETTERS OF CREDIT (1) Letters of credit are subject to the following conditions:

(a) through (e)(ii) remain the same.

(iii) capital or stockholders' equity must be at least 5.5% of total assets ((total stockholders' equity [~~shareholders equity~~ capital stock + capital surplus + retained earnings])/total assets = 0.055 or more).

~~(f) Under a general financial health category, from either Sheshunoff Information Services, Moody's (Mergent Ratings Service) or Standard and Poor's, the bank must have a b+ or better rating for the current and previous two quarters.~~

(g) through (j)(iii) remain the same, but are renumbered (f) through (i)(iii).

AUTH: 82-4-204, MCA

IMP: 82-4-223, 82-4-232, 82-4-235, MCA

**REASON:** In (2)(e)(iii), the proposed amendment substitutes "capital stock" for "shareholders equity" to tailor the definition of "total stockholders' equity" to the banking industry. According to the Division of Banking and Financial Institutions of

the Montana Department of Administration, the current definition is in error; capital stock, capital surplus, and retained earnings are the components of stockholders' equity usually reflected on the balance sheet of a bank.

The proposed amendment deletes the criterion to evaluate the financial strength of a bank issuing a letter of credit set forth in (1)(f). Use of this criterion has proved difficult for a number of reasons. First, the credit rating agencies that the U.S. Securities and Exchange Commission considers as reliable and credible, such as those currently listed in (1)(f), change over time. For example, Sheshunoff Information Services no longer provides ratings and additional credit rating agencies not listed in (1)(f) have been recognized by the SEC. In addition, not all credit rating agencies use the rating scale that includes the b+ rating referred to in this provision. Finally, the credit rating agencies rate national banks, not state chartered banks. Thus, (1)(f) precludes acceptance of letters of credit issued by state chartered banks.

The remaining three criteria set forth in (1)(e) are sufficient to assess the financial strength of a bank for the purpose of determining whether to accept a letter of credit issued by the bank. The proposed amendment is made in consultation with the Division of Bank and Financial Institutions of the Montana Department of Administration.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than \_\_\_\_\_, 2010. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than \_\_\_\_\_, 2010.

6. If the board or department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be two based on the four active prospecting and 15 active mining permits in Montana.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, 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; 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 Elois Johnson, Paralegal, 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 Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/  
JOHN F. NORTH  
Rule Reviewer

BY: /s/  
JOSEPH W. RUSSELL, M.P.H.,  
Chairman

Certified to the Secretary of State, \_\_\_\_\_, 2009.