

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR ACTION ON PROPOSED
RULE AMENDMENTS AND NEW RULES**

Agenda # III.A.3.

Agenda Item Summary: The department is proposing that the board amend and adopt air quality rules to establish appropriate permitting thresholds for Greenhouse Gas (GHG) emissions.

List of Affected Rules: Adopting the rules as proposed in the notice would amend ARM 17.8.501, 17.8.504, 17.8.601, 7.8.740, 17.8.743, 17.8.745, 17.8.801, 17.8.901, and 17.8.1201. The new rules would be codified in ARM Title 17, chapter 8, subchapters 5, 6, 7, 8, 9, and 12.

Affected Parties Summary: The proposed amendments to the air quality permit thresholds with respect to GHG potentially would affect all owners or operators of stationary and portable facilities and registered oil and gas facilities that have potential GHG emission levels between 25 and 25,000 tons per year.

Scope of Proposed Proceeding: The department proposes that the board provide an opportunity for public comment regarding its proposed action and consider and act on the proposed rule amendments and new rules.

Background: Pursuant to Section 75-2-203 (1), MCA, the board has authority to establish limits on emissions of air pollutants from any air pollutant source necessary to prevent, abate, or control air pollution. According to the U.S. Environmental Protection Agency's (EPA) "Proposed Endangerment and Cause or Contribute Findings for GHGs Under Section 202(a) of the Clean Air Act" ("Proposed Endangerment Finding"), 74 Fed. Reg. 18886 (April 24, 2009), "GHGs are gases that effectively trap some of the Earth's heat that would otherwise escape to space. GHGs are both naturally occurring and anthropogenic. The primary greenhouse gases of concern directly emitted by human activities include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride." The department is proposing that the board establish appropriate emission thresholds for regulation of GHG emissions in the proposed amendments and new rules.

The proposed action would include incorporation of GHG emission thresholds for both minor and major source air quality permitting. This action is necessary because EPA is proposing to finalize regulations under the Federal Clean Air Act (FCAA) that would make GHG a regulated pollutant, and, thereby, trigger applicability of Major New Source Review and Title V major source permitting programs, as well as Montana's minor source permitting program. Applicability of those programs is based on emissions of regulated air pollutants above specified threshold levels. If permitting requirements

apply to GHG emissions at the applicability levels currently provided under the FCAA and the existing state rules, air quality permits will be required for thousands of relatively small emission sources for which air quality permits are not currently required, and the department will be required to process permit applications in numbers that are orders of magnitude greater than current administrative resources can accommodate.

The department is proposing that the board establish the permitting threshold for GHG for both the major and minor source permitting programs at 25,000 tons per year of carbon dioxide equivalent (CO₂e) emissions, which is the permitting threshold proposed by EPA in its October 27, 2009, "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" ("Tailoring Rule"), 74 Fed. Reg. 55292. This threshold change would be incorporated in revisions to Title 17, Chapter 8, Subchapters 6, 7, 8, 9, and 12.

Major New Source Review permitting requirements also are triggered if the owner or operator of a major stationary source undertakes a modification that is projected to increase emissions of a regulated pollutant above a specified emissions threshold characterized as the "significance level." For any particular pollutant, this level is zero unless EPA establishes a different significance level by regulation on the basis of *de minimis* emissions or administrative necessity. The department is proposing that the board establish a significance level in Title 17, Chapter 8, Subchapters 8 (Prevention of Significant Deterioration of Air Quality or PSD) and 9 (Nonattainment Area New Source Review or NSR), within the range of 10,000 to 25,000 tons per year, and that the board request comment from the public on the appropriate level within that range. The proposed range is the same range found in EPA's October 27, 2009, proposal and is intended to provide the board with the flexibility to consider public comments and any final EPA significance level that is promulgated prior to final board action.

To alleviate the financial impact of a new regulatory program on the owners and operators of currently unregulated emission sources, the board is proposing to reduce the air quality permit application fee under Title 17, Chapter 8, Subchapter 5, for major new source permits for municipal solid waste landfills and publicly owned treatment works (POTW), from \$15,000 to \$500. Based on the relative low level of complexity of air emission sources at landfills and POTWs, the level of department resources required to issue an initial major new source permit for that type of a facility would be equal to, or less than, the level of department resources required to issue a permit for a modification to an existing permitted source, which currently requires a \$500 application fee.

The department also is proposing that the board add five sets of four proposed new rules to five different rule subchapters. Under New Rules I, V, IX, XIII, and XVII, for consistency with federal regulation of GHG emissions, the proposed amendments and new rules would take effect on the effective date of EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards" ("Light-Duty Vehicle Rule"), proposed at 75 Fed. Reg. 49454 (September 28, 2009), or the effective date of EPA's Tailoring Rule, whichever date is earlier.

Under New Rules II, VI, X, XIV, and XVIII, the proposed rule revisions would apply retroactively to the effective date of EPA's final Light-Duty Vehicle Rule, or the effective date of its final Tailoring Rule, whichever date is earlier, so that the department is not required to issue permits with inappropriate major source GHG permitting provisions if EPA finalizes its GHG regulations before the board completes this rulemaking and establishes appropriate GHG permitting thresholds.

Under New Rules III, VII, XI, XV, and XIX, to maintain consistency with federal regulation of GHG, if EPA stays, withdraws, or reconsiders its Light-Duty Vehicle Rule and its Tailoring Rule, or if both regulations are vacated by a court of competent jurisdiction, all of the GHG rule provisions adopted in this rulemaking would be void.

Under New Rules IV, VIII, XII, XVI, and XX, the proposed rule revisions would be temporary and would terminate on December 31, 2011, to achieve the immediate administrative goals of reducing the permitting burden on the regulated community, the currently non-regulated entities that would be affected, and the department and allow for a later stakeholder process to address GHG permitting specifically for Montana.

Hearing Information: The department proposes that the board conduct a hearing to take public comment at a time and place established by the board's hearing officer.

Board Options: The board may:

1. Initiate rulemaking, appoint a hearing officer, and schedule a hearing;
2. Determine that amendment and 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 that the board initiate rulemaking and appoint a hearing officer to conduct a public hearing.

Enclosure:

1. Draft Notice of Public Hearing on Proposed Amendment and Adoption

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.501, 17.8.504, 17.8.601, 17.8.740,)
17.8.743, 17.8.744, 17.8.745, 17.8.801,)
17.8.901, 17.8.1201, pertaining to)
definitions, fees, and permits, and the)
adoption of New Rules I through XX)
pertaining to temporary greenhouse gas)
emission rules)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

(AIR QUALITY)

TO: All Concerned Persons

1. On _____, 2010, at _____.m., the Board of Environmental Review will hold a public hearing [in/at address], Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or 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 that 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.

3. New Rules I through XX consist of five sets of four rules that would be placed in ARM Title 17, chapter 8, subchapters 6, 7, 8, 9, and 12.

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

17.8.501 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) and (2) remain the same.

(3) "Municipal solid waste landfill" has the meaning given in 75-10-203, MCA.

(3) and (4) remain the same, but are renumbered (4) and (5).

(6) "Publicly owned treatment works" (POTW) has the meaning given in ARM 17.30.1304(48).

(5) through (9) remain the same, but are renumbered (7) through (11).

AUTH: 75-2-111, MCA

IMP: 75-2-211, MCA

17.8.504 AIR QUALITY PERMIT APPLICATION FEES (1) An applicant submitting a Montana air quality permit application, as required in ARM Title 17, chapter 8, subchapters 7, 8, 9, or 10, shall submit an application fee as provided in

(1)(a), (b), and (c):

(a) the following table sets forth source types and associated fees:

<u>Source Type</u>	<u>New Source</u>	<u>Modified Source</u>
<u>NSR/PSD-except municipal solid waste landfill and POTW</u>	\$15,000	\$500
<u>NSR/PSD - municipal solid waste landfill and POTW</u>	<u>\$500</u>	<u>\$500</u>
A	\$1,200	\$500
S/SM	\$1,000	\$500
B	\$800	\$500

(b) through (5) remain the same.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA

IMP: 75-2-211, 75-2-220, 75-2-234, MCA

17.8.601 DEFINITIONS (1) through (1)(c) remain the same.

(2) "Carbon dioxide equivalent," or "CO₂e," means a metric used to compare the emissions from various greenhouse gases based upon their global warming potential (GWP). The CO₂e for a gas is determined by multiplying the mass of the gas by the associated GWP. The applicable GWPs and guidance on how to calculate a source's GHG emissions in tons per year CO₂e can be found in EPA's "Inventory of U.S. Greenhouse Gas Emissions and Sinks," which is updated annually under existing commitment under the United Nations Framework Convention on Climate Change (UNFCCC).

(2) through (4)(d) remain the same, but are renumbered (3) through (5)(d).

(6) "Greenhouse gas," or "GHG," means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs) as CO₂e.

(5) (7) "Major open burning source" means any person, agency, institution, business, or industry conducting any open burning that, on a statewide basis, will emit more than 500 tons per calendar year of carbon monoxide, or 25,000 tons per year or more of GHG, or 50 tons per calendar year of any other pollutant regulated under this chapter, except hydrocarbons.

(6) through (11) remain the same, but are renumbered (8) through (13).

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

IMP: 75-2-203, MCA

17.8.740 DEFINITIONS For the purposes of this subchapter:

(1) and (2) remain the same.

(3) "Carbon dioxide equivalent," or "CO₂e," means a metric used to compare the emissions from various greenhouse gases based upon their global warming potential (GWP). The CO₂e for a gas is determined by multiplying the mass of the gas by the associated GWP. The applicable GWPs and guidance on how to calculate a source's GHG emissions in tons per year CO₂e can be found in EPA's "Inventory of U.S. Greenhouse Gas Emissions and Sinks," which is updated annually under existing commitment under the United Nations Framework Convention on Climate Change (UNFCCC).

(3) through (8) remain the same, but are renumbered (4) through (9).

(10) "Greenhouse gas," or "GHG," means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs) as CO₂e.

(9) through (21)(b) remain the same, but are renumbered (11) through (23)(b).

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

IMP: 75-2-211, MCA

17.8.743 MONTANA AIR QUALITY PERMITS--WHEN REQUIRED

(1) Except as provided in ARM 17.8.744, 17.8.745, and 17.8.1602, a person may not construct, install, modify, or operate any of the following without first obtaining a Montana air quality permit issued by the department:

(a) remains the same.

(b) asphalt concrete plants, mineral crushers, and mineral screens that have the potential to emit 25,000 tons per year or more of GHG or more than 15 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter;

(c) any incinerator, as defined in 75-2-103(11), MCA, and that is subject to the requirements of 75-2-215, MCA;

(d) any facility or emitting unit upon which construction commenced, or that was installed, before November 23, 1968, when that facility or emitting unit is modified after that date and the modification increases the potential to emit by 25,000 tons per year or more of GHG or by more than 25 tons per year of any other airborne pollutant, other than lead, that is regulated under this chapter; or

(e) any other facility or emitting unit upon which construction was commenced, or that was installed, after November 23, 1968, that is not specifically excluded under ARM 17.8.744, and that has the potential to emit 25,000 tons per year or more of GHG or more than 25 tons per year of any other airborne pollutant, other than lead, that is regulated under this chapter.

(2) through (5) remain the same.

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

IMP: 75-2-211, MCA

17.8.744 MONTANA AIR QUALITY PERMITS--GENERAL EXCLUSIONS

(1) A Montana air quality permit is not required under ARM 17.8.743 for the following:

(a) through (i) remain the same.

(j) drilling rig stationary engines and turbines that do not have the potential to emit 25,000 tons per year or more of GHG or more than 100 tons per year of any other pollutant regulated under this chapter and that do not operate in any single location for more than 12 months;

(k) through (m) remain the same.

AUTH: 75-2-111, 75-2-204, 75-2-234, MCA

IMP: 75-2-211, 75-2-234, MCA

17.8.745 MONTANA AIR QUALITY PERMITS--EXCLUSION FOR DE MINIMIS CHANGES (1) A Montana air quality permit is not required under ARM 17.8.743 for de minimis changes as specified below:

(a) Construction or changed conditions of operation at a facility for which a Montana air quality permit has been issued that do not increase the facility's potential to emit by more than the significance level for GHG, as defined by ARM 17.8.801(29), or by more than 15 tons per year of any other pollutant except:

(i) through (2) remain the same.

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

IMP: 75-2-211, MCA

17.8.801 DEFINITIONS In this subchapter, the following definitions apply:

(1) through (7) remain the same.

(8) "Carbon dioxide equivalent," or "CO₂e," means a metric used to compare the emissions from various greenhouse gases based upon their global warming potential (GWP). The CO₂e for a gas is determined by multiplying the mass of the gas by the associated GWP. The applicable GWPs and guidance on how to calculate a source's GHG emissions in tons per year CO₂e can be found in EPA's "Inventory of U.S. Greenhouse Gas Emissions and Sinks," which is updated annually under existing commitment under the United Nations Framework Convention on Climate Change (UNFCCC).

(8) through (14) remain the same, but are renumbered (9) through (15).

(16) "Greenhouse gas," or "GHG," means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs) as CO₂e.

(15) through (21)(d) remain the same, but are renumbered (17) through (23)(d).

~~(22)~~ (24) The following apply to the definition of the term "major stationary source":

(a) "major stationary source" means:

(i) any of the following stationary sources of air pollutants which emits, or has the potential to emit, 25,000 tons per year or more of GHG or 100 tons per year or more of any other pollutant subject to regulation under the FCAA, excluding

hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA: fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, Portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(ii) notwithstanding the stationary source size specified in ~~(22)~~ (24)(a)(i), any stationary source which emits, or has the potential to emit, 25,000 tons per year or more of GHG or 250 tons per year or more of any other air pollutant subject to regulation under the FCAA, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA; or

(iii) any physical change that would occur at a stationary source not otherwise qualifying under ~~(22)~~ (24)(a)(i) or (ii), as a major stationary source if the change would constitute a major stationary source by itself.

(b) through (c)(xxvii) remain the same.

(23) through (26) remain the same, but are renumbered (25) through (28).

~~(27)~~ (29) The following apply to the definition of the term "significant":

(a) "significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy of particulate matter emissions
15 tpy of PM-10 emissions

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

Fluorides: 3 tpy

Sulfuric acid mist: 7 tpy

Hydrogen sulfide (H₂S): 10 tpy

Total reduced sulfur (including H₂S): 10 tpy

Reduced sulfur compounds (including H₂S): 10 tpy

Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): $3.2 * 10^{-6}$ megagrams per year ($3.5 * 10^{-6}$ tpy)

Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tpy)

Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tpy)

Greenhouse gas: [an amount to be determined by the board that is within the range of 10,000 to 25,000 tpy]

(b) "significant" means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the FCAA, that ~~(27)~~ (29)(a) does not list any emissions rate. This does not include hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA.

(c) Notwithstanding ~~(27)~~ (29)(a), "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than one $\mu\text{g}/\text{m}^3$ (24-hour average), except for GHG.

(28) and (29) remain the same, but are renumbered (30) and (31).

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

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.901 DEFINITIONS In this subchapter the following definitions apply:

(1) through (4) remain the same.

(5) "Carbon dioxide equivalent," or "CO₂e," means a metric used to compare the emissions from various greenhouse gases based upon their global warming potential (GWP). The CO₂e for a gas is determined by multiplying the mass of the gas by the associated GWP. The applicable GWPs and guidance on how to calculate a source's GHG emissions in tons per year CO₂e can be found in EPA's "Inventory of U.S. Greenhouse Gas Emissions and Sinks," which is updated annually under existing commitment under the United Nations Framework Convention on Climate Change (UNFCCC).

(5) through (9) remain the same, but are renumbered (6) through (10).

(11) "Greenhouse gas," or "GHG," means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs) as CO₂e.

(10) through (11)(b)(B)(vii) remain the same, but are renumbered (12) through (13)(b)(B)(vii).

~~(12)~~ (14) The following apply to the definition of the term "major stationary source":

(a) "major stationary source" means:

(i) any stationary source of air pollutants which emits, or has the potential to emit, 25,000 tons per year or more of GHG or 100 tons per year or more of any other pollutant subject to regulation under the FCAA; or

(ii) remains the same.

(iii) any physical change that would occur at a stationary source not qualifying under ~~(12)~~ (14)(a)(i) or (ii) as a major stationary source, if the change would constitute a major stationary source by itself.

(b) through (b)(xxvii) remain the same.

(13) through (17) remain the same, but are renumbered (15) through (19).

~~(48)~~ (20) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

	<u>Pollutant and Emission Rate</u>
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy of particulate matter emissions
or	15 tpy of PM-10 emissions
Lead:	0.6 tpy
<u>Greenhouse Gas:</u>	<u>[an amount to be determined by the board that is within the range of 10,000 to 25,000 tpy]</u>

(19) and (20) remain the same, but are renumbered (21) and (22).

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

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1201 DEFINITIONS In this subchapter, unless indicated otherwise, the following definitions apply:

(1) through (10)(l) remain the same.

(11) "Carbon dioxide equivalent," or "CO₂e," means a metric used to compare the emissions from various greenhouse gases based upon their global warming potential (GWP). The CO₂e for a gas is determined by multiplying the mass of the gas by the associated GWP. The applicable GWPs and guidance on how to calculate a source's GHG emissions in tons per year CO₂e can be found in EPA's "Inventory of U.S. Greenhouse Gas Emissions and Sinks," which is updated annually under existing commitment under the United Nations Framework Convention on Climate Change (UNFCCC).

(11) through (20) remain the same, but are renumbered (12) through (21).

(22) "Greenhouse gas," or "GHG," means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs) as CO₂e.

(21) through (22)(b) remain the same, but are renumbered (23) through (24)(b).

~~(23)~~ (25) "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in ~~(23)~~ (25)(a) through (c). For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial

Classification Manual, 1987.

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

(b) A major stationary source of air pollutants that directly emits or has the potential to emit, 25,000 tons per year or more of GHG or 100 tons per year or more of any other air pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

(i) through (c) remain the same.

(24) through (33) remain the same, but are renumbered (26) through (35).

AUTH: 75-2-217, MCA

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

5. The proposed new rules provide as follows:

NEW RULE I EFFECTIVE DATE FOR GREENHOUSE GAS EMISSION

REGULATION (1) All GHG provisions in this subchapter are effective on the effective date of EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), or the effective date of its final "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), whichever is earlier.

NEW RULE II RETROACTIVITY OF GREENHOUSE GAS EMISSION

REGULATION (1) All GHG provisions in this subchapter apply retroactively to the effective date of EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), or the effective date of its final "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), whichever is earlier.

NEW RULE III GREENHOUSE GAS EMISSION REGULATION

CONTINGENT UPON FEDERAL REGULATION (1) If EPA, stays, withdraws, or reconsiders its "Light Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), and its "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), or a court of competent jurisdiction issues an order vacating or otherwise invalidating EPA's regulation of GHG for any reason, all GHG provisions in this subchapter are void as of the date of such administrative or judicial action and shall have no further force and effect.

NEW RULE IV TERMINATION OF GREENHOUSE GAS EMISSION

REGULATION (1) All GHG provisions in this subchapter terminate on December 31, 2011.

NEW RULE V EFFECTIVE DATE FOR GREENHOUSE GAS EMISSION

MAR Notice No. 17-____

REGULATION (1) All GHG provisions in this subchapter are effective on the effective date of EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), or the effective date of its final "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), whichever is earlier.

NEW RULE VI RETROACTIVITY OF GREENHOUSE GAS EMISSION

REGULATION (1) All GHG provisions in this subchapter apply retroactively to the effective date of EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), or the effective date of its final "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), whichever is earlier.

NEW RULE VII GREENHOUSE GAS EMISSION REGULATION

CONTINGENT UPON FEDERAL REGULATION (1) If EPA, stays, withdraws, or reconsiders its "Light Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), and its "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), or a court of competent jurisdiction issues an order vacating or otherwise invalidating EPA's regulation of GHG for any reason, all GHG provisions in this subchapter are void as of the date of such administrative or judicial action and shall have no further force and effect.

NEW RULE VIII TERMINATION OF GREENHOUSE GAS EMISSION

REGULATION (1) All GHG provisions in this subchapter terminate on December 31, 2011.

NEW RULE IX EFFECTIVE DATE FOR GREENHOUSE GAS EMISSION

REGULATION (1) All GHG provisions in this subchapter are effective on the effective date of EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), or the effective date of its final "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), whichever is earlier.

NEW RULE X RETROACTIVITY OF GREENHOUSE GAS EMISSION

REGULATION (1) All GHG provisions in this subchapter apply retroactively to the effective date of EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), or the effective date of its final "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), whichever is earlier.

NEW RULE XI GREENHOUSE GAS EMISSION REGULATION

CONTINGENT UPON FEDERAL REGULATION (1) If EPA, stays, withdraws, or reconsiders its "Light Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), and its "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), or a court of competent jurisdiction issues an order vacating or otherwise invalidating EPA's regulation of GHG for any reason, all GHG provisions in this subchapter are void as of the date of such administrative or judicial action and shall have no further force and effect.

NEW RULE XII TERMINATION OF GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter terminate on December 31, 2011.

NEW RULE XIII EFFECTIVE DATE FOR GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter are effective on the effective date of EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), or the effective date of its final "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), whichever is earlier.

NEW RULE XIV RETROACTIVITY OF GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter apply retroactively to the effective date of EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), or the effective date of its final "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), whichever is earlier.

NEW RULE XV GREENHOUSE GAS EMISSION REGULATION
CONTINGENT UPON FEDERAL REGULATION (1) If EPA, stays, withdraws, or reconsiders its "Light Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), and its "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), or a court of competent jurisdiction issues an order vacating or otherwise invalidating EPA's regulation of GHG for any reason, all GHG provisions in this subchapter are void as of the date of such administrative or judicial action and shall have no further force and effect.

NEW RULE XVI TERMINATION OF GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter terminate on December 31, 2011.

NEW RULE XVII EFFECTIVE DATE FOR GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter are effective on the

effective date of EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), or the effective date of its final "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), whichever is earlier.

NEW RULE XVIII RETROACTIVITY OF GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter apply retroactively to the effective date of EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), or the effective date of its final "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), whichever is earlier.

NEW RULE XIX GREENHOUSE GAS EMISSION REGULATION CONTINGENT UPON FEDERAL REGULATION (1) If EPA, stays, withdraws, or reconsiders its "Light Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), and its "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), or a court of competent jurisdiction issues an order vacating or otherwise invalidating EPA's regulation of GHG for any reason, all GHG provisions in this subchapter are void as of the date of such administrative or judicial action and shall have no further force and effect.

NEW RULE XX TERMINATION OF GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter terminate on December 31, 2011.

REASON: Pursuant to 75-2-203 (1), MCA, the board has authority to establish limits on emissions of air pollutants from any air pollutant source necessary to prevent, abate, or control air pollution. According to the U.S. Environmental Protection Agency's (EPA's) "Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases (GHGs) Under Section 202(a) of the Clean Air Act" ("Proposed Endangerment Finding"), 74 Fed. Reg. 18886 (April 24, 2009), "GHGs are gases that effectively trap some of the Earth's heat that would otherwise escape to space. GHGs are both naturally occurring and anthropogenic. The primary greenhouse gases of concern directly emitted by human activities include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride."

GHG emissions were established as meeting the definition of "air pollutant" under the FCAA in the April 2, 2007, decision of the U.S. Supreme Court in Massachusetts v. EPA, 549 U.S. 497 (2007), a challenge to EPA's denial of a petition for rulemaking with respect to regulating GHG from motor vehicles. The Court stated: "Because greenhouse gases fit well within the Act's capacious definition of 'air pollutant,' EPA has statutory authority to regulate emissions of such gases from new motor vehicles. That definition – which includes 'any air pollution

agent ..., including any physical, chemical, ... substance ... emitted into ... the ambient air ... ' (emphasis added) – embraces all airborne compounds of whatever stripe. Moreover, carbon dioxide and other greenhouse gases are undoubtedly "physical [and] chemical ... substances." In 75-2-103(3), MCA, the Clean Air Act of Montana refers to pollutants regulated under the FCAA as follows: "Air pollutants' means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S. Code (U.S.C.) 7401, et seq." Air contaminants are defined under 75-2-103(2) as "dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof."

Before EPA may issue standards addressing emissions of greenhouse gases from new motor vehicles or engines under Section 202(a) of the FCAA, the Administrator of EPA must satisfy a two-step test. First, the Administrator must decide whether, in her judgment, the air pollution under consideration may reasonably be anticipated to endanger public health or welfare. Second, the Administrator must decide whether, in her judgment, emissions of an air pollutant from new motor vehicles or engines cause or contribute to this air pollution. In its Proposed Endangerment Finding, EPA proposed to make both of these findings and stated: "The effects of climate change observed to date and projected to occur in the future including, but not limited to, the increased likelihood of more frequent and intense heat waves, more wildfires, degraded air quality, more heavy downpours and flooding, increased drought, greater sea level rise, more intense storms, harm to water resources, harm to agriculture, and harm to wildlife and ecosystems, are effects on public health and welfare within the meaning of the Clean Air Act."

On September 28, 2009, EPA followed its Proposed Endangerment Finding with a "Proposed Rulemaking to Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards" ("Light-Duty Vehicle Rule"), 74 Fed. Reg. 49454. EPA is addressing the regulation of GHG emissions from major stationary sources in a proposed EPA regulation, issued October 27, 2009, titled "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" ("Tailoring Rule"), 74 Fed. Reg. 55292. If EPA finalizes either its Light Duty Vehicle Rule or Tailoring Rule, GHG will automatically become a regulated pollutant under the FCAA and the Clean Air Act of Montana and EPA's action will automatically trigger air quality permitting provisions under the Major New Source Review and Title V major source permitting programs, as well as under Montana's minor source permitting program.

If permitting requirements become applicable to GHG emissions at the applicability levels provided under the FCAA and adopted by the board under the existing state rules, minor and major source permitting requirements will apply for the first time to thousands of relatively small emission sources for which permits are not currently required. For example, many home furnaces, currently not subject to minor source permitting under the residential heating use exemption, exceed the existing potential emissions threshold of 25 tons per year of GHG for minor source permitting. In addition, the department will be required to process permit applications in numbers that are orders of magnitude greater than current administrative resources can accommodate. The proposed rules would be temporary in an effort to quickly make rule changes to avoid the consequences of

permitting GHG sources at the current permit thresholds but allow for a stakeholder process in later rulemaking to establish permanent GHG permit thresholds for both major and minor source air quality permitting.

Therefore, the board is proposing rule amendments and new rules to establish appropriate emission thresholds for regulation of GHG emissions. The board is proposing temporary rules to establish the permitting threshold for GHG for both the major and minor source permitting programs at 25,000 tons per year of carbon dioxide equivalent (CO₂e) emissions, which is the threshold level in EPA's October 27, 2009, proposal for GHG major source permitting under Major New Source Review and Title V. This threshold change would be incorporated in revisions to Title 17, chapter 8, subchapters 6, 7, 8, 9, and 12. Major New Source Review permitting requirements also are triggered if a major stationary source undertakes a modification that is projected to increase emissions of a regulated New Source Review pollutant above an emissions threshold, characterized as the "significance level." For any particular pollutant, this level is zero unless EPA establishes a significance level on the basis of de minimis emissions or administrative necessity. Thus for any major source, any minor change that increases GHG emissions by any amount would, as a result, potentially require PSD review. This would result in thousands of modification projects that would have to comply with the PSD program. Therefore, to maintain consistency with EPA's proposed rules and out of administrative necessity, the board is proposing to establish significance levels in Title 17, chapter 8, subchapters 8 (Prevention of Significant Deterioration or PSD) and 9 (Nonattainment Area New Source Review or NSR), within the range of 10,000 to 25,000 tons per year, and is requesting comment on the appropriate level within that range. The proposed range is the same as the significance level range in EPA's October 27, 2009, proposal and is intended to provide the board with the flexibility to consider public comments and any final EPA significance level that is promulgated prior to final board action.

To alleviate the impact of a new regulatory program on currently unregulated municipal solid waste landfills and publicly owned treatment works (POTW), the board is proposing to reduce the application fee on new NSR/PSD permits for those facilities under Title 17, chapter 8, subchapter 5, from \$15,000 to \$500. Based on the relative low level of complexity of emission sources at landfills and POTWs, the level of department resources required to issue an initial NSR or PSD permit for that type of a facility would be no greater than the level of department resources required to issue an NSR or PSD permit modification for an existing source, for which the department currently charges a \$500 application fee.

Under New Rules I, V, IX, XIII, and XVII, the proposed rule amendments and new rules would become effective upon the effective date of either a final EPA Light-Duty Vehicle Rule or a final EPA Tailoring Rule, either of which would automatically trigger GHG permitting requirements.

Under New Rules II, VI, X, XIV, and XIX, the proposed rule amendments and new rules would apply retroactively to the effective date of EPA's final Light-Duty Vehicle Rule or the effective date of its final Tailoring Rule, whichever date is earlier, so that minor source permits issued in the interim would not be issued with inappropriate major source GHG permitting provisions.

Under New Rules III, VII, XI, XV, and XIX, to maintain consistency with

federal regulation of GHG, if EPA stays, withdraws, or reconsiders its Light-Duty Vehicle Rule and its Tailoring Rule, or if both regulations are vacated by a court of competent jurisdiction, all of the GHG rule provisions adopted in this rulemaking would become void.

Under New Rules IV, VIII, XII, XVI, and XX, the proposed rule revisions would be temporary and would terminate on December 31, 2011, to achieve the immediate administrative goals of reducing the permitting burden on the regulated community, on the currently non-regulated entities that would be affected, and on the department and allow for a later stakeholder process to address GHG permitting specifically for Montana.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., _____, 2010. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

8. 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.

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

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

Certified to the Secretary of State, _____, 2009.