

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULEMAKING

Agenda # III.B.2.

Agenda Item Summary: Rulemaking to amend the solid waste rules to change citations to conform to rule repeals being made by Department.

List of Affected Rules: This rulemaking would amend ARM 17.50.403 and 17.50.410.

Affected Parties Summary: The proposed rule amendments could affect all parties regulated by the Department under the solid waste rules.

Background: Under the solid waste statutes, the Department adopts the procedural and substantive regulatory rules, and the Board adopts solid waste fee rules. The Board's fee rules contain cross-references to the Department's rules. This rulemaking was proposed because the Department had proposed to repeal and replace several of its rules that were cross-referenced in the Board's rules. It was planned that the Department's rulemaking would be completed before the Board's December meeting, and the Board could adopt the modifications to cross-references at the December meeting. However, the Department has not completed its rulemaking because it issued a supplemental notice of proposed rulemaking.

Hearing Information: No public hearing contemplated.

Board Options: Because the Department has not completed its rulemaking, the Board cannot adopt the modifications to the cross-references.

DEQ Recommendation: The Department recommends that the Board take no action on the rulemaking. Because a notice of adoption will not have been published within 6 months of the publication of the notice of proposed rulemaking, the Board's proceeding will die. When and if the Department repeals and replaces the cross-referenced rules, the Department will propose that the Board reinstate rulemaking to modify the cross-references.

Enclosures:

1. Notice of Proposed Amendment.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
17.50.403 and 17.50.410 pertaining to)	AMENDMENT
definitions and annual operating license)	
requirements)	(SOLID WASTE)
)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On July 27, 2009, the Board of Environmental Review proposes to amend the above-stated rules.

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., July 6, 2009, 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. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.50.403 DEFINITIONS Unless the context requires otherwise, in this subchapter the following definitions apply:

(1) through (5) remain the same.

(6) "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. ~~The term~~ This definition does not include soils contaminated solely by inorganic metals, ~~or soils that meet the definition of hazardous waste under ARM 17.54.204 Title 17, chapter 53, or regulated PCB (polychlorinated biphenyls) contaminated soils.~~

(7) through (12) remain the same.

(13) "Interim closure" means the period of time from the department's receipt of the certification required in ~~ARM 17.50.530(1)(h)~~ [NEW RULE XLIX(10) published in MAR Notice 17-284 on February 26, 2009] until the department ~~verifies closure compliance under ARM 17.50.530~~ approves that certification.

(14) through (54) remain the same.

AUTH: 75-10-106, 75-10-115, 75-10-204, 75-10-221, MCA

IMP: 75-10-115, 75-10-221, MCA

17.50.410 ANNUAL OPERATING LICENSE REQUIRED (1) through (6)(c)

remain the same.

(7) ~~Fees at a facility in interim closure must be held in abeyance by the department. Once a facility is in interim closure, its duty to pay license fees is suspended. If the department determines, pursuant to ARM 17.50.530 [NEW RULE XLIX(10) published in MAR Notice 17-284 on February 26, 2009], that not to approve certification of closure was not completed in compliance with the closure plan, the owner or operator shall pay to the department the suspended fees held in abeyance to the department. An owner or operator of a facility for which the department has determined by the department not to have completed closure in compliance with the facility's closure plan approve certification of closure shall, after the owner or operator believes that closure has been completed in compliance with the closure plan, submit a new certification as required in ARM 17.50.530(1)(h) under [NEW RULE XLIX(10) published in MAR Notice 17-284 on February 26, 2009]. The facility is then again in interim closure, pending re-inspection and verification of closure compliance approval of closure certification by the department.~~

Tables 1 through 3 remain the same.

AUTH: 75-10-106, 75-10-115, 75-10-204, 75-10-221, MCA

IMP: 75-10-115, 75-10-204, 75-10-221, MCA

REASON: The department is proposing to amend the definition of "contaminated soil" in ARM 17.50.403(6). The current definition cites a rule of the department, ARM 17.54.201, that was repealed in 2001. That rule was repealed at p. 169, 2001 Montana Administrative Register, issue number 2, effective January 26, 2001, and new Montana hazardous waste rules were adopted. One of those new rules, ARM 17.53.301, incorporates by reference a regulation of the federal Environmental Protection Agency (EPA), 40 CFR 260.10, that defines contaminated soils that constitute hazardous waste. ARM 17.50.403(6) has not previously been updated to cite the proper hazardous waste rule. It is necessary to change the citation in that rule so that it refers to the current definition in the hazardous waste rules. In addition, a definition of "contaminated soil" is being proposed to be added to ARM 17.50.502, by the department in a separate rulemaking. This definition explicitly excludes soils contaminated by polychlorinated biphenyls (PCBs). Because the phrase "contaminated soils, defined in ARM 17.50.403," is used in ARM 17.50.410 to establish the licensing fee for a landfarm that could treat contaminated soils and that would be regulated under ARM Title 17, chapter 5, subchapter 5, it is necessary to have the definitions be identical. So, it is necessary to amend ARM 17.50.403 to have the same definition of "contaminated soil" as in ARM 17.50.502.

Existing ARM 17.50.410, which uses the definition of "interim closure" from existing ARM 17.50.403(13), requires the department to hold in abeyance fees owed by a solid waste management facility after the facility's engineer certifies that the facility has been closed according to its approved closure plan, but before the department has inspected the facility and approved the certification. The proposed amendments to ARM 17.50.403 and 17.50.410, which would substitute references to New Rule XLIX published in MAR Notice 17-284 on February 26, 2009 for the reference to ARM 17.50.530, the existing closure rule, are necessary because ARM

17.50.530 is being proposed to be repealed by the department in a separate rulemaking, with similar closure requirements being proposed in New Rule XLIX published in MAR Notice 17-284 on February 26, 2009. No substantive change is intended. The board also is proposing minor editorial revisions that are not intended as substantive changes.

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, no later than July 23, 2009. 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, no later than July 23, 2009.

6. If the board 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 7 based on the 71 licensees in Montana.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this entity. 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 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, 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/ David Rusoff

DAVID RUSOFF

Rule Reviewer

BY: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,

Chairman

Certified to the Secretary of State, June 15, 2009.